FINAL TECHNICAL REPORT

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Summary

That Kenya's security sector was in need of far-reaching reforms has been evident long before PEV engulfed the country in 2008. To be sure, the post-election crisis vividly exposed the grave shortcomings of the Kenya security sector whose image was badly tarnished by the illegal and unjustifiable actions of some of its members. For a start, many Kenyans perceive the security sector, particularly the Kenya Police, as an inefficient, brutal, anti-people institution that lacks transparency and accountability.

In 2003, the Kenya Government initiated, for the first time, a relatively extensive SSR process that targeted the Kenya Police in particular. The police reform program was conceived under the government's Economic Recovery and Wealth Creation Strategy (2003) and the sector-wide GJLOS program. Steered by the National Task Force on Police Reforms, the stated goal of the police reform process was to transform the Kenya Police into an effective, efficient, human rights-compliant, people-oriented, and accountable institution. Envisioned to cost at least 52 billion Kenyan shillings over the five year lifetime of the Kenya Police Strategic Plan 2004–2008, the reforms prioritized the improvement of policing and security as fundamental prerequisites of economic growth.

These reforms have tended to be inadequate and ineffective because they have been implemented on the false premise that there was nothing fundamentally wrong with the philosophy, structure, and set up of Kenya's security sector, namely that its problems are really only the result of the lack of capacity and resources. Indeed, in its interactions with the police, GJLOS program coordinators have had to contend with the persistent police assertion that improved performance is contingent on the acquisition of modern equipment and better terms and conditions of service.

Many observers argue that the national debate on SSR suffers critically from two defects. The first defect relates to a lack of a consensus on the definition of the concept of security sector governance which tends to be viewed as limited to only the police, the military and the penal institutions. Establishing the constitutional basis of the idea of security sector, especially as it relates to the social contract between citizens and their state, is an important starting point for designing an effective security governance policy framework.

The second defect is the unavailability of sufficient media access to accurate SSR information. This situation is compounded by the technical nature of security-related information and the secrecy with which it is handled by security agencies.

1. **The Research Problem**

Kenya's history over the past decades has been characterized by a situation where security sector agencies, such as the police, the prisons, the prosecution and the judiciary, were generally seen as corrupt, lacking independence and serving as a tool of those in power as many a times they were co-opted into the service of repression of the very people they were meant to protect.

For example, the Police and other security agencies had often been involved in human rights abuses, most visibly excessive use of violence against civilians. This problem was illustrated well by the fact that the Commission of Inquiry into the Post-Election Violence (CIPEV)[1] found that around one third of the total casualties of the 2008 election violence were caused by police shootings. Partly, this problem is recognized to relate to the institutional set-up of the Police. CIPEV found, among others, that existing police legislation failed to provide for clear responsibilities and lines of accountability; that the system for managing staff performance and discipline issues was highly inadequate; and that there was a lack of institutional support for using modern policing tactics.

As a result of this realization, several initiatives had been launched aimed at reforming Kenya's security sector especially the Police Service. As early as 2003, the Kenya Government had initiated, for the first time, a relatively extensive SSR process that targeted the Kenya Police in particular.[2] The police reform program was conceived under the government's Economic Recovery and Wealth Creation Strategy (2003) and the sector-wide GJLOS program. Steered by the National Task Force on Police Reforms,[3] the stated goal of the police reform process was to transform the Kenya Police into an effective, efficient, human rights-compliant, people-oriented, and accountable institution.

These reforms however ended up being inadequate and ineffective because they were implemented on the false premise that there was nothing fundamentally wrong with the philosophy, structure, and set up of Kenya's security sector, namely that its problems are really only the result of the lack of capacity and resources.

Since 2003, Department of Defence (DoD) and armed forces reforms received substantial international assistance. But official public scrutiny and oversight mechanisms are not effective; military overspending contributes to mismanagement of the budget process. Prison staffs have also received human rights training; corporal punishment of prisoners has been outlawed. However, understaffing, generally poorly trained staff and overcrowded facilities contribute to continued excessive prisoner ill-treatment.

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[1] Republic of Kenya: Commission of Inquiry into the Post-Election Violence (CIPEV), 2008

[2] For a review of the police reform process during 2003-2006, see Ajuang, "Police Accountability in Kenya."

[3] This particular Task Force is distinct from the Justice Phillip Ransley-led National Task Force on Police Reforms, which was established in 2009 and is described in footnote 25.

With respect to the Judiciary, it was commonly accepted that the institution suffered from significant flaws, resulting that in many instances the courts have proven an obstacle to advancing the rule of law. The lack of trust in the courts was generally accepted to have contributed to the post-election violence of 2007/2008, something which is well illustrated by the fact that the 2007 electoral dispute was not taken to the courts, but to the streets.

Equally for the judiciary, between 1960 and 1998, eight different committees and/or commissions were established to examine the state of the Judiciary and to make proposals for reform. Most of the recommendations in the reports made by these committees/commissions never saw the light of day. Years of corruption, ineptitude and manipulation by the Executive and prominent personalities had led to a crisis of confidence in the Judiciary's ability to dispense justice."[4] These problems are also recognized by the Judiciary itself, which in its Transformation Framework 2012-16 explains as follows: "The overweening influences of the Executive created an enfeebled Judiciary, an arm of government strikingly reluctant to play its classical role in the defence and upholding of the constitutional principle of separation of powers. This capture by narrow interests created an institution plagued by corruption and inefficiency – a veritable figure of scorn at odds with the public interest."[5]

In summary, the intended reforms in the security sector failed because the SSR in the country lacked a constitutional reference point grounded in democratic values with clearly defined results in the field of security governance.

The new constitution that was promulgated on 27th August 2010 has however in one fell swoop changed all these by recognizing that the ideas of security, peace, human rights and development are interdependent[6] and in providing the institutional, policy, legal, or constitutional changes necessary for SSR.

2. Justification
While the promulgation of the Constitution of Kenya 2010 gave an added impetus to the pace of Security Sector reforms by providing the institutional, policy, legal, or constitutional changes necessary for it, it was clear that the same are under threat from anti-reform forces, bureaucracy, red tape and lack of coordinated citizen participation in the process. This calls for more research and policy dialogues with the various stakeholders and policy makers to find new and better approaches to implementing the new constitution and other reforms under agenda 4 in addition to a more robust civil society engagement with the actors in these reforms particularly in those areas of human security.

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[4] AfriCOG, Good Governance Report 2011, http://www.africog.org/sites/default/files/AGR%20Report.pdf.
[5] Judiciary Transformation Framework 2012-16 P. 2.
[6] See Sen, Development as Freedom; Ismail and Hendrickson, "What is the Case for a Security and Justice Focus in Development Assistance Programming?"

There is therefore a need to move the process to a higher level of more research, policy dialogues and robust civil society engagement by focusing on Security Sector Reforms as the Household survey that was conducted in July 2010[7] and the various South Consulting reports both demonstrate that these are fundamentally critical to Kenya's future stability, peace and progress and that if they are not properly and successfully implemented, the country may experience a worse violent conflict in the near future. The research aims at mitigating the effects of challenges posed by vested national interest and regional geopolitical developments in the implementation process especially in the light of the fact that next year will be an election year.

As agreed under the National Accord, the state established the Commission of Inquiry into Post-Election Violence (CIPEV)[8] that was to investigate the facts and circumstances surrounding the violence, the conduct of state security agencies (SSAs) in their handling of it, and to make recommendations concerning these and other matters. The Waki Report recommended concrete measures to improve performance and accountability of state security agencies and coordination within the state security mechanism, including strengthening joint operational preparedness arrangements; developing comprehensive operational review processes; merging the two police agencies; and establishing an Independent Police Complaints Authority.

Besides, the report CIPEV decried the lack of a national security policy in Kenya and the fact that in dealing with PEV, the security agencies acted separately, with no joint planning or coordination.[9] While the Kenya Security Intelligence Machinery was generally found to have done well at forecasting the likelihood of violence, CIPEV noted significant weakness in translating the intelligence into operational interventions.[10] Even though the National Security Intelligence Service (NSIS) was found to have been the best prepared of all the security agencies, it was faulted for engaging in questionable activities.[11] These included its attempt to obtain accreditation from the Electoral Commission of Kenya (ECK) to be part of the election process, and purporting to advise the ECK on the electoral process.

Kenyans therefore have a relatively strong basis from which to start a comprehensive SSR process. For one, The Constitution of Kenya 2010 establishes a constitutional framework for the security sector which sets out the core principles and values that should guide the sector. The faithful implementation of the Constitution and the other detailed recommendations set out in the Waki

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[7] APFO Household Survey, 2010

[8] Kenyan president Mwai Kibaki established CIPEV on 23rd May 2008, to investigate PEV and make recommendations on the punishment of the perpetrators of atrocities and the prevention of potential outbreaks of violence in the future (see Kenya Gazette Notice No. 4473 Vol. CX No. 4 of 23rd May 2008). On the decline of professionalism within the Kenya Police, see generally "Chapter 11" in Report on Commission of Inquiry.

[9] Ibid: 372-376.

[10] Ibid: 361.

[11] Ibid: 365-367.

Report, the Ransley Report, and the Report of the United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions (The Alston Report)[12] will almost certainly bequeath the country a security sector that is radically different from the existing one.

Finally, the African Union encourages Civil Society Organizations to use relevant channels to continue to interact with the AU, RECs and AU Member States on matters relating to their roles as described in paragraph 74(a) to (h).[13] Civil society will act not only as watchdogs over security related actions of national, regional and continental authorities, but civil society engagement will also be seen as a measure of public approval of security related activities including security sector reform.

3. Research Findings

From the research, it became apparent that the national debate on SSR suffers critically from three defects. The first defect relates to a lack of a consensus on the definition of the concept of security sector governance which tends to be viewed as limited to only the police, the military and the penal institutions. Establishing the constitutional basis of the idea of security sector, especially as it relates to the social contract between citizens and their state, is an important starting point for designing an effective security governance policy framework. This has been occasioned by what Justice Waki called in his report the lack of a national security policy in Kenya.

The second defect is the unavailability of sufficient media access to accurate SSR information. This situation is compounded by the technical nature of security-related information and the secrecy with which it is handled by security agencies.

The overall goal of Police reforms is to transform the Kenya Police and Administration Police Forces into efficient, effective, professional and accountable security agencies that Kenyans can trust for their safety and security. The Government has made previous efforts at reforming policing in Kenya. However, no in-depth and comprehensive evaluation has been undertaken. Reforms, in the past have largely focused on operational and administrative aspects but did not target institutional, legal and policy areas that are necessary for transformation of the police forces into professional efficient and effective police services.

Comprehensive SSR cannot take place without the input of the diversity of society's members. Consequently, politicians and the greater Kenyan community will need to work together advocating for, implementing, and monitoring SSR initiatives. Civil society groups and development partners stand to play a critical role in facilitating this collaboration.

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[12] "The Alston Report" gets this popular version of its title from its author Professor Phillip Alston, who has been the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions since 2004.
[13] The Constitutive Act of the African Union

Finally, from the perspective of State Security Agents among others, conventional approaches to security sector reforms processes have been mostly informed by externally-generated policy frameworks and assumptions that often do not necessarily align with the realities and sources of insecurity of African peoples, states and societies. The purpose of this project was thus to undertake innovative research on the content, timing, sequencing and ownership of security transitions from the perspective and self-analysis of security sector stakeholders so as to address the lack of national ownership of current SSR approaches.

4. Fulfillment of Project Objectives
a.   *Goal*

The project's overall objective is defined as thus: "To analyze and strengthen knowledge of constructive implementation of Security Sector reform processes, through promotion of dialogue among the different sectors of society on security issues as a confidence-building measure"

b.   *The specific objectives of the project are:*

- to produce innovative research on a crucial dimension of post-election violence peacebuilding, namely security transition processes (STP);
- To build capacity for researchers at Africa Peace Forum on policy-relevant research on Security Sector Reforms.
- Engage policy makers, academicians and civil society members in regular dialogue that is needed to gradually elaborate credible analyses and policy options necessary for Security Sector Reform processes.
- To assess the extent to which gender is mainstreamed in the security sector reforms, national cohesion policies and devolution process and propose how gender can be mainstreamed in Security Sector Reforms, national cohesion and integration and devolution.
- Examine emerging issues and document public opinion on required governance reforms (agenda 4) through the use of ICTs; and
- Document and share public opinion with existing post-election reconstruction structures including parliament to effect change and enhance governance

We can state confidently that these objectives have been fully achieved throughout the course of the project:
- With regards to the first objective, the project has produced four new research papers covering diverse aspects of the Security sector reforms[14]

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[14] The Papers are on:
  1. What is Security Sector Reforms: Issues and Actors in Kenya;
  2. Non-State Approaches to Security Sector Reforms: The Role of Civil Society Organizations;
  3. Gender and Security Sector Reforms;
  4. Constitution of Kenya 2010 and SSR: Promises and Dilemmas;
  5. Legislating Security Sector Reforms: Legal and Institutional Challenges in Kenya.

- Concerning the second objective, Africa Peace Forum staff, George Kabongah's capacity in conducting policy-relevant research on Security Sector Reforms has been enhanced
- Finally, the research findings were shared with relevant policy audiences, notably through the policy dialogues that were attended by relevant Security Sector Agents, governmental agencies, CSOs and the media.

5. Project Design and Implementation

a. *Project Design*

In order to achieve the above objectives, this project had two major components: research including response mechanisms/institutions, and the engagement of the policy makers, academia, and civil society in discussions on security issues in the country. The project started with a planning meeting which was a preparatory phase for the desk research and the policy dialogues that would in part examine the emergence and evolution of the security sector reforms in Kenya and the potential for these, in cooperation with civil society to contribute to the development of cooperative regional security arrangements. The Draft Agenda of the planning meeting had initially identified six thematic areas as follows:

1. Introduction/Background to SSR in Kenya
2. Civil Society Role in Security Sector Reforms
3. Gender Aspects of SSR
4. The New Constitution and SSR
5. Security Sector Reforms in Kenya Today: Policy Challenges and Options
6. Way Forward: Need for National Security Policy

However after a full day of serious deliberations among the participants, mostly identified authors, it was agreed that the objective of the project would be better captured by reorganizing the topics as follows:

1. What is Security Sector Reforms: Issues and Actors in Kenya;
2. Non-State Approaches to Security Sector Reforms: The Role of Civil Society Organizations;
3. Gender and Security Sector Reforms;
4. Constitution of Kenya 2010 and SSR: Promises and Dilemmas;
5. Parliamentary and Civilian Oversight of the Security Sector: Hopes and Impediments; and
6. Legislating Security Sector Reforms: Legal and Institutional Challenges in Kenya.

i). Desk Research

This phase of the project involved carrying out a critical review of the existing literature on Security Sector Governance to examine the emergence and evolution of the Security Sector Reform in Kenya and in relation to the six key thematic areas that had been identified at the preparatory meeting above and how these could be made to conform to the African Union Policy Framework on Security Sector Reforms that requires civil society to contribute in the needs assessment, formulation, adoption, implementation, monitoring and evaluation of the security sector. The major objective of this part was to build capacity of upcoming researchers on policy-relevant research on Security Sector Reforms which explains why almost all the papers were done by fresh masters' graduates. Unfortunately, due to monetary constraints since the project had been run on a shoe-string budget, only four papers were written and presented. A fifth paper, *Legislating Security Sector Reforms: Legal and Institutional Challenges in Kenya,* was commissioned but not completed in time as the identified author wanted 10 times what had been given to other authors since it needed a scholar who had firsthand experience in legislating processes.

ii). Policy Dialogue and Public Engagement

This constituted the second component of this project. A process of dialogue with the concept notes prepared by the researchers forming the background to the dialogue among the policy makers, researchers, academics, relevant national and regional civil society groups, government officials, the diplomatic community, regional leaders, and other key international decision-makers. These dialogues served to generate public debate, dialogue and awareness around critical issues related to security sector reforms.

The Policy Dialogue were facilitated by the author of the relevant thematic issue through a presentation (30-35 minutes) followed by brief comments (3-5 minutes) by each of the participants and an open discussion or small group discussions depending upon the number of participants. The participant's comments focused on four questions:

- What work had they done/or were they planning to do on the topic as relates to SSR? (Or, what was their interest in the issue and SSR?)
- What gaps did they see within the field of the thematic issue and SSR?
- What actions/initiatives would they prioritize for future work on the issue and SSR?
- Do they have any concrete recommendations for policy-makers in this field/issue?

b. Activities

The project has been developed successfully, although with some minor obstacles or unforeseen events disrupting its course. However, we eventually asked for (and were generously granted) an extension of six months, in order to take into account the delayed activities for reasons stated here. This was especially the case in the first three months of the project and cost the project a two-month delay in implementation of activities. Africa Peace Forum itself had internal problems including

break-ins by thugs which led to loss of vital equipments and thereby forcing the staff to reconstruct the files from other sources. The project was able to overcome this and a planning meeting was held on 23rd May 2012 together with Friedrich Ebert Stiftung[15].

However, at the planning meeting, it was agreed that to capture the overall objective of the project, it was mandatory to adopt the broader definition of security sector as contained in the African Union Policy Framework on Security Sector Reform. This meant bringing in more players and actors in the sector than originally contained in the proposal we submitted that only envisaged Police Reforms. This larger definition of SSR therefore meant more background research than originally envisaged.

Secondly, was because of the General Elections of 4th March 2013. These elections were historic in many ways as for the first time; Kenyans were electing candidates for six positions as opposed to the previous elections which had only three. This put an enormous demand on the security sector organs, given the experience of the 2007 elections. All the security sector agents i.e. the police, judiciary, National Intelligence, prisons, and the Directorate of Prosecutions among others had therefore chosen to focus their attention on election security. It was consequently very difficult for Africa Peace Forum to get the security sector actors involved in our policy dialogues as from their perspective, it was important but not a priority area.

Luckily, as the elections went on peaceful, Africa Peace Forum was able to hold 4 Policy dialogue meetings from May to August 2013 on the following thematic areas:
1. Non-State Approaches to Security Sector Reforms: The Role of Civil Society Organizations;
2. Gender and Security Sector Reforms;
3. Constitution of Kenya 2010 and SSR: Promises and Dilemmas;
4. Legislating Security Sector Reforms: Legal and Institutional Challenges in Kenya.

These dialogue sessions were well attended by the different actors and who managed to clarify and gave proposals on how to enrich each of the background papers that were presented by the authors.

6. Project Management

The research team had only one researcher who doubled up as the project officer. This certainly denied the project the opportunity to benefit from having a team of personnel that brings with it the required diversity for a project of such magnitude. The researcher coordinator therefore relied heavily on outsourced personnel which were not in line with the specific objective of the project to build capacity for researchers at Africa Peace Forum on policy-relevant research on Security Sector Reforms. In future, research work should be divorced from coordination or administrative functions to free the researcher to concentrate on the main function of research.

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[15] See the Rapporteurs Report attached

7. **Project Outputs and Dissemination**
- Rapporteurs Report on:
    a. Planning/Preparatory Meeting of 23rd May 2012
    b. What is Security Sector Reforms: Issues and Actors in Kenya;
    c. Non-State Approaches to Security Sector Reforms: The Role of Civil Society Organizations;
    d. Gender and Security Sector Reforms;
    e. Constitution of Kenya 2010 and SSR: Promises and Dilemmas; and
    f. Legislating Security Sector Reforms: Legal and Institutional Challenges in Kenya
- Photos of the Planning Meeting.
- Video Recording of the Planning Meeting
- Concept notes on:
    1. What is Security Sector Reforms: Issues and Actors in Kenya;
    2. Non-State Approaches to Security Sector Reforms: The Role of Civil Society Organizations;
    3. Gender and Security Sector Reforms;
    4. Constitution of Kenya 2010 and SSR: Promises and Dilemmas; and
    5. Legislating Security Sector Reforms: Legal and Institutional Challenges in Kenya.

African Peace Forum intends to publish all these research papers in the journal *AMANIafrika* so as to reach as many stakeholders as possible. This will be done through the hiring of academic of higher standing as content editor to look at the works and edit them into the journal. Besides, the project idea, framework, findings and conclusions were also presented orally at various policy dialogue events where the project officer and commissioned researchers facilitated the discussions as invited or commentator.

8. **Project Outcomes**
The project has interested many partners who have offered to work with Africa Peace Forum among them Friedrich Ebert Stiftung (FES), Konrad Adenauer Stiftung, Security Research and Information Centre (SRIC) and the Directorate of Police Reforms

9. **Overall Assessment and Recommendations to IDRC**
In relation to law enforcement, SSR measures could consider broadening security sector planning to emphasise the idea of policing budgets as opposed to police budgets. In this way, other sectors of government, such as education or environmental protection agencies, could complement the work of traditional policing agencies more effectively. This approach may also focus greater public and official attention on the need to improve the standard of community policing in rural areas.[16]

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[16] SSR actors appear to see policing largely as an urban issue probably because the Kenya Police is generally absent in rural areas. In fact, a recent one-month research tour of the Coast Province by the author of this briefing paper found that many Kenyans living in the province look to the Provincial Administration and its Administration Police for

1. The different SSR actors and stakeholders need also to reflect on how to better integrate SSR issues into the ongoing transitional justice processes. For instance, now that TJRC has handed in its report and the next phase requires implementation, there could be discussion about how the implementation of the TJRC report is going to address the security sector's historical involvement in human rights violations as documented in the report.

2. Civil society groups need to publicize the idea of SSR and its linkages to other issues in the governance realm such as human rights, justice, peace, and development.

3. The media is a particularly important channel through which to create public understanding and participation on security issues. Civil society groups need therefore to develop a strategic outlook in their engagement with the media on SSR issues.

4. Research institutions in Kenya need to work with civil society groups to assist them to improve their conceptual understanding of security. This requires making the necessary investments required to locally generate new knowledge on security.

5. There are gaps in knowledge and information about the role civil society groups have played or stand to play in the realm of security governance. Development partners ought therefore to consider supporting research studies that can shed light on the security-centered work of these groups.

6. The SSR debate is still at an embryonic state and security sector players and policymakers generally are yet to see the benefits of a broader, strategic engagement with civil society groups. This situation may require civil society groups to review their confrontational stance in respect to security-related matters generally and to think critically about what they actually "bring to the table" in this debate.

7. Despite promising police reform programmes (including community policing), violent crime is widespread. Reports indicate that police are continuing to commit unlawful killings and arbitrary arrests.

10. Conclusion

In conclusion, the adoption of a holistic, multidisciplinary and integrated approach that reiterates innovation and systematic inquiry into the existing technological opportunities in security sector reforms such as the use of ICTs should be looked into

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security. This dimension has not really been considered in the ongoing national debate on whether the Administration Police should be merged with the Kenya Police as recommended in the pending draft constitution.

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