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Politics and Policing

Understanding the impact of post-conflict political settlements on security reforms in Kenya



July 2016



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Abbreviations

CCP	Concerned Citizens for Peace
CIPEV	Commission of Inquiry into the Post-Election Violence
CORD	Coalition for Reforms and Democracy
GJLOS	Governance, Justice Law and Order Sector
IAU	Internal Affairs Unit
ICC	International Criminal Court
IGP	Inspector General of Police
IPOA	Independent Policing Oversight Authority
KNCHR	Kenya National Commission on Human Rights
KNDR	Kenya National Dialogue and Reconciliation
KPTJ	Kenyans for Peace with Truth and Justice
NARA	National Accord and Reconciliation Agreement
NARC	National (Alliance of) Rainbow Coalition
NGO	Non-governmental organisation
NIS	National Intelligence Service
NPSC	National Police Service Commission
NSIS	National Security Intelligence Service
ODM	Orange Democratic Movement
PBO	Public Benefit Organisation
PEV	Post-election violence
PNU	Party of National Unity
PRIC	Police Reform Implementation Committee
SSR	Security sector reform

Executive summary

THIS REPORT FORMS PART OF A TWO-YEAR RESEARCH PROJECT conducted by Saferworld examining the development of responsive, public-focused security regimes through peace agreements. Adopting the concept of ‘political settlements’ as a framework for analysis, the report reviews the relationship between prevailing political settlements in Kenya from 2008 and reforms introduced in the country in the wake of serious internal violence. It focuses specifically on reforms envisaged for the police service, outlined initially in the 2008 National Accord and Reconciliation Agreement (NARA) that brought an end to the 2007–08 post-election violence, and then through subsequent initiatives. By doing so, the report seeks to shed light on the complex processes by which national elites sought to respond to, manage and control the effects of the pressure to reform. It also seeks to highlight the political conditions in which changes in the sphere of public security provision occurred.

Kenya is an important case study for understanding the role political dynamics can play in determining the pace and nature of security sector reform (SSR). Internal violence in late 2007 triggered the development of an ambitious blueprint for security reform, including for the reform, professionalisation and development of the police service. Agenda Item 4 of the National Accord (as well as the new 2010 constitution) committed the political elite to deliver wide-ranging changes to the structure and behaviour of the police – changes that were subsequently detailed in a significant number of new policing laws. The major impact that political will and interests have had over subsequent years in shaping the realisation of those commitments is little disputed. Less explored, however, is the question of how. How did the political elite, national police institutions and pro-reform actors interact to influence police reform implementation and what impact did that process have on security transformation in practice?

Report findings highlight that control over the police service emerged as one of several key battlegrounds on which a power struggle took place within a Kenyan political elite that had been reshaped by the National Accord. From 2013, when the NARA came to an end, a newly assertive political elite sought to shape and constrain those reform measures deemed to challenge centralised control over senior police appointments and strategy. Fears around violent extremism provided an important context for legitimising the reassertion of central control over the police, particularly after the September 2013 attack on the Westgate shopping mall in Nairobi.

Findings have implications for a number of people and institutions engaged in the security sector. Policing commitments outlined in the National Accord were supported by long-term engagement by international donors and security practitioners to support the development and reform of Kenya’s national police services. Findings suggest a need for programming to be based on more realistic and politically aware analysis of

the policing context and the conditions in which transformation is likely to take place. At a thematic level, initial analysis of the Kenya case suggests there would be value in further research on the utility of political settlements as a conceptual tool for structuring SSR planning and bridging international guidelines with locally informed and appropriate responses.

The report also seeks to contribute to broader, emerging research in the field of political settlements. Recognising that research on political settlements has often been theoretical in nature, the report aims to provide a context-specific and policy-relevant application of the political settlements concept and in turn to spur further operational research in the field.

Introduction

THE CONCEPT OF THE ‘POLITICAL SETTLEMENT’ has gained prominence in recent years in discussions on development and peacebuilding, as international actors seek to understand the role that politics and political actors play in shaping development outcomes. Jonathan Di John and James Putzel have proposed the following working definition of a political settlement, which has also been adopted by the Department for International Development: “a common understanding, usually between political elites, that their best interests or beliefs are served through acquiescence to a framework for administering political power.”¹

Considerable debate exists about the concept’s core components – about its status, for example as an event or an ongoing process of political negotiation – and its boundaries as a unit of analysis (particularly, whether it describes an elite configuration or a wider set of relationships).² Research has also focused on the various formats political settlements may take – on imagining a political settlement’s ‘typology’ that distinguishes between elite regimes that are stable or unstable; open or closed to external participation; and democratic and peaceful on the one hand, or repressive and reliant on violence on the other.³ The extent to which a political settlement is inclusive of other social groups has been a particular preoccupation, with more inclusive arrangements thought to carry significant benefits for stability and reduced conflict risks.⁴ Researchers have focused on horizontal inclusion – on the benefits of elite regimes that incorporate other, potentially contending elite groups and in doing so neutralise external threats. Others have focused on vertical inclusion – on the value of strengthening state-society relations and promoting the inclusion of marginalised groups in political decision making.⁵ There is continuing disagreement about which type of inclusion matters most for peace and stability in the long run.⁶

More recently, literature on political settlements has turned to the question of when and under what conditions prevailing dynamics among elites might be transformed so as to promote particular normative goals, and the types of criteria that may be relevant

1 Di John J, Putzel J (2009), ‘Political Settlements’, GSDRC (Birmingham: University of Birmingham), p 4.

2 For a discussion of this debate see Bell C (2015), ‘What We Talk About When We Talk About Political Settlements’ working paper, Political Settlements Research Programme, School of Law, University of Edinburgh.

3 The debate over typologies has proposed various axes for ‘diagnosing’ a political settlement in order to determine what the implications for policymakers and practitioners might be. For example, Tim Kelsall provides three axes as a tool to understanding different types of political settlements: the level of inclusivity; the means of inclusion (i.e. whether elites are motivated to engage by a common purpose, such as nation building, or merely a share of the spoils); and the level to which the norms for governance are impersonal (i.e. meritocratic or based on impartial rules) or personalised (i.e. based on patronage, nepotism etc.). (Kelsall T (2016), ‘Thinking and working with political settlements’, (London: Overseas Development Institute: London)).

4 Castillejo C (2014), ‘Promoting inclusion in political settlements: a priority for international actors?’ NOREF Report, (Oslo: NOREF).

5 Barnes C (2009), ‘Renegotiating the Political Settlement in War-to-Peace Transitions’, paper commissioned by the UK Department for International Development, (London: Conciliation Resources), pp 24–26.

6 *Op cit* Castillejo C (2014), p 2.

for measuring progress towards inclusive, peaceful and just societies.⁷ This research is of particular interest to those working on and in fragile and conflict-affected states, offering a new and more politically aware lens through which to imagine how societies transition from situations marked by high levels of violence to ones characterised by sustainable peace. To date, however, the usefulness of political settlements as a tool for analysis has suffered as a result of a number of factors. These include conceptual confusion about how ‘political settlements’ differ from other tools for analysis (such as political economy analysis) and gaps on questions of gender and on the role that violence may play in sustaining or disrupting prevailing systems of power.⁸ Researchers have also highlighted the need for detailed case study analysis that moves beyond description and theoretical reflection and allows for the identification of actionable ‘strategies for change’ for external and internal actors.⁹

Taking Di John and Putzel’s working definition, this report reviews the relationship between the dominant political settlement in Kenya and reforms launched in the wake of serious internal violence. It focuses specifically on reforms imagined for the police service, outlined in the NARA – a peace agreement that was designed to bring an end to the violence and through subsequent initiatives, including those delivered and supported by external actors. By doing so, the report sheds light on the complex processes by which national elites sought to respond to, manage and control the effects of reform processes and the changes those reforms envisaged to the prevailing ‘framework’ through which power was organised. As such, it provides fresh perspectives on the ways in which political elites – and the ‘rules’ that governed the prevailing political system – shaped the impact and effectiveness of reforms in practice.

The aim of the report is not to provide an exhaustive description of the political settlement in Kenya – of the diverse linkages elites maintained with sub-national, international and regional power centres and the resources or ‘rents’ through which the settlement was sustained, though we recognise those systems existed. Nor, from a policy perspective, does the report review the extent to which the National Accord drawn up in Kenya was transformative. Rather, we seek to review the relationship between the political settlement and one sphere of reform in which elites were particularly invested: security and security provision. The security reform blueprint outlined in Kenya from 2008 sought to make significant changes to the rules that had governed prevailing political dynamics, in order to promote a reduction in violence and support the evolution of more a responsive, public-focused policing. Here we review how elites responded to this reform pressure, and in turn how internal and external actors sought to engage in order to shape reform outcomes. By analysing this process of interaction, we contribute tentative findings about transformation in public policing, and the conditions in which such transformation becomes difficult and unlikely. The report thus seeks to bridge the gap between political settlements analysis and the analysis of practical policy intervention strategies geared at promoting positive change.

The NARA brought an end to the violence that erupted following the country’s disputed national elections in 2007. Though reforms began earlier, the police reform process launched after this point is an important focus for political settlements analysis for several reasons. The agreement brokered in Kenya – and the constitutional and legal reforms it spurred – were presented as transformative, as a moment in which Kenya’s political system and the rules governing it might be rewritten so as to promote particular normative goals, including human rights, political accountability and democracy. Policing was a major front on which these normative reforms were to take place. These reforms would seek to break the historical reliance of the political elite on the police as an instrument of elite power and repression; to improve the account-

7 *Op cit* Bell C (2015).

8 See Rocha Menochal A (2015), ‘Inclusive Political Settlements: Evidence, Gaps, and Challenges of Institutional Transformation’, (Birmingham: DLP). Also *op cit* Bell C (2015).

9 *Op cit* Bell C (2015), p 22.

ability of the police to the Kenyan population; and to deliver improvements to security conditions for ordinary people, including through measures requiring the police to operate to standards of professionalism and transparency.

The report draws upon existing literature on police reform and field research conducted by Saferworld and partner organisations in Kenya. Field research was carried out at the national level with key informants in Nairobi between August and November 2015, including representatives from the police, civil society, academia and government institutions. Research was also carried out in four counties – Nairobi, Kisumu, Mombasa and Isiolo – between October and December 2014.

Police reform in Kenya

The NARA – signed into law on 28 February 2008 – brought an end to the post-election violence (PEV) that had erupted in Kenya in late 2007. The agreement set out the terms of a power sharing deal between the incumbent president, Mwai Kibaki, and his Party of National Unity (PNU), and Raila Odinga, leader of the opposition Orange Democratic Movement (ODM), who had disputed the election result. Odinga had served in the previous Kibaki-led National Alliance of Rainbow Coalition (NARC) government from 2002 before he and his Liberal Democratic Party were ejected in 2005 – a move that narrowed the political settlement prevailing in Kenya at the time.¹⁰ The National Accord required that these contending elite groups – the leadership of the ODM and PNU parties and their respective constituencies – adjust to a new, brokered system of horizontal inclusion of elites within the political settlement. Spurred by significant international and civil society pressure, the National Accord also established a wide-ranging agenda for constitutional, electoral and institutional reform. This included measures to radically reform the police service, partly by establishing new mechanisms for management, oversight and accountability of the police that were independent from the executive.

These commitments triggered a period of struggle, as elements of the new coalition government sought to assert control over senior police posts and portfolios in a context of wide-ranging constitutional reform. As the coalition disbanded following elections in 2013 and a new government took charge, these power struggles gave way to more assertive efforts by the newly empowered political elite to consolidate control and reverse reform gains. A number of strategies were adopted by the elite during this period to minimise threats to the political ‘rules’ that had sustained elite power for decades and to maximise opportunities for centralised control.

The first section of this report examines how the police reform agenda came to be articulated in the National Accord and the transformation this agenda envisaged for policing and for Kenya’s political settlement. The second section reviews the nature of the political settlement that existed in the pre- and post-2013 period and the strategies deployed by elites to manage the effects of police reforms.

¹⁰ Raila Odinga then went on to form the ODM.

1

The development of Kenya's police reform agenda

1.1 The political elite and policing in Kenya

PRIOR TO THE 2010 CONSTITUTION, political power in Kenya was heavily centralised and invested in the national executive, reflecting the model of government inherited from the British Empire at independence in 1963 and perpetuated by successive Kenyan governments for nearly 50 years. The Office of the President maintained a high level of control over the rest of government, a system supported by a national patronage network that rewarded loyalty among prominent members of the president's ethnic community with access to state resources.¹¹ Other government ministries and members of parliament were either complicit in this system or lacked the political influence to challenge it: the judiciary lacked the power to enforce its decisions. Institutional 'checks and balances' over the executive were largely impotent in this context, enabling the emergence of a 'winner-takes-all' political system in Kenya marked by systematic and large-scale state corruption.¹² For the majority of its post-independence history, political leadership in Kenya – and control over government rents and resources – has rotated between the Kikuyu and the Kalenjin, two of Kenya's ethnic communities.

Kenya's two police forces – the Kenya Police and the Administration Police – have been used by successive governments as a tool of repression and social control for decades.¹³ The forces have their roots in the colonial period, where they were used to protect Britain's economic and administrative assets (in the case of the Administration Police) and to subdue and police the population (in the case of the Kenya Police).¹⁴ After independence, some constitutional safeguards separating the police and the executive were put in place, including an independent Police Service Commission and restrictions on the president's power to appoint or dismiss the Inspector General of Police.¹⁵ However in the years after independence, as Kenya moved towards becoming a one-party state, successive governments rolled back these protections to bring the police under the control of the president.

¹¹ Martini M (2012), 'Kenya: Overview of Corruption and Anti-corruption', Transparency International, U4 Anti-Corruption Resource Centre, Expert Answer No. 348 (www.u4.no/).

¹² See, for example, Wrong M (2009), *It's Our Turn to Eat: The Story of a Kenyan Whistleblower*, (London: Harper Collins) and Gastrow P (2011) 'Termites at Work: Transnational Organized Crime and State Erosion in Kenya', (New York: International Peace Institute).

¹³ Noyes A (2013), 'Securing Reform? Power Sharing and Civil-Security Relations in Kenya and Zimbabwe', *African Studies Quarterly* **13** (4) Winter, p 35.

¹⁴ Mahmood M (1996), *Citizen and Subject: Contemporary Africa and the legacy of Late Colonialism* (London: James Currey).

¹⁵ Furuzawa Y (2011), 'Two police reforms in Kenya: Their implications for police reform policy', *Journal of International Development and Cooperation* **17** (1) p 55.

Security sector institutions played an important role reinforcing the president's power, with senior ranks of the intelligence services, military and police dominated by the president's ethnic community. The police were important for containing periods of popular dissent, particularly during one-party rule, when the police were used to arrest, intimidate and disappear those associated with the political opposition. Over time, informal armed actors, including gangs and militias, also protected and enforced the elite's political and economic interests.¹⁶ With the end of one-party rule in 1991–2 that eventually led to the election of the NARC in 2002, a new process of police reform was started. In 2003, the NARC government formed the Task Force on Police Reforms as part of the Economic Recovery and Wealth Creation Strategy and the Governance, Justice Law and Order Sector (GJLOS) programme. These reforms attempted to reorient the police towards a more people-focused service, including an initial prioritisation of community-based policing. However, they did not address the underlying issues with the culture and politics of policing in Kenya, focusing instead on technical inputs and greater investments.¹⁷

1.2 The 2007 electoral crisis and public pressure for reform

Violence had marred Kenyan elections for years. However, the intensity and geographic spread of the violence that followed the 2007 general election was unprecedented. In the run-up to the vote, many parties used ethnically charged messaging in their campaigns that in some cases amounted to 'hate speech'. In December 2007, Kenyans went to the polls in one of the tightest contests in recent history. The announcement on 30 December that the PNU leader and incumbent president, Mwai Kibaki, had won the presidency and defeated the contesting ODM candidate, Raila Odinga, was immediately disputed by ODM, who alleged widespread vote rigging. The announcement triggered high levels of violence across the country, including in parts of Western Kenya, the Coast and Rift Valley provinces, and informal settlements in Nairobi. Spontaneous violence gave way to increasingly organised attacks and retaliations in some locations, including in Naivasha and Nakuru. In total, more than 1,200 people were killed in the violence and 600,000 were displaced from their homes.

The police were found to have played a significant role in the PEV. The Commission of Inquiry into the Post-Election Violence (CIPEV) – established in May 2008 to investigate the circumstances of the violence and the conduct of security agencies, also known as the Waki Commission – outlined evidence of civilian killings, sexual violence and looting of civilian property by police officers.¹⁸ In Western Kenya, the Waki Commission found that the majority of civilian deaths had been caused by police, who had attacked civilians on political and ethnic grounds.¹⁹ The report also found that the police had failed to respond to unfolding violence due to inadequate security planning and had failed to investigate individual cases, "even when provided with strong evidence identifying offenders".²⁰

The scale of the violence took many Kenyans, as well as the international community, by surprise, though some have argued that there were a number of warning signs as the elections approached.²¹ International efforts to mediate an end to the crisis began in

¹⁶ Ngunyi M, Katumanga M (2014), 'From Monopoly to Oligopoly: Exploration of a Four-Point Hypothesis Regarding Organized and Organic Militia in Kenya', (Nairobi UNDP), p 25.

¹⁷ International Center for Transitional Justice Kenya (2010), 'Security Sector Reform and Transitional Justice in Kenya', ICTJ Briefing, International Center for Transitional Justice, New York, p 5.

¹⁸ Part of the agreement under the National Accord included the need for a thorough account of the post-election violence and that those responsible needed to be arrested and charged. The CIPEV, headed by retired judge Philip Waki, was formed on 23 May 2008 to investigate the violence, the conduct of the security agents, and to offer recommendations for addressing findings. The commission presented its findings to the coalition government on 15 October 2008. In addition to the police, the commission also examined other security institutions including the National Security Intelligence Service (NSIS), now known as National Intelligence Service (NIS), and the military.

¹⁹ Republic of Kenya (2008), 'Report of the Commission of Inquiry into Post Election Violence (CIPEV)', (Nairobi: Government Printers), p 389.

²⁰ *Ibid* p 369, p 394.

²¹ Kanyinga K, Walker S (2013), 'Building a Political Settlement: The International Approach to Kenya's 2008 Post Election Crisis', *Stability: International Journal of Security and Development*, 2 (2).

early 2008, led by Kofi Annan and the African Union's Panel of Eminent Personalities. These efforts succeeded on 28 February 2008 in brokering an agreement between PNU and ODM to share power in a grand coalition government along with members of other political parties, subsequently codified in the 2008 National Accord and Reconciliation Act. The Act provided for Kibaki to retain the presidency alongside a newly established role of prime minister to be filled by Raila Odinga. Positions in a newly expanded 42-member cabinet were shared between the various parties of the grand coalition, though key portfolios – including internal security, foreign affairs, finance and justice – remained with Kibaki's PNU. As such, the National Accord expanded the prevailing political settlement with greater horizontal inclusion, though in a manner that was restricted.

The international community was involved at the outset in applying pressure on the parties to resolve the immediate crisis through power sharing and address the deeper social and institutional failings that had caused it, including within the police.²² In January 2008, the United States and British governments threatened to suspend development aid unless a solution was found.²³ Later, in February 2012, the US imposed travel bans on ten publicly unnamed Kenyan politicians.²⁴ Donor funding was also directed to civil society organisations involved in advocating and informing the development of more detailed reform measures from 2008–11 and to independent commissions created alongside the Political Accord, including the Independent Review Commission on the 2007 Elections and the CIPEV.²⁵ Once the reform agenda was outlined, the Open Society Institute funded public monitoring of and reporting on implementation, ensuring a degree of public and international scrutiny over progress.

External pressure also came from Kenyan civil society during the negotiations through two groups: Concerned Citizens for Peace (CCP) and Kenyans for Peace with Truth and Justice (KPTJ). While not party to the negotiations, they were able to provide information – particularly through their documentation of the PEV – to the mediators, as well as disseminate information to the public.²⁶ Despite civil society's push to have police reforms expressly stated in the NARA, this politically sensitive issue was removed from the talks, thus reducing the opportunity for generating political buy-in for comprehensive reforms among the executive and other political elites.²⁷ However, the external pressure from the international community and civil society was able to secure basic commitments to longer-term political reform, including to the security sector.²⁸

Public scrutiny also focused on the investigation and prosecution of the perpetrators of the PEV. A list of individuals considered to bear the greatest responsibility for the violence was handed over to the International Criminal Court (ICC) by Kofi Annan in July 2009 after Kenya failed to establish a domestic Special Tribunal to try the cases. Uncertainty over who among the political elite would be held responsible for the PEV provided a collective urgency for them to show their commitment to reforms.²⁹

1.3 A radical roadmap for reform

As noted above, the National Accord went beyond power sharing. In order to address the political and social dynamics that had led to the PEV, the parties agreed to a set of ambitious and broad structural reforms under what became known as Agenda Item 4,

²² *Ibid.*

²³ Mynott A (2008), 'Dilemma for donors over Kenya aid', BBC News, 24 January, (news.bbc.co.uk).

²⁴ Weaver M (2008), 'US bans Kenyan politicians accused of inciting violence', The Guardian, 7 February, (www.theguardian.com).

²⁵ *Op cit* Kanyinga K, Walker S (2013), pp 13–14.

²⁶ Office of the African Union Panel of Eminent Personalities (2014), *Back from the Brink: The 2008 Mediation Process and Reforms in Kenya*, African Union Commission, pp 30–31.

²⁷ Osse A (2014), 'Police reform in Kenya: a process of meddling through', *Policing and Society*, December, p 11.

²⁸ Brereton, V, Ayuko B (2016), 'Negotiating Security: Sudan's Comprehensive Peace Agreement and Kenya's Political Accord', *Global Governance*, Vol 22, p 150.

²⁹ *Op cit* Osse A (2014), p 12.

which sought to “address the fundamental root causes of recurrent conflict”.³⁰ Agenda Item 4 committed the parties to delivering wide-ranging reforms to the constitution, to land management and to a range of institutions including parliament, the civil service, the judiciary and the police, with a view to promoting transparency, accountability to the public, independence from the executive, and ending official impunity.³¹ In identifying these issues, Agenda Item 4 committed the elite to dismantling the highly centralised and personalised political system that they had perpetuated and reinforced for decades.

The terms of Agenda Item 1 required the police services to take immediate measures to stop the violence and restore security. Meanwhile, provisions on structural institutional reforms were to be undertaken through provisions outlined in Agenda Item 4 on long-term issues and solutions.³² These committed parties to five reform processes: 1) to review the constitution so as to establish an independent police commission; 2) to review and define the role of the Administration Police; 3) to review laws and policies related to security and policing, including on issues of citizen oversight and an independent complaints mechanism, human resource management and professionalisation; 4) to finalise and implement a national security policy; and 5) to recruit and train police officers so as to raise the police-to-population ratio to the UN standard.

A National Task Force on Police Reform (also known as the Ransley Task Force) was launched in May 2009 to give shape to a more detailed reform agenda. Following an inclusive process, it received written and oral representations from a wide range of state and non-state actors, including the international community. Submitting its interim report in August 2009, the Ransley Report made over 200 recommendations.³³ The Task Force’s report, still seen as the ‘blueprint’ for Kenyan police reform, was followed by the creation of the Police Reform Implementation Committee (PRIC) in October 2009, to oversee implementation. PRIC developed legislation establishing a group of new policing institutions, produced a new police training curriculum, and prepared a roadmap for the roll-out of police reform.

The framework established for reforming the police was part of a broader set of measures designed to overhaul Kenya’s political system. Finally passed by popular referendum in August 2010, the new Constitution of Kenya fundamentally transformed the formal, legal rules of the political settlement. It attempted to significantly reduce the powers of the presidency, instituting measures to separate the three branches of government and to end presidential influence over the judiciary, the security sector, and civil service (in line with Agenda Item 4). Significantly, it also imposed limits on presidential powers of appointment and dismissal of public officials and required presidential decisions to be set in writing, so as to address a history of verbal, and therefore untraceable and unaccountable, decision making.³⁴ The constitution – passed by public referendum after a national consultation process – represented a moment of new, vertical inclusion in Kenya.

Police reform commitments were also included in Kenya’s new constitution, codifying the commitments and obliging the executive to deliver them. Police reforms were set out in Chapter 14 of the new constitution, which committed the police to a number of functions and standards, including to operate with professionalism, transparency and

³⁰ Kenya National Dialogue and Reconciliation: Statement of Principles of Long-term issues and solutions, with Matrix of Implementation Agenda [Agenda Item 4], 23 May 2008, para I.

³¹ *Ibid.*

³² During the negotiations, the parties agreed that the police were to play a central role in stopping the violence; enhancing the security and protection of the people and their property; restoring respect for the sanctity of human life; and ensuring that freedom of expression, press freedom and the right to peaceful assembly were upheld. Under Agenda Item I of the signed agreement, the police were to (i) act in accordance with the Constitution and the law and in particular, stop the use of live bullets on unarmed civilians in unjustifiable circumstances; (ii) carry out their duties and responsibilities with complete impartiality; (iii) be deployed in a manner seen to promote and reflect national integration and harmony. Under Agenda Item II, the police were to ‘provide safe passage and security’ to displaced persons and others wishing to return to their homes.

³³ South Consulting (2009), ‘The Kenya National Dialogue and Reconciliation (KNDR) Monitoring Project: Status of Implementation of Agenda Items 1–4’, Fourth Review Report, October, paras 34–35.

³⁴ Akech M (2010), ‘Institutional Reform in the New Constitution of Kenya’, International Center for Transitional Justice, October, p 26.

accountability; to comply with human rights and fundamental freedoms; and to promote relationships with broader society.³⁵ Chapter 14 integrated operational recommendations from the Ransley Report and the PRIC, such as placing the Administration Police and Kenya Police under a single, independent inspector general of police. Under the fifth schedule of the constitution, key pieces of police reform legislation were set to be enacted within two years.³⁶

Box 1: Police reform legislation

- The **National Police Service Act (2011)** established the position of an independent inspector general of police (IGP), unified the Kenya Police and Administration Police in a single hierarchy under the IGP, established the Criminal Investigations Directorate and required all police officers to be vetted.
- The **National Police Service Commission (NPSC) Act (2011)** established a civilian board with the remit of recruitment and promotion of officers, including the IGP, as well as responsibility for vetting police officers and overseeing police training.
- The **Independent Policing Oversight Authority Act (2011)** provided for an independent board to investigate and respond to complaints against the police, with the power to recommend disciplinary action and criminal prosecutions.

Several factors also meant that the comprehensive articulation of the police reform agenda was constrained from the outset. While basic political commitment to deliver longer-term reform was established in Agenda Item 4, the more detailed, operational reforms for policing were developed through separate processes, including the CIPEV, the Ransley Task Force and the PRIC. This process of deferring the politically sensitive issue of police reform and excluding it from the substance of political negotiations likely helped facilitate a quick resolution to the crisis.³⁷ At the same time, this deferral involved a significant trade-off, reducing opportunities for generating important political buy-in for police reforms at an elite level and for challenging attitudes towards the security services that prevailed among the executive.³⁸

Failing political commitment would significantly impede the implementation of police reforms over subsequent months and years. From the beginning of the coalition government's rule, commitments were subject to delays, with appointments to the PRIC, for example, dragging for several months. Within the coalition, debate instead focused on the distribution of ministerial positions and portfolios, with ODM in March 2009 calling for the renegotiation of the National Accord over allegations of PNU domination. By October 2009, South Consulting – tasked with monitoring the overall reform progress – reported that “reforms are frustrated or advanced on the basis of how individuals think their political careers will be affected”.³⁹

The case of Mohammed Ali, the Commissioner of Police during the PEV, demonstrated the desire of the political elite to sidestep accountability that would effect transformative change. In September 2009, Mohammed Ali was removed from office and several other senior offices transferred, in line with the recommendations of the Alston Report to the UN Human Rights Council.⁴⁰ However, there were significant concerns that this represented a tokenistic demonstration of commitment to police reform, intended to mask the lack of commitment to genuine reform; one academic noted that Ali “was asked to step aside and was appointed to head another public office”, rather than being dismissed outright.⁴¹

³⁵ Article 238(2)(b), the Constitution of Kenya 2010, www.kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=Const2010#KE/CON/Const2010/chap_14, accessed 15 November 2015.

³⁶ The Fifth Schedule – Legislation to be enacted by Parliament, The Constitution of Kenya 2010, p 142.

³⁷ *Op cit* Brereton V, Ayuko B (2016), pp 149–150.

³⁸ *Ibid*, pp 149–150.

³⁹ *Op cit* South Consulting (2009), para 94.

⁴⁰ Philip Alston was the UN special rapporteur on extrajudicial, summary or arbitrary executions and produced a report for the UN Human Rights Council in February 2009 on extrajudicial killings by the Kenyan police.

⁴¹ Saferworld interview with university lecturer, Nairobi, August 2015.

2

The implementation of Kenya's police reform agenda

THE ROLL-OUT OF KENYA'S POLICE REFORM AGENDA was characterised by a series of struggles within the grand coalition government over existing and new police institutions. The National Accord lapsed with the March 2013 general elections. The coming to power of a new government and a series of security developments provided the context for the more forceful reassertion of control over policing by the executive.

2.1 Reform battlegrounds

Implementation of the police reform agenda rapidly became an area of contestation within the political elite – primarily between the president and the prime minister – as each side sought to secure influence over police posts and structures deemed most politically 'valuable'. The nature of the National Accord – in particular its creation of a dual executive – also served to create a system in which decisions could be persistently contested and progress on individual reforms delayed. The following section examines how disputes led to delays in the publication of new legislation and the formation of the NPSC. Meanwhile, struggles within the ranks of the police also prevented a full merger of the Kenya Police and Administration Police structures.

Early disagreements focused on the appointment of the independent Inspector General of Police (IGP) and other senior officials, causing significant delays. While the National Police Service Act, which provided for the establishment of the IGP, was passed in August 2011, it was not published until nearly a year later in July 2012, with no reason given by the government.⁴² The appointment of the IGP was further delayed by struggles over appointments to the NPSC – established by the NPSC Act in September 2011 – who would oversee the IGP's recruitment, as well as the recruitment of two deputy inspector generals and the Director of the Directorate of Criminal Investigations. Odinga objected to the initial list of nominees on the grounds that he had not agreed to all the names.⁴³ This postponed the formation of the NPSC until October 2012.⁴⁴

⁴² Amnesty International (2013), 'Police Reform in Kenya: "A Drop in the Ocean"', January, p 12.

⁴³ *Op cit* Office of the African Union Panel of Eminent Personalities (2014), p 205.

⁴⁴ The initial list of nominees had also been rejected by civil society organisations who claimed none of the nominees qualified to be appointed as Judge of the High Court as required by the Constitution. (Momanyi B (2012), 'LSK Rejects Police Commission Nominees', Capital News, 25 April, (www.capitalfm.co.ke)).

Ultimately, delays meant that the appointment of an inspector general did not happen until December 2012, just three months short of the next general elections. Delays in appointments stymied other reforms, including a proposed process of police vetting, which was deferred to give precedence to election planning.

A second struggle focused on the merger of the two police forces as envisioned under the NPSC Act. The political elite saw the Administrative Police – which reported to a government minister, rather than to the police commissioner like the Kenya Police – as a direct extension of their power and influence. Senior Administrative Police officials resisted the merger, due to perceptions they would lose authority under a unified command.⁴⁵ The political elite, meanwhile, has been unwilling to press for a fully operationalised merger, meaning that as yet the Administrative Police, Kenya Police and the partially separate Directorate of Criminal Investigations continue to operate under their old command structures.⁴⁶ A police reform audit published in 2015 by the Kenya National Commission on Human Rights and the Centre for Human Rights and Peace at the University of Nairobi found that senior officers resisted the full merger due to fear for their positions.⁴⁷ This has led to confusion, tension and, on occasion, outright conflict between the two.⁴⁸

Approaching elections in 2013 appear to have significantly affected political willingness to undertake reforms seen to threaten stability within the security sector ahead of elections, though also as reforms could affect police loyalty, given the role the police might have to play enforcing a poll result or responding to demonstrations.⁴⁹ As a result, aside from the appointment of an IGP independent of executive control, reforms that would have prompted substantive changes and that could be perceived to threaten police jobs – such as vetting and the introduction of accountability and disciplinary bodies – were delayed until after the electoral period.

2.2 Containment strategies

The 2013 election brought to power President Uhuru Kenyatta and Deputy President William Ruto in a new ‘Jubilee’ electoral alliance that united the Kikuyu and Kalenjin political elites. After the elections, the new Jubilee government moved decisively to roll back parts of the reform agenda and bring the police under executive control.

Security crises in late 2013 provided an important backdrop for the reassertion of political control over policing. From September 2013, Kenya witnessed a series of attacks claimed by the Somali extremist group al-Shabaab, starting with the high-profile siege of the Westgate shopping mall in Nairobi. The handling of the Westgate crisis by the security services – and by the IGP and Minister of Interior – was heavily criticised in the media, with senior officials issuing contradictory statements as the crisis unfolded, and with at least one police officer killed in ‘friendly fire’.⁵⁰ Police responses to further al-Shabaab-linked attacks in Mpeketoni in June 2014 and at Garissa University in April 2015 were both criticised for being slow and ineffective.⁵¹ Arbitrary arrests and the harassment of large numbers of Somali Kenyans by the police under Operation Usalama Watch – launched in the wake of grenade attacks in Mombasa and Nairobi in March 2014 – also drew heavy condemnation from human

⁴⁵ Mageka A (2015), ‘Police Reform in Kenya: Challenges and opportunities’, Security Sector Reform Resource Centre blog, October 9, (www.ssrresourcecentre.org).

⁴⁶ KNCHR & CHRP (2015), ‘Audit Of The Status Of Police Reforms In Kenya’ p 30.

⁴⁷ *Ibid.*

⁴⁸ For example, in November 2014, Administration Police officers launched a ‘rescue mission’ to free a senior inspector who had been arrested and held at a Kenya Police station. (The Standard (2014), ‘Mend rift between AP, regular police officers’, 4 November, (www.standardmedia.co.ke).

⁴⁹ This can be seen in many of the pre-election assessments conducted prior to the elections, such as Ndong’u J, Wepundi M (2012), ‘Transition and reform: People’s Peacemaking Perspectives on Kenya’s post-2008 political crisis and lessons for the future’, Saferworld; or International Crisis Group (2013), ‘Kenya’s 2013 Elections’, ICG, Africa Report N°197, 17 January.

⁵⁰ Swanson W (2013), ‘Westgate questions and Kenya’s misled media’, Al Jazeera, 22 December (www.aljazeera.com).

⁵¹ Daily Nation (2014), ‘Report blames police over Mpeketoni raids’, 6 October; Daily Nation (2015), ‘Shame of slow response in 15-hour campus terror’, 4 April, (www.nation.co.ke).

rights groups.⁵² Attacks again put the spotlight on police abuse and performance failures.

The Westgate attack prompted calls from several quarters for the government to improve its capacity to respond to insecurity, with weaknesses highlighted in police response, intelligence gathering and immigration. One of the initial government responses was to propose amendments to the National Police Service Act.⁵³ The amendments included provisions to enable the president and parliament to oversee the recruitment of the IGP should the position fall vacant.⁵⁴ This effectively returned the power to appoint the IGP from the NSPC to the president. Following attacks in Mandera County in November and December 2014, a series of amendments to 21 pieces of existing legislation were proposed by the Parliamentary Committee on National Security and Administration.⁵⁵ These were signed into law in December 2014 in the form of the Security Laws (Amendment) Act, 2014.⁵⁶ Ostensibly aimed at increasing the capacity of the state and the police to respond to terrorist attacks, this legislation expanded police powers to stop and search terror suspects, extend detention without trial and introduce restrictions on the media's ability to report on security issues.

'Fast tracked' through parliament, the changes elicited a strong reaction from the opposition and civil society. The opposition Coalition for Reforms and Democracy (CORD) and the Kenya National Commission on Human Rights (KNCHR) mounted a legal challenge to the High Court, alleging the Act contravened the 2010 constitution.⁵⁷ While some restrictions on media freedom were thrown out, the court upheld the decision to allow the president to appoint the IGP.⁵⁸

This tightening of security laws and political control of the security sector occurred in a context of broader attempts by the Jubilee government to curtail public scrutiny of government activities. The executive moved during 2013 and 2014 to amend the Public Benefit Organisations (PBO) Act, 2013 in order to introduce restrictions on the amount of funding non-governmental organisations (NGOs) could receive from outside the country.⁵⁹ The measure was widely interpreted as an attempt by the executive to reduce the ability of NGOs to hold the government to account, particularly in light of international pressure over the impending ICC cases against the president and deputy president. Further attempts were made to tighten government oversight over the media through the Kenya Information and Communication (Amendment) Act, 2013 and the Media Council Act, 2013, which established a basis for strengthened government regulation of the media backed up by a system of heavy fines. Civil society lobbying succeeded in preventing the enactment of the amendments to the PBO Act, though the bank accounts of two NGOs working on human rights and counter-terror issues were frozen after they were placed on a list of "entities suspected to be associated with Al-Shabaab" issued by the IGP in April 2015 and based on the Prevention of Terrorism Act (2012).⁶⁰ The organisations (Haki Africa and Muslims for Human Rights Group, both based in Mombasa) had been critical of Kenya's anti-terror policies and were working with the Independent Policing Oversight Authority (IPOA) on cases of extra-judicial killings linked to the police.⁶¹

The move to bring the IGP back under executive control needs to be seen in the context of the expansion of police powers and the attempts to curtail space for criticism of the

52 See Human Rights Watch (2014), 'Kenya: End Abusive Round-Ups', HRW, 12 May (www.hrw.org); Amnesty International (2014), 'Kenya: Somalis scapegoated in counter-terror crackdown', 27 May, (www.amnesty.org).

53 The National Police Service (Amendment) Act was passed in July 2014.

54 Government of Kenya, National Police Service (Amendment) Act 2014, (Nairobi: Government Printers).

55 <https://www.hrw.org/news/2014/12/13/kenya-security-bill-tramples-basic-rights>

56 Government of Kenya, Security Laws (Amendment) Act 2014, (Nairobi: Government Printers).

57 BBC (2014), 'Kenya anti-terror law challenged in Nairobi court', 23 December, (www.bbc.com).

58 Daily Nation (2015), 'Security laws illegal, declares High Court', 23 February, (www.nation.co.ke).

59 E.g. Migiro K (2013), 'Kenyan cuts in foreign funding of NGOs aimed at silencing critics-HRW', Thomson Reuters Foundation, 12 November, (news.trust.org).

60 Authority of the Republic of Kenya (2015), The Kenya Gazette, Vol. CXVII, No. 36, Nairobi, 7 April (www.nation.co.ke/blob/view/-/2679390/data/987688/-/vn59cw/-/TERROR-LIST.pdf).

61 Kubania J (2015), 'Muslim human rights group accuses Kenyan government of harassment', The Guardian Africa network, 23 June, (www.theguardian.com).

government, in particular over its actions on security. The reassertion of control over the office of the IGP by the executive went against the recommendations made following the PEV to depoliticise the police, and signified a backwards step in relation to the progressive political settlement envisaged in the 2010 constitution.

2.3 Reform: pockets of progress?

Despite the national context, pockets of change in the sphere of public security provision nonetheless emerged in the pre- and post-2013 periods. Conditions enabling shifts in police behaviour or standards to take place, at both national and local levels, appear to have been facilitated by several factors. These include the threat of disciplinary action (even where institutional limitations mean such action is unlikely to be effective), dedicated civil society and international support, or a temporary confluence in both elite interests and wider public pressure on a specific reform issue. Changes, however, were often temporary: an unprecedented degree of public transparency, for example, surrounded the recruitment of the IGP and both deputy inspector generals in November 2012, before political influence over the IGP was reasserted over subsequent months.⁶²

The legislation that proceeded from the 2010 constitution provided for the establishment of two accountability and oversight mechanisms. The NPSC Act provided for the creation of an Internal Affairs Unit (IAU) to investigate complaints against the police.⁶³ While the IAU is located within the NPSC and reports to the IGP, the IPOA, established in June 2012, is independent of the police. The IPOA was established as an independent board to investigate and respond to complaints related to police misconduct, with the power to recommend disciplinary action and criminal prosecutions. While slow to start, both of these institutions have begun to investigate police misconduct. The IPOA was initially criticised in the media for being less active than it promised to be. In its first 20 months of operation, it had only started investigating around 2.5 per cent of complaints raised.⁶⁴ This was mainly due to limited funding to carry out its activities, especially those related to evidence collection. More recently it has been able to investigate cases of police misconduct and push for prosecutions, such as the case of the extrajudicial killing of Kwekwe Mwandaza in Kwale in August 2014, for which two police officers were convicted of manslaughter.⁶⁵ The IPOA was also successfully able to take a case to the High Court to nullify a tranche of police recruitment in July 2014 that was deemed to be marred by corruption.⁶⁶ However, in the wake of the Garissa attack, the president defied this court ruling by ordering the July 2014 recruits to report for training.⁶⁷ Overall, the IPOA remains constrained by limited funding, lack of staff and limited presence outside Nairobi (as well as limited public awareness of its role), which limits the number of complaints it can receive.⁶⁸ It is important to note that a political settlement by definition reaches beyond the legal and constitutional elements captured on paper to include the institutions, resources and people needed to deliver services, including security and justice. In this way, the erosion of the Kenyan political settlement through the curtailment of civic space and the politicisation of police appointments at the highest levels has been compounded by a lack of political will to make resources available to ensure delivery at the operational level.

⁶² *Op cit* Amnesty International (2013), 'Police Reform in Kenya: "A Drop in the Ocean"', p 14.

⁶³ NPSC Act (Section 87).

⁶⁴ Kiarie J (2014), 'Is the Independent Policing Oversight Authority (IPOA) the new toothless bulldog in town?', Standard Digital, 22 February, (www.standardmedia.co.ke).

⁶⁵ Fourteen-year-old Kwekwe Mwandaza was shot and killed by police officers in Kwale County in August 2014. Two police officers were convicted of manslaughter. See Oketch W (2016), 'Kwekwe case: Police officers get seven years in jail for innocent girl's killing', Standard Digital, 16 February, (www.standardmedia.co.ke).

⁶⁶ https://www.amnesty.nl/sites/default/files/public/police_oversight_26022015_light.pdf, p 21.

⁶⁷ Leftie P (2015), 'Garissa attack: Uhuru orders training of 10,000 police recruits in court case', Daily Nation, 2 April, (www.nation.co.ke).

⁶⁸ *Op cit* KNCHR & CHRP (2015), p 35.

The IAU has also made some progress and has been praised for its work on benchmarking professional standards of police with the UK.⁶⁹ This has provided a further mechanism by which people can express their complaints to the police.

Despite limitations facing the IPOA, the creation of new accountability mechanisms – including the IPOA and the IAU – even if of limited operational effectiveness, may already have had a limited impact on police behaviours. There is evidence that the existence of disciplinary procedures alone has been sufficient in some cases to constrain police misconduct. As a civil society actor in Isiolo County reported: *“the young ones are afraid they will lose their jobs should they violate human rights, the old ones are afraid of losing their retirement benefits.”*⁷⁰ However, this has also been interpreted by some as preventing the police from conducting their duties, as they fear carrying out any actions that may result in repercussions.⁷¹ The real and potential impact that these mechanisms could have is currently misunderstood or resisted by many in the police. It is vital that police officers have faith in such accountability mechanisms which, when functioning effectively, offer a degree of protection from spurious or malicious charges for officers when they operate within the law. Such mechanisms, while initially useful in changing unwanted behaviours and holding those responsible for misconduct to account, form an integral (although highly specific) part of the broader political settlement by providing both officers (as representatives of the state with the monopoly on the use of force) and the public (whose consent is key) with confidence in and clarity of police conduct.

The public vetting of senior police officers by the NPSC is another sphere in which limited reform has taken place. After some delays prior to the election, the process eventually started in November 2013 and has so far entailed investigations of senior officers against standards of past conduct, integrity and financial probity, and human rights record between late 2013 and early 2014. At least sixty-three officers – including three senior police officers – were relieved from duty as a result of the NPSC’s first wave of investigations, and an additional twenty-nine are still under investigation.⁷² An additional 12,000 officers are due to be investigated as part of a second phase of the vetting process. Public participation has been a feature of the vetting process, with people invited to submit evidence of misconduct against a published list of officers.⁷³ However, the process has also been criticised for its limited scope – for its narrow focus on financial integrity rather than human rights abuses.⁷⁴ The NPSC has also complained of significant gaps in funding in mid-2015, which threatened to halt the process entirely.⁷⁵

Unhelpfully, the executive has sought to cast doubt on the legitimacy of the vetting process. In his March 2015 State of the Union address, President Uhuru Kenyatta criticised its pace and impact, presenting the process as a threat to police performance: “The on-going police vetting process has taken too long and is now having a negative impact on the overall reform agenda in the police.”⁷⁶ He continued: “It is leading to low morale, affecting command and control and therefore our ability to provide security.”

While these processes and mechanisms for accountability have laid the groundwork for positive police reform, they are still subject to interference by the executive or other parts of the political elite. This interference can be inferred from the unwillingness of parliament or the treasury to release the funds needed for these bodies to fulfil their mandates. Furthermore, as demonstrated by the government’s reaction to the IPOA’s

⁶⁹ Njuguna E, Ndung’u J, Achilles K (2015), ‘Institutionalising police reforms in Kenya: lessons from 2012–2015’, Saferworld.

⁷⁰ Saferworld interview with civil society, Isiolo, October 2014.

⁷¹ *Op cit* KNCHR & CHRP (2015), p 36.

⁷² Nyamori M (2015), ‘12,000 Kenya police to be vetted in second phase of police vetting exercise’, The Standard, 24 October, (www.standardmedia.co.ke).

⁷³ Cherono S (2015), ‘Public invited to take part in police vetting’, Daily Nation, 23 October, (www.nation.co.ke).

⁷⁴ KNCHR (2014), ‘Are we under siege? The state of security in Kenya: an occasional report (2010–2014)’, (Nairobi: KNCHR), p 33.

⁷⁵ Kiplang’at J (2015), ‘Vetting of police hit by lack of funds’, Daily Nation, 23 May, (www.nation.co.ke).

⁷⁶ Kenyatta U (2015), ‘President Uhuru Kenyatta speech during State of the Nation address at Parliament’, The Star, 26 March, (www.the-star.co.ke).

nullification of police recruitment, there is a limit to how far the executive will allow these reform initiatives to operate. In this case, the Garissa attacks made it politically expedient for the executive to override the work of the IPOA and overall, while there have been some positive steps towards police reform, the advances so far have yet to have a transformative impact.

The police reform agenda articulated between 2009 and 2011 was supposed to trigger a transformation in security conditions for ordinary people, through a reduction in police abuse, the introduction of systems designed to improve accountability and reporting on police indiscipline, and through improvements to training and recruitment. While this is a very short period in which to see a truly transformative impact, some of these envisaged changes have been realised. For example, a new police training curriculum was introduced in 2011 with an increased focus on human rights and attitudinal change.⁷⁷ Gender desks have been established in many police stations, though their effectiveness is questioned.⁷⁸ Service Standing Orders for the police have been developed and strategies exist for community policing. However, these envisaged changes do not appear to have had a transformative impact upon public perceptions of the police. Surveys by international organisations have shown that levels of mistrust of the police remain high. Transparency International's Global Corruption Barometer in 2013 showed that 95 per cent of respondents in Kenya felt the police were either "corrupt" or "extremely corrupt."⁷⁹ The research found that many still perceive the police to be linked to political or criminal interests and still deploy force or harassment in their dealings with the public.⁸⁰ Furthermore, the police interviewed still see the public primarily as a source of information or intelligence,⁸¹ rather than a 'partner' in addressing security challenges.

77 South Consulting (2011), 'The Kenya National Dialogue and Reconciliation (KNDR) Monitoring Project: Progress in Implementation of the Constitution and other reforms', Review Report, October, para 46.

78 Njeri M, Ogola S (2014), 'My action counts: An assessment of gender based violence responses in nine counties of Kenya', (New York: International Rescue Committee).

79 Transparency International (2013), 'Global Corruption Barometer', (www.transparency.org/gcb2013/country/?country=kenya).

80 Saferworld interviews with police and civil society representatives, Kwale, Kisumu and Isiolo counties, October and November 2014.

81 Saferworld interviews with police, Kwale, Kisumu and Isiolo counties, October and November 2014.

Conclusions

THE POLITICAL SETTLEMENT THAT EMERGED IN KENYA following the post-election violence of 2007–08 – and the constitutional and legal reforms that accompanied that transition – promised the Kenyan population a greater say in the decisions that affect their lives. The prospects for improved accountability for and oversight of the security services, for a more independent, equitable justice provision, and for meaningful public participation in governance and institutional reform questions appeared – at least on paper and in political dialogue – eminently achievable. Commitments to constitutional reform leading to devolution and SSR (among other initiatives) and a general reappraisal of the relationship between the political elite and the Kenyan people appeared to herald a new era in Kenyan politics that offered an alternative path to the winner-takes-all politics that had proved so divisive over recent decades.

In terms of security, the development of Kenya's police reform agenda spoke to significant changes in the spheres of governance and security, promising to break the historic relationship between the executive and the police service and in doing so lay the basis for more accountable, professional and public-focused security provision. The development of the reform agenda was to a large degree made possible by the conditions created by the 2007 elections – and the crisis it spurred for both the political elite and the police – which catalysed public demands for political accountability. The success Kenya saw in setting out and legislating a comprehensive agenda for police reform between 2008 and 2011 can be attributed to the relative clarity of the 'roadmap' laid out in the National Accord and, particularly, the strength of domestic and external pressure to implement it.

The formal, 'on paper' police reform agenda, however, was insufficient to ensure commitments that translated into practice. Rather, over time, the political elite deployed a range of tactics to manage and resist reforms deemed to challenge their relationship with the police, particularly with its senior ranks. Control over the police service emerged as one of several key battlegrounds on which a power struggle within the political elite – reformulated under the NARA's power sharing provisions – took place. From 2013, however, a newly empowered elite was able to act more assertively and unilaterally. Fears around violent extremism provided an important context for legitimising the reassertion of central control, particularly after the September 2013 attack on the Westgate shopping mall in Nairobi.

In Kenya, a number of external actors engaged in the police reform process from 2008 to support the development of new policing institutions and implementation of structural changes within the police outlined in new policing laws, including through civil society- and NGO-led programming. Analysis of this period suggests that political obstructionism was a major and constant barrier to certain types of reform

progress, particularly to reforms designed to merge the services, increase police accountability, and decrease political interference in senior appointments and decision making, as outlined above. Stronger analysis of political realities in the sphere of policing may have led to more astute decisions about programming. Specifically, it may have enabled donors and implementing agencies to a) identify sets of reforms where change was less likely and those where change was feasible, and to make decisions about programme focus accordingly; and b) identify in a conscious manner the extent to which transformation of the political attitudes and relationships that constrained police reform progress was a programme goal or otherwise. Such analysis would in turn have enabled more informed decisions about the programming approach and appropriate timeframes for tracking change.

Our findings indicate the value of developing a fuller understanding of political settlements and their central dynamics as a basis for designing, supporting and delivering reform initiatives that have a realistic chance of success. An astute analysis of the political, economic and social environment can offer donors, UN agencies, international NGOs and others a sound understanding of where power lies and the conditions under which transformation may be possible. It can also highlight potential resistance to reform and guide decisions on appropriate engagement at different levels. This is particularly the case when designing and implementing reforms that fundamentally challenge those in power and the means by which they exercise it.

Saferworld is an independent international organisation working to prevent violent conflict and build safer lives. We work with local people affected by conflict to improve their safety and sense of security, and conduct wider research and analysis. We use this evidence and learning to improve local, national and international policies and practices that can help build lasting peace. Our priority is people – we believe in a world where everyone can lead peaceful, fulfilling lives, free from fear and insecurity.

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COVER PHOTO: Kenyan police patrol the streets following days of unrest in Mombasa, Kenya, in August 2012. © IRIN/SIEGFRIED MODOLA WWW.IRINNEWS.ORG



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