

Joint response to the Commission for the Implementation of the Constitution on the National Police Service Proposed Regulations

Background

The Constitution of Kenya demands the highest standards of professionalism, transparency, accountability and discipline among police officers. It also requires compliance with constitutional standards of human rights and fundamental freedoms to foster and promote relationships with society more broadly. A number of new policing laws including the National Police Service Act 2011, the National Police Service Commission Act 2011, and the Independent Policing Oversight Authority Act 2011 have been enacted, creating a completely new institutional and legal framework for the police.

As the primary policing law in Kenya, the National Police Service Act 2011 requires the Inspector-General of Police to review all Standing Orders and Regulations issued before its enactment.

This submission outlines Saferworld and Usalama Forum's responses to a number of policing regulations issued as part of this process by the Commission on Implementation of Constitution (CIC), for public input and feedback.¹ This feedback is restricted to the following regulations:²

- **Transfer and Deployment,**
- **Recruitment and Appointment,**
- **Promotion,**
- **Community Policing,**
- **County Policing Authority Guidelines,**
- **Disposal of unclaimed firearms and ammunitions,**

¹ In total, 18 sets of regulations were released for public input.

² Our focus on these is based on our experience working with police on policing (especially during the development of Service Standing Orders) and arms control and this is our main area of expertise.

- **Use of private property by the police,**
- **Use of power by police officers,**
- **Use of force,**
- **Erection of barriers,**
- **Conditions as to the use of firearms.**

The proposed regulations are part of the ongoing police reforms which seek to transform the police service into efficient, effective, professional, and accountable security agencies that Kenyans can trust for their safety and security.

We welcome the Commission's recognition that public participation is necessary and our responses are based on extensive experiences from our work with the police and members of the public in 13 communities across the country. Our responses focus on a range of policy revisions and changes to police practice and procedure which we believe need to be addressed under these regulations. We make the following recommendations on how specific regulations could be refined.

Transfer and Deployment

These regulations are intended to establish policies, procedures, and administrative practices for the transfer and deployment of police officers. In this regard, the proposed regulations should address current problems and challenges associated with the permanent relocation of an officer to a new duty station and the temporary movement of an officer from one station to another for a specific assignment.

Some of the main problems and challenges associated with current practice of transfer and deployment include:

- **Poor compliance with the existing guidelines on transfer and deployment due to a lack of consistent administrative procedures.**

- Excessive negative exercise of powers of discretion by senior officers in the transfer and deployment of junior police officers.
 - Poor coordination and planning in the transfer and deployment of officers and a lack of consultation with respective heads of departments prior to transfer and deployment.
 - Transfer and deployments of officers without full consideration of the requisite skills and human resource needs of designated duty stations.
 - Transfer and deployment of officers to non-core duties, for example receptionists, body guards/escorts, cooks, cleaners, and clerks.
 - Tribalism, nepotism, cronyism, and corruption.
 - Transfer and deployment of officers to remote areas - or the threat of such - as a form of punishment.
 - Constant failure by the Police Service to address genuine requests/concerns from officers on transfer or deployment on medical or health matters.
 - Lack of clear criteria for secondment of police officers to State Corporations and other Ministries, Departments or Agencies (MDAs).
 - Mass unplanned transfers causing huge backlogs of unpaid transfer allowances to the affected officers.
 - Disruption of officers' personal (personal and career development) and family life on transfer, which causes compromise on effectiveness and efficiency in service delivery.
 - Non-utilisation of specialist and skilled officers leading to disaffection and discontent among competent officers, some of whom have had to leave the service not by choice.
 - Police officers being transferred from one station to another without being helped with the logistics to move to their next duty station.
- deployment to ensure that they do not abuse this power. Such measures are currently absent from the proposed regulations.**
- **Include measures requiring that the secondment and attachment of officers is supported with clear terms of secondment and attachment including eligibility among the officers, duration, services to be offered to the recipient institution, core competencies, skills and experience, and the duration of attachment.**
 - **Include measures requiring the service to internally advertise vacancies and opportunities for secondment or attachment and invite applications from qualified police officers.**
 - **Include measures that would ensure that transfer and deployment would take into consideration police officers' skills and competence.**
 - **Include measures to clarify procedures for inter-service transfer within the National Police Service.**
 - **Include measures that would ensure that the lives of members of the officer's family are not significantly disrupted, including children who could be in school when the transfers take place.**
 - **Include measures that would make it a disciplinary offence for officers to solicit for transfer on grounds that are not medical or compassionate.**
 - **Include measures that would make it a disciplinary offence for senior police officers to accept or solicit bribes to facilitate transfer or deployment of an officer.**
 - **Include measures that would make it a disciplinary offence for officers to offer bribes to avoid imminent transfer or deployment.**

Many measures proposed in the regulations will address some of these problems and challenges, but more can be done to address gaps and that further considerations are needed:

- **Include measures that would stop the current practice of transfer and deployment as a means of reward or punishment against police officers and make it an offence against discipline if officers are proven to have done so. Such measures are currently absent from the proposed regulations.**
- **Limit the discretion that senior officers may have in initiating transfer and**

Recruitment and Appointment

These regulations are intended to provide policies, procedures, and administrative practices for recruitment and appointment. In this regard, they should address current problems and challenges associated with the process of hiring a member of the National Police Service and the formal conferment or notification of employment.

Some of the main problems and challenges associated with the current practice of recruitment and appointment include:

- Interference of police recruitment processes by influential individuals through corruption and nepotism.
- Inability to attract and retain the best professionally and academically qualified Kenyans during the recruitment process.
- Increasing recruitment of police trainees without merit or qualifications, and which does not sufficiently take into account the growing base of highly educated individuals in Kenya by attracting university graduates.
- Overlooking or dismissal of qualified candidates because of a lack of political connections.

Many measures proposed in the regulations will address some of these problems and challenges but we believe that more can be done to address gaps and that further considerations are needed:

- **Establish a thorough, rigorous, and competitive recruitment process with clear time for vetting, so lasting longer than the current one-day exercise.**
- **Establish clear measures to end interference in the recruitment process, including cases of corruption.**
- **Include special measures to promote active recruitment exercises in academic institutions or elsewhere to target specific high calibre candidates.**
- **Include measures that would criminalise the actual or attempted influence by political or other actors over the recruitment process at county, constituency or national levels.**

Promotions

These regulations are intended to establish policies, procedures, and administrative practices for promotions. In this regard, they should address the current problems and challenges associated with members of the service acquisition of a higher rank, with higher pay and more responsibilities.

Some of the main problems and challenges associated with current practice of promotions include:

- Corruption and nepotism in the promotions process.
- A lack of transparency in the promotion process.
- The awarding of promotions and training is not impartial.
- Cases of officers being promoted without attending the relevant promotional courses.

- Cases of officers being promoted for reasons other than merit, leading to concerns about their ability to command or manage others.

Many measures proposed in the regulations will address some of these problems and challenges, but we believe that more can be done to address gaps and that further considerations are necessary:

- **Revoke the Inspector General's power to select officers to consider for promotion, in order to remove the potential for partiality or influence in the process.**
- **There are no clear administrative measures to ensure there is no corruption and nepotism in the promotion process and to criminalise the same.**
- **There should be administrative measures and requirement to ensure that officers promoted attend relevant promotional courses.**
- **Include measures for a non-promotion reward scheme to recognise outstanding performance by police officers who excelled in international athletic competitions.**
- **Ensure that promotion is based on the police service staff competencies as reflected in the authorised establishment, rather than being supply-driven.**
- **Include measures that would promote greater transparency and accountability of the Promotional Boards.**
- **Include measures that would require the Service to develop a clear career progression path whose requirements are clearly known to all its police officers (based on schemes of service).**

Community Policing

These regulations are intended to establish policies, procedures, and administrative practices for community policing. In that regard, they should address the current problems and challenges associated with collaborative efforts by the service and the community to jointly identify problems and solutions to crime and disorder in the community.

Some of the main problems and challenges associated with the current practice of community policing include:

- Lack of appreciation by the public for the good work done by the police.
- Lack of trust and confidentiality between the community and the police.
- Fear of the police.

- Lack of co-operation from the public in the arrest of dangerous criminals and criminal gang activities.
- Differences in understanding what is meant by community policing.

Many measures proposed in the regulations will address some of these problems and challenges, but we believe that more can be done to address gaps and that further considerations are needed:

- **The principles of community policing should be revised to reflect internationally recognised principles which include: practicing policing by consent not coercion; being part of the community not apart from it; working in partnership with other agencies and the public; tailoring the ‘business’ of policing to meet the community’s needs; being accountable for its ‘business service’; empowering communities to have a say in the priorities of the police in their area; and providing a quality service.**
- **Under section 5 it is not necessary to define what community policing is not, as the wording is used to address things that have previously been used to attack the concept of community policing. It is not important to state that community policing is not an oversight body over the police, as the forums and committees are also supposed to promote transparency and accountability. If retained, this section should be amended to say that community policing is not an oversight body (in the way the Independent Policing Oversight Authority (IPOA) is) but rather is an important local accountability mechanism.**
- **Community policing committee chairpersons should be elected by members of the public rather than appointed by the head of the service in the area to avoid potential co-option and ensure that the public participates in electing people of integrity to serve and represent them.**
- **The regulations should define the term of office of the vice chair.**
- **In paragraph 9 include the function of the County Policing Authorities to hold the police to account at the county level (in respect of the performance of their functions and in response to agreed priorities).**
- **Clearly state that community policing is a core part of the police’s core business and is not represented as an optional “add-on”. Include measures that would**

require local police to put effort towards building a better community image.

- **Include measures that would require local police to develop joint priorities and work plans and build strategic partnerships between them and the community they serve.**

County Policing Authority Guidelines

These regulations should put in place policies, procedures, and administrative practices for the County Policing Authority (CPA). In this regard, they should address current problems and challenges associated with the promotion and facilitation of policing policies in the county.

Some of the main problems and challenges associated with the current practice of County Policing Authorities include:

- A lack of trust between the public and the police leading to failing partnerships and a lack of co-ordination or interaction.
- A lack of clarity over the role of county governments in policing.
- The existence of various forms of community policing without harmonised guidelines.

Although many measures proposed in the regulations will address some of these problems and challenges, we believe that more can be done to address gaps and that further considerations are needed:

- **The provision of payment allowances for members of the County Policing Authorities while community policing committees are left without any form of logistical facilitation undermines the principle of volunteerism in community policing, furthermore this the police are likely to view community policing as an “add-on” component of their work that needs extra finance, rather than being seen as part and parcel of their work.**
- **Ensure records of meetings are made publicly available. They should in no circumstances be treated as confidential information.**
- **A revision part II – nomination and appointment of members - of the CPA guidelines is required as it is currently inconsistent with the NPS Act. The guidelines reference to sections 41 (2) which is only one clause and does not include sub-sections; rather the correct references in the Act is section 41(1) a-e.**

Disposal of Unclaimed Firearms and Ammunitions

These regulations are intended to establish policies, procedures, and administrative practices for disposal of unclaimed firearms and ammunitions. In this regard, they should address the current problems and challenges associated with the disposal of unclaimed firearms and ammunitions collected by the police officer or surrendered to the Service by any person. Some of the main problems and challenges associated with current practice of disposal of unclaimed firearms and ammunitions include:

- Several cases of unclaimed firearms being hired out to criminals by members of the Police Service.
- Overstretched government storage facilities and delays in destruction raising the risk of losing stockpiles through corruption.

Although many measures proposed in the regulations will address some of these problems and challenges, we believe that more can be done to address gaps and that further considerations are needed:

- **Measures should clearly set out that unclaimed firearms are to be safely stored with clear limits as to who can gain access to these firearms.**
- **Ensure that the use of unclaimed firearms and ammunitions by police will be a disciplinary and criminal offence.**
- **Ensure that any unclaimed firearms and ammunitions are only stored up to a certain time, after which they should be destroyed to ensure that there is no overstretching of government facilities.**
- **Under part III, to ensure adherence to international protocols on arms, as much as is possible, the disposal of arms surrendered to the state must be through destruction as opposed to reuse or reallocation to state departments, except where the firearms so surrendered are found to have been the property of the state.**
- **The requirement to record details of the weapon circumstances surrounding its disposal represent a method of accountability for the police and is most welcomed.**

The Use of Private Property by the Police

These regulations are intended to establish policies, procedures, and administrative practices for the use of private property by the police. In this regard, they

should address the current problems and challenges associated with defining the different types of property such as private or public property, movable or immovable items, goods of value and other acceptable descriptions.

Some of the main problems and challenges associated with the current practice of the use of private property by the police include:

- Police officers using private property to conduct their own business, especially those collected to be used as exhibitions.
- Police officers easily consume property in their care, such as recovered money, to be used for exhibition or evidence.

Although many measures proposed in the regulations will address some of these problems and challenges, we believe that more can be done to address the following gaps and further considerations are needed:

- **Measures should be established to ensure that there is accurate information on private property in police custody, and agreements when police officers are allowed to view and use private property in police custody.**
- **Criminalise the use of private property by police officers, or their transfer to private individuals who are not the owners of the property.**

Use of Power by Police Officers

These regulations are intended to establish policies, procedures, and administrative practices for the use of power by the police. In this regard, they should address the current problems and challenges associated with the use of authority conferred to the police by the constitution.

Some of the main problems and challenges associated with current practice of use of power by police officers include:

- Police officers using power to charge people with crimes they did not commit, which is a common practice during police remands or arrest.
- Senior police officers harassing their junior officers.

Although many measures proposed in the regulations will address some of these problems and challenges, we believe that more can be done to address gaps and that further considerations are needed:

- **It is still hard for the public to put their trust in the police and is therefore hard for them to report cases of abuse. There should therefore be effort towards making**

the public gain more trust in the police and these oversight bodies.

- **Ensure proper regulations are put in place to govern the use of power by police officers as well as disciplinary measures to control misuse of the same.**

The Use of Force

These regulations are intended to establish policies, procedures, and administrative practices for the use of force. In this regard, they should address the current problems and challenges associated use of strength or physical action by the police in an effort to achieve the desired goal.

Some of the main problems and challenges associated with the current practice of the use of force include:

- Cases of the police shooting live ammunition into the air and also directly into groups of protestors and crowds of people without imminent threat to life.
- Several cases of police using excessive and lethal force against the public in rallies and especially demonstrations.

Although many measures proposed in the regulations will address some of these problems and challenges, we believe that more can be done to address gaps and that further considerations are needed:

- **A requirement for officers to plan the policing of events in a way which avoids or minimises the use of force and measures to evaluate whether any use of force was in line with Kenya's human rights obligations under the Constitution and international human rights law and standards, and which clearly prohibits and criminalises the use of excessive force.**
- **Ensure that police officers record statements and reports immediately following a situation in which they are forced to use excessive force, preventing opportunities for police officers to collaborate on statements. Ensure a requirement of the independent collection of witness statements by other officers or other regulatory bodies.**
- **Distinguish between the use of "force" and the use of "firearms" in paragraph 7.**
- **There should be a requirement that officers give a clear warning before using force in line with international human rights law and standards.**
- **To leave the matter of reporting in cases where death or serious injury is caused for 24 hours before reporting under**

paragraph 14 would almost certainly result in the destruction or loss of evidence, not to mention allowing officers involved to confer in a way that could be used to undermine any IPOA investigation. The reference to 24 hours should be changed to 'immediately'.

- **Section 18, sub paragraph 3 sets out training considerations that only relate to firearms. No courses are mentioned in relation to other types of force. The list of considerations should make reference to 'judgemental training' to have officers trained in a way that they have to make judgements about when to use or not use force – especially related to the use of firearms.**

Erection of Barriers

These regulations are intended to establish policies, procedures, and administrative practices for the erection of barriers. In that regard, they should address the current problems and challenges associated with the erection of barriers across a street or roads, access routes, and other thoroughfare to prevent or delay the movement of people and other items.

Some of the main problems and challenges associated with current practice of erection of barriers include:

- Erection of numerous road blocks/barriers, some of which have become a permanent feature, to extort money from motorists and other members of the public.
- Deployment of police officers with no requisite training and skills on traffic operations and management to perform such duties.
- Rampant tribalism and nepotism in the deployment of police officers to traffic management duties has significantly contributed to corruption.
- Use of traffic police officers to control traffic even when traffic lights are in working conditions.

Although many measures proposed in the regulations will address some of these problems and challenges, we believe that more can be done to address gaps and that further considerations are needed:

- **The guidelines should be narrowed down and made specific to address abuses of power and violations related to the erection of barriers and roadblocks, as the current guidelines are too general.**
- **The regulations should put in place measures to address current corrupt**

practices associated with the erection of barriers and roadblocks.

- **There should be measures to ensure that the public is made aware of the erection of these roadblocks and why they are erected in the first place.**

Condition as to the Use of Firearms

These regulations should put in place policies, procedures, and administrative practices for conditions as to the use of firearms. In that regard, they should address the current problems and challenges associated with the use of a rifle, pistol, or other portable gun.

Some of the main problems and challenges associated with the current practice of conditions as to the use of firearms include:

- Cases of police officers using live ammunition against the public in rallies and especially demonstrations, which often lead to deaths of members of the public.
- Several cases of members of the Police Service being in collusion with criminals by hiring out their guns to be used in criminal activities.

Although many measures proposed in the regulations will address some of these problems and challenges, we believe that more can be done to address gaps and that further considerations are needed:

- **Under Section 9: the language should be changed to make it clear that police shall not use firearms against children. As it is, it makes it sound like a judgmental endeavour for police not to use firearms against children.**
- **Regulations should reinforce the importance of range training for officers. This has been missing even though provided for under the National Police Service Standing Orders (SSOs).**
- **Section 30 of the regulations must clearly spell out how national police reserves should secure arms generally and especially those among nomadic communities.**
- **The regulations should specify measures that should be put in place to safeguard the integrity of firearms records in stations.**

Private Use of Police Officers

These regulations should put in place policies, procedures, and administrative practices for private use of police officers. In that regard, they should

address the current problems and challenges associated with the hiring of a police officer from the service by a private person or persons to offer security services for a period not exceeding eight hours per day at the expense of the private person.

Some of the main problems and challenges associated with the current practice of the private use of police officers include:

- Cases of police officers being hired to carry out illegal activities in the alleged private use.
- Cases of police officers taking advantage of the private use and carrying out illegal activities or other activities not part of their mandate.

Although many measures proposed in the regulations will address some of these problems and challenges, we believe that more can be done to address gaps and that further considerations are needed:

- **Measures to be put in place to ensure that deployment for private purposes shall be for the protection of the public good or interest.**
- **The regulations should specifically address the issue of hiring out police officers, ensuring proper follow up protocols to ascertain the nature of services provided by the police in private.**
- **There should also be specific measures to ensure that the police hired are not misused and paid to do other activities other than what they were hired for.**

About Saferworld

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 that everyone should be able to lead peaceful, fulfilling lives, free from insecurity and violent conflict.

We are a not-for-profit organisation with programmes in nearly 20 countries and territories across Africa, Asia, Europe and the Middle East.

About Usalama

Usalama is a partnership space that brings together local, national and international organisations working in the area of security sector reform in Kenya.

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