
A PROGNOSIS OF THE SECURITY SECTOR REFORMS THREE YEARS AFTER THE
PROMULGATION OF THE CONSTITUTION OF KENYA (2010)

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Presented at the Friedrich Ebert Stiftung (FES) Stakeholders' Conference at the Laico Regency Hotel on 20th
November 2013

OPENING QUOTE

“Patriotism means to stand by the country. It does not mean to stand by the president or any other public official, save exactly to the degree in which he himself stands by the country. It is patriotic to support him insofar as he efficiently serves the country. It is unpatriotic not to oppose him to the exact extent that by inefficiency or otherwise he fails in his duty to stand by the country. In either event, it is unpatriotic not to tell the truth, whether about the president or anyone else.”

— THEODORE ROOSEVELT

SETTING UP THE LEGISLATIVE FRAMEWORK AND INSTITUTIONS

The Constitution provides for clear procedures of setting up the security sector institutions but which were to be subservient to “civilian authority”. Even before the Constitution was promulgated, some fabulous research and inquiry work done by the three Philips, who are Alston, Waki and Ransley has already made headway of ensuring that the police, the most notorious of the three security sector institutions, was to be transformed; and radically at that. The three gentlemen’s reports are clear; the police in Kenya are a law unto themselves. Yours truly, having spent some years on security sector research, and also met these three Philips at different times, supports these reforms and goes ahead to propose a civilian oversight framework on behalf of Kenyans to ensure police are held accountable. The concept on civilian oversight is wholeheartedly accepted by Kenyans and also by middle-cadre and lower- cadre police. The leaders? Your guess is as good as mine.

Having spent about two years jumping from one Police College to the next so as to give lectures about law enforcement within the human rights paradigm, including women rights, rights of youth and those of the marginalized, all turned into a naught when post-election violence happened. It was time to say enough is enough! The police beat up Kenyans senseless and the top cop did see no evil, hear no evil and said no evil until he was marched to The Hague: perhaps then is when he knew something wrong had happened in Kenya. Before that, I had talked several times with the then top leadership of the police and especially the then police spokesperson, and on each occasion, raised the matter of 400 plus deaths arising out of misuse of firearms, but to the then spokesperson, two things were clear: first, police have no exclusive ownership of firearms; and second, the young boy shot in Kisumu was only a Rambo movie; some sort of photo-shop superimposed moving images!

So when the Ransley Taskforce met to develop various legislation to guide future policing, it was crystal clear to these patriots. Police excesses must be nabbed, powers cut, and those powers left, used with accountability. The Chairperson of the Independent Policing Oversight Authority (IPOA), and his group did wonders, including borrowing heavily from emerging democracies that have dealt with these matters for long. Many countries such as El-Salvador, United Kingdom and particularly in Northern Ireland, Republic of South Africa and Bosnia and Herzegovina have demonstrated where there is a will there is a way. We owe it to them for the great work done! The now-called Ransley Report, is the “police bible” that we use to mark signs of reforms in policing but let me go back to some more personal stories.

Back to the legislative process. In 2011, Parliament in its own wisdom, passes three critical pieces of legislation. One to establish the National Police Service Commission (NPSC); one to deal with the new police outfit, the National Police Service (NPS); and the final one to establish IPOA. One law is missing at the government press! The one establishing the NPS. Where is it? The government printer has no clue! The

responsible ministry has no idea! The civil society activists have no clue! Talk of ghost laws? This was one of those in 2011, but it resurfaced in August 2012, after hard ball pressure from IPOA to relevant individuals, some of whom are flying their incompetence very high in the current administration.

Two other relevant legislation, that is, the Kenya Defense Forces (KDF) and the National Intelligence Service (NIS) should be passed. But the nature of secrecy around the two bills and who is invited to the various stakeholders' fora to discuss the same is a tight-lipped arrangement. To begin with the NIS bill tries to snatch away right to privacy and right to information, which are already guaranteed in the Constitution. On the other hand, the "armed forces" start calling themselves the KDF on the Promulgation Day, despite there is no law titled KDF. Speak of putting the cart before the horse?

Two stories are worth telling here. First, the former NSIS, the predecessor of NIS, was known to many Kenyans for wasting public funds by snooping on gossiping Kenyans; especially so during the Kanu and Moi regime. After the Promulgation Day, very close sources tell me this was the habit until someone called their 'gossip brief-case' "BURE...BURE KABISA" or simply refused to open those daily 'security briefs' that arrive at 0600 hours at the "House on the Hill". Second, this group notoriously called the SB (that is, Special Branch), was famous for what your's truly and the activists have managed through courts of law, to 'rob', like Robin Hood from Kenyan taxpayers, money to pay debts that should have been paid by individuals because of the torture and illegal confinements of true liberators of Kenyans at various places notably Nyayo House, Nyati House and also Kamiti Maximum Prison.

As regards the KDF. The legislation is quite lengthy. But let us speak very briefly about them on the past and the present. For those interested in the past, ask the Wagalla people, and all those from Northern Frontier Districts between 1963 and 1967 what happened. For those wanting to know not a distant past, ask those who fly planes near Mathare Valley, what they were doing in 1982 trying to do what Nigerians and Ghanaians have beat us in; and am not talking about soccer, but overthrowing successive governments. However, in the recent past, from mid-2008 to mid-2010, ask the KDF, with the police, what they did in Mount Elgon, during Operation Linda Maisha, and whose babies are crying now! But after the Promulgation Day, ask them what they did about the Garissa Market, the scotched earth policy, which is a typical strategy employed by the KDF! Flattening a market to the extent that you may think no structure has ever been erected there! How about flattening three floors at West-Gate? The paper-bag experience too? Not now, wait till later; be patient.

2.3 OLD PHILOSOPHY AND SAME PEOPLE...UNDER NEW ORDER?

The security sector institutions were marching at Uhuru Park, saluting the Commander-in-Chief, who later waved the then new Constitution, but after that auspicious ceremony, the actors in the institutions went back

to their lines, their barracks and their offices to continue with the same old behavior, attitude and predisposition. Many stories can be told under this section to demonstrate what your's truly means. I saw the army, the air-force, the navy, the administration police, the Kenya police, and of course, while hidden, the intelligence services were hovering all over mostly in suits at the Presidential Dias but within the crowds, disguised in jeans and t-shirts. Let the stories begin.

A friend of mine, let's call him 'Kevin', is arrested in September 2013. He is diabetic. He calls and calls, but eventually gets to talk to me at 0630 hours on a Friday morning. He is suffering in silence at a notorious police station which, as activists, we have seen so much notoriety to the extent that two young men died there in custody in 2012. I speed off to check on him before he meets his Maker. Fortunately, he alerts me that after banging on the cell door for over two hours, in the wee hours of the night towards morning, one Good Samaritan cop rushes to the police canteen and brings him a scoop of sugar. I arrange his bail and get him out. They were so quick to get him out so that if he dies, he does so in my custody. But all that process of release takes not less than 3 hours! After the IPOA was formed, how many people have died in police custody? Same old philosophy, same people?

Two weeks prior that incident the IPOA, the Chair and your's truly launches the IPOA Baseline Report on "POLICING STANDARDS AND GAPS IN KENYA" that depicts police investigations as simply inept. When the Inspector General (IG) of Police takes the stand, he starts by literally challenging our work as if we concocted the figures. The process was very scientific. The IG's officers, speaking anonymously, were involved in various questions of the survey. But typically, defense is indeed a weapon of choice top cops use all the time, especially when caught with their pants down. This is the same IG, who once in March and April 2013, issued illegal, arbitrary and unconstitutional orders, limiting the rights to move freely, assemble or associate.

Most recently, the same IG goes air-borne with the press coverage of the West-Gate reporting! Surely. Who did not see paper-bag carrying military officers and we were told they had only 'fetched water'; not from some well, but from a supermarket, which did not have any attendant to charge at the paying counter! If the military top-leadership admitted that the 'looting' was sanctioned, and some have had to pay for the same, what's wrong with this top cop? However, 'looting' should be but only part of the story. The larger story missing from the national dialogue is the kinds of gaps, security unconsciousness, lapses and level of corruption be it monetary or mental that led to such loss of life and serious injuries at the hands of these wayward persons, and whose bodies we have never seen to date! A friend of mine, the quintessential anti-corruption czar, John Githongo, summarized that the culture of eating caused us the West-Gate Scandal. Need I say more? I will come back to Githongo shortly.

In a separate story, your's truly goes to a police station in a rural setting to get a service. He spends the whole day being shifted from one officer to the other, and spoken to in an impolite language. Similar to the story of bailing out 'Kevin' above, I did not say which office I occupy. I ask for a police abstract, then I am sent on a wild goose chase to photocopy an original slip. Then I come back and get a 'dress-down'. I am asked so many questions similar to those I usually call "MASWALI YA CLINIC", which neither have a start-date nor an end-date. I am told to line up. When I am near the service giver, but I am told I called a lady officer "mama", then I am 'dressed down' and told to go another office. Then at that office, another one asks me what's wrong with me. I keep quiet and calm: all in the name of wanting to know what every other Kenyan goes through. Eventually, the last 'dress down' is that I should pay for breakdown services for towing my vehicle. To my shock, the receipt I get from a private car tower, has the name of the "DTO" at the bottom, and whom I am told, has to get something from that service. Did we not say that police conducting private businesses in especially those close with the conflict of interest issue were banned? Surely, old philosophy...same people, but new order?

In Mombasa, a retreat is organized. It comes immediately after we, as IPOA, have held so many meetings with the House Departmental Committee on Administration and National Security. The purpose was to convince them that there is no need to amend the National Police Service Act, and equip the police with more powers that will remain unaccountable and also render the human rights paradigm irrelevant. But to the shock of many Kenyans, the amendment bill has already gone through the first reading as I write this address. Many MPs have been bemused that "police hands have been tied" by the Sixth Schedule that calls for restraint on the use of firearms against lack of imminent danger to the officer or other persons. But even if we shelve that idea of hands being tied, how many Kenyans have died on the roadsides, in restaurants, in banks, or even in the streets as firearms are being used as short-cuts by a trigger-happy security sector? How many died at West-Gate Scandal?

To wind up the story telling, let's turn over the hour glass and address two vital issues. First is on police deployment and second, on police budgeting process and spending. Your's truly, similar to many other State Officers present here, are obliged to spend public money and resources, including human resources wisely. But since taking office, many State Officers, especially from the constitutional commissions, MPs (including Senators), Governors, and independent offices have been allocated at least one police officer per person without any independent analysis of risk or threat levels being confirmed. Police protection is more of an entitlement, or even, part of the pay benefits of the office. This is not a good way of utilizing scarce State human resources like police officers. This "UKUBWA ATTITUTDE" is the one ruining security for all where few Kenyans are walking around with so many 'cops in suits' as if they just realized that they are endangered.

Whose goat did you eat? My plea is that those State Officers should release the police to do normal beat-and-patrol security in the streets, since anyway, many of the same are not trained body-guards; and therefore?

The second matter is to allow the security sector institutions, particularly the police, to have control and have a say on how their budget is prepared, utilized and accounted for. When making a presentation at the above said Mombasa Retreat, the IG made more or less similar comments like all his predecessors. That police do not have a sufficient budget to cover their housing needs, training needs, purchase security equipment, purchase motor vehicles, and such old regurgitated problems. What is the bottom-line? Two things: first, there is a major problem with police budgeting and it's spending, where most likely economic sharks and political barracudas eat where they did not sow and fail to provide essential goods and services to the police. But second, on the other hand, police always pass the buck, where instead of accounting of what has been allocated, which is usually among the top five in the big sectoral expenditures, they say money is not enough to undertake policing in Kenya. We must address all the above for security sector reforms to take root, as we now end the diagnosis and now turn to the prognosis.

3.0 PROGNOSIS: IN SEARCH OF A NEW PEOPLE, SECTOR AND PHILOSOPHY

As this story-telling draws to a close, generally, may I propose three overarching solutions to stem what is ailing the security sector. Security sector, even if your's truly defines it at the end, broadly includes, police, penal institutions (read correctional facilities), the military, the intelligence, the judiciary, the prosecution, and such other institutions that squarely fall in the criminal justice system or whose work revolve around public safety, national security, access to justice and also law and order mandates. Mostly, I have addressed this story to the police, who to me are the window, the door, the padlock and the keys to the criminal justice system, and if this institution is professionalized, Kenya becomes a safe place to live in. Below, yours truly offers three ideas:

1) The FIRST prescription is the creation of a national institutional arrangement to share strategies and encourage accountability. In Kenya, it is an advantage that most of these institutions are within the legislatively-established National Council for the Administration of Justice (NCAJ), but minus some of the above critical institutions. Another critical institution to bring some of these institutions together is the National Security Council (NSC), and also the often controversial National Security Advisory Council (NASAC). There is need for a common appreciation of national security but more often than not these critical institutions are more engaged in cat-fights (or more diplomatically, turf wars) rather than see the larger picture of national security as envisaged in the Constitution. To worsen the situation is a bunch of idle bureaucrats who say they offer security and hence are part of the national security architecture. The County Commissioners are still around despite a court disqualification for their existence: which meant, they do not

have any recognition in law or among most Kenyans. These must be dealt with sooner than later, if Kenyans will enjoy security sector reforms. They simply exist to confuse the legitimate institutions of national security, and of course, bemuse Kenyans with their big signposts written “OFFICE OF THE PRESIDENT”, even in remote villages that suffer from bandits, rapists, murderers, arsonists and all manner of criminals, under their watch!

2) The SECOND prescription is people. Institutions are people but minus people they are just mere machines. People who are committed to national security must be found and your’s truly believes that they are there. All the above institutions are occupied by people but that did not stop Baragoi from happening. West-Gate happened. But also positively, Kismayu was redeemed because of the able KDF working with team spirit and morale, saved us from the specter of Al-Shabab. Now where is President Museveni? Why is he not talking about a “career army”. Can the KDF turn their arsenal towards MIGINGO? What say you?

Equally, the police in Kenya have also nabbed most of the insecurity issues before they happen, and we commend them. Some of them have even died in-line of duty saving our country! We honour them. But as your’s truly has said institutions are people. Intelligence-led security sector reforms must find a place in Kenya; so is technologically-led security. This hit-and-run way of security sector institutions, some of whom sleep on the job, like in West-Gate, must change. Before I pen off this issue of people, let me be blunt and ask a hard question. The Cabinet Secretary in-charge of Interior and National Coordination, and some of his senior and junior advisers, must lead the security sector reforms. The jury discussing their role, or lack of it, in the West-Gate Scandal or through other reform initiatives is still out, and when the verdict comes in, there will be definitely one answer to the question: has there been any “National Coordination” of security sector institutions before, during and after the Jubilee Government took over the reigns of power? Your guess is as good as mine!

3) The THIRD prescription is the matter of respecting and protecting fundamental freedoms and human rights in accordance with the Constitution. In this age, anyone, including the President, Deputy President, the IG or other leader within or ‘without’ the security sector institutions who tries to muzzle Kenyans, the media or such other public from doing what the Constitution guarantees, is playing the Russian Roulette. Unfortunately however, the revolver pistol is not having a single bullet to chance their survival: it is fully loaded. Second, those who try to play with Kenyans hard-earned freedoms, up to including, denying the right to information from other independent sources, or threatening the sources with arrest are living in the 18th Century. They should be dispatched back!

In summary to this prognosis, your's truly summarizes that all security sector institutions, as defined above, should rethink of what they want to do in Kenya under the Constitution. If they are unable, and since institutions are people, they should vacate office. For example, that is why vetting should and must be done for the police in Kenya. It's not a choice, but a statutory obligation. Whoever thinks this process can be changed or prolonged is mistaken. Whoever thinks that security sector reforms is a public relations exercise is leaving in a dream.

Indeed, Kenyans made a decision on 27th August 2010. The decision is sealed. As I end this story-telling paper, I am fully aware I may have stepped on people's toes, and sometimes may be, even people's heads. But it's not personal - never has it been. I am a patriot. I love my country and the more I think of my children and all the future generations, I am fully convinced about this story-telling. It is written that TRUTH SETS US FREE. I hope, throughout this story-telling, that I have done so to the best of my knowledge and ability, without ill-will, prejudice and bias! SO, HELP ME GOD! Amen.

PARTING SHOT

"During my brief tenure in government, I clashed with senior colleagues who insisted that 'eating' from security contracts in particular was okay because the money was essential to pay for democracy that we all know is messy and expensive. 'National security' became the final refuge of the corrupt. My repost then, and now, was: when you eat from procurement deals meant for the police, military, customs, immigration at the top, then bureaucrats below watch and learn. Like termites munching at the wooden foundations of the house of State, everything soon becomes porous."

— JOHN GITHONGO