DIALOGUE ON RIGHTS-BASED POLICING REFORM IN A CLIMATE OF TERRORISM, INSURGENCY AND SERIOUS VIOLENT CRIME

10–12 October 2017
Ikoyi, Lagos, Nigeria

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African Policing Civilian Oversight Forum

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Contents

Acronyms and abbreviations

ADF	Allied Democratic Forces
APCOF	African Policing Civilian Oversight Forum
AU	African Union
BSAC	British South Africa Company
CSO	civil society organisation
IDPs	internally displaced persons
IPOA	Independent Policing Oversight Agency (Kenya)
LRA	Lord's Resistance Army
MJTF	Multinational Joint Task Force
SLAA	Security Laws Amendment Act (Kenya)
UN	United Nations
UNDP	United Nations Development Programme
ZRP	Zimbabwe Republic Police

1 Introduction and opening

Policing, criminal justice and the security sector more broadly face a number of challenges on the African continent, many of which directly constrain the establishment or development of rights-based policing reforms. There is often, for instance, a political appetite for tough policing responses to violent crime and a scepticism towards the rights agenda. Despite this, remarkable progress has been made in finding support for such reforms, many of which have helped shaped democratic policing organisations in a number of African countries.

Reform efforts have, however, begun to face new challenges, including, notably, that of terrorism and insurgency. Over the last decade, these have continued to escalate in a number of African regions, bringing with them various direct and indirect challenges to state governance, security and policing. Responses to insurgency and terrorism have placed further pressure on criminal justice systems as a whole, often presenting conditions in which permissive attitudes exist towards forms of policing that are at odds with the rights-based framework – violent interrogation and lengthy pre-trial detentions, torture, extra-judicial killings, and ethnic profiling, to name but a few. Responding to these concerns requires the entrenchment of accountability and oversight mechanisms, themselves positioned and empowered not only to defend the civilian population against violent crime and insurgency, but also to uphold the rule of law and the rights of detainees, even if suspected of terrorism. It should be remembered that, moreover, abuses in or by the criminal justice system are themselves significant drivers of extremism – the UNDP's recently published *Journey to Extremism* (2017) found that such abuses were instrumental in foregrounding 70% of individuals' turn towards extremism.

The complexity of meeting these challenges are compounded when such responses occur in civil spaces, as they require the cooperation and coordination of numerous security and government services, whether administratively or operationally. Insurgency and terror responses often utilise the armed forces, many of whom may not be trained in policing or investigative strategies, and whose operations may therefore curtail the effectiveness of the criminal justice system and the protection of individuals' rights under international and local legal frameworks. Recognising the importance of these challenges, APCOF convened a high-level dialogue with pivotal role-players in Africa's security landscape to discuss, critically engage, and ultimately begin the process of reforming policing bodies and practices in a climate of terrorism, insurgency and violent crime, which are effective yet also enshrine the protection of human rights on the continent. In collaboration with a number of development partners, the dialogue focused on five areas of fragility: violence; access to justice for all; effective, accountable and inclusive institutions; economic inclusion and stability; and capacities to prevent and adapt to social, economic and environmental shocks.

Held over three days in October 2017 in Lagos, Nigeria, the dialogue brought together academics, civil society practitioners, and police and military commanders to further these aims in a mutually beneficial and inclusive manner. While the discussions were far-ranging, as is detailed in this report, the principal concerns and questions may be summarised thus:

1. What should the balance between the police and the military look like in the provision of security, who should be included, and how should it be weighted?

2. What kind of policing architecture best meets the needs of African nations in responding to terrorism, and what kinds of relationships and forms of cooperation work best in enhancing the policing of terrorism?

3. How do we reconcile the operational mandates and procedures of the military and police when they both respond to security issues in African countries, and what capacity-building exercises and resources are needed to make more effective and accountable the security responses to terrorism in Africa?

4. How can and should the community be included in the policing of terrorism in African countries, and how should the police and military be positioned relative to the larger system of criminal justice system?

5. What support measures and activities need to be extended to the police so that they can be effective and legitimate in their activities, and what kind of interventions are best deployed by donor agencies in enhancing and holding accountable policing activities and organisations in African contexts?

6. In what ways do counter-terrorism activities shape policing in African contexts, and how can these changes be monitored and controlled effectively?

7. What seems to work best and where, and what new innovations lend themselves to better policing, in terms of oversight and accountability?

8. What is and should be the nature of operational cooperation and coordination between police and military services in ensuring public and private security?

9. What role should leadership play, and how can it be enhanced to ensure accountability and oversight of policing bodies and activities effectively?

While this report may not be able to provide definitive answers to these very difficult challenges, it and the dialogue aim to further the debates and conversations on which such answers will ultimately be based. Reflecting on these, this report provides a record and initial engagement with the many speakers' ideas and presentations that formed the basis for the dialogue.

Sean Tait of APCOF chaired the engagements, which were jointly hosted in collaboration with Innocent Chukwuma of the Ford Foundation, Nigeria.

2 Contexts and complexities of policing and human rights in Africa

Etannibi Alemika

Professor Etannibi Alemika (University of Jos, Nigeria) sketched out the context in which contemporary policing in Africa operates, providing a critical framework in which the later discussions could be situated. He noted that, despite the pervasive entrenchment of the discourse of human rights on the continent, the majority of the people living on the continent have yet to enjoy these in a substantive and tangible manner. One of the primary limitations of the practical realisation of human rights is unfortunately driven by policing itself – rights-based policing is still not necessarily the de facto operational model underpinning the organisational model of many African police services. While many of the countries on the continent continue to struggle to come to terms with their own colonial legacies, and while such historical architectures impact significantly on the implementation of rights-based policing models, Alemika stressed that there can be no African exceptionalism which justifies this. Indeed, he noted that, while rights-based policing models may have longer histories in other states, and while resource limitations may impact those services less, the duty to ensure that human rights are protected far outweighs any procedural constraints.

Etannibi Alemika

Understanding the manner in which the limitations unique to the African context impact on policing is, however, fundamentally important to overcoming them. Policing, he argued, does not operate in isolation, but is

rather shaped and even defined by broader political, economic and social parameters. Policing is as such subject to, yet also offers an ideal locus for, the enabling of change as it is uniquely positioned as the primary means by which states exercise sovereignty. Moreover, as the most central tool of control, policing makes visible the intersection of all the forces acting on states. As such, policing is not merely a practice but a complex conceptual terrain which is of great analytical use and yet also one on which significant obligation for reform falls.

Alemika emphasised that sustained reforms thus require that modern forms of governance be reviewed and critiqued. Of pivotal concern to his critique was capitalism itself. 'Capitalism does not give stability', he noted, and thus a state that adopts and conforms to capitalist forms of governance will necessarily be riddled with instability and fracture, which itself is reflected in policing services that are mandated to operate in such systems. Ideally, then, socio-democratic political economies need to take stock of the effects of capitalism as both enterprise and architecture, and the reform of these metasystems is needed to change the operational style and strategic focus of policing that is felt at ground level. Indeed, policing invariably reflects the society in which it occurs, both positively in terms of protecting individuals and communities from violence, and yet also by reflecting any underlying forms of social discord or anger. Police services are then a fundamental barometer of the extent to which a society is free of authoritarianism.

In summarising the conceptual critique Alemika presented, the following was highlighted as being of significant concern:

1. Police behaviour is and will remain a function of deeper societal framings and discourses, and the implementation of reforms and changes therefore requires significant attention to the manner in which the political economy of a country is itself structured. As he noted, 'There is no point trying to change the police in a context which itself is disruptive'.

2. Following from this, policing is a dynamic practice – one that occurs in, and is itself a complex field of, practice that cannot be abstracted from the broader architecture and practices of governance in which it occurs. This is especially noteworthy considering that policing is the most intrusive power of the state, often required to interface with the citizenry in the most confrontational of manners. Police are also unique in holding the power of arrest over citizens, having the ability to infringe on individuals' human rights more directly than any other government services. As such, policing powers are especially extensive; moreover, in contrast to other security groupings such as the military, such actions require little authorisation. The discretionary practices of policing can therefore be wide-ranging and, as such, reflect the power of the state. As a result, good policing requires good governance.

Even with the above in mind, Alemika stressed the importance of critically engaging with the very discursive nature of the primacy of human rights itself, especially in the African context. The UN Security Council is, for instance, constituted by five primary countries that all have similar politico-economic structures. Accordingly, their placement and power positions their architecture as ideal and unproblematic when in fact their creation and sovereignty was as contested and fractured as many African states. Moreover, their rise to power has been driven by a transition in the Order of Things from communitarianism to that individualism, which, while spurring the entrenchment of rights-based policing, has been exported to African states wholesale without due consideration for its contextual applicability and utility. When driven by capitalist demand, moreover, the ideal product of policing may pay scant regard to African perspectives and structures, which are often communitarian and dynamic. Ironically, then, when badly done, human-rights based discourses can themselves be dictatorial in terms of driving a framing of governance that is in conflict with the organic systems of government that have emerged in Africa. The UN system does not accurately reflect the African context; therefore, styles of policing that conform to UN structures may not fit well with African realities.

In capturing these concerns, Alemika noted that they can be invoked by asking a number of critical questions: Which rights are safeguarded in the demand for rights-based policing? Whose rights are these, and which do we wish to defend? What are the rights of the community vis-à-vis the right of the individual?

In drawing to a conclusion, it was stressed that the concept of human rights is itself a result of constraint rather than inclusion. This does not suppose that human rights are not useful or should not be protected, but rather notes that the structural models by which they are entrenched may be the result of external demand rather than responses to the organic structures of African communities.

3 Post-conflict police reform: Lessons learnt?

Elrena van der Spuy

Professor Elrena van der Spuy (University of Cape Town, South Africa) provided a succinct and analytical overview of the process and structures that have been drawn upon in reforming policing in Africa. She noted that, while democratisation seemed fundamentally important during the Cold War era, the style in which it was exported was not without problems. While pervasive efforts of select individuals and critical scholarship resulted in third-wave democratisation models, which aimed to be more reflective of their own power and potential, such ideals continue to be fraught with issues. The assumption that development and security were both linked directly, for instance, has been shown not to be the case, with many states finding that with accelerated economic development come innumerable security problems. Policing reforms are often central to democratisation efforts and, while over the course of 25 years these processes have travelled some distance, there remain many old challenges and many new issues that require sustained analysis and critical reflection.

In reviewing this journey, Van der Spuy delved into the archival records she has studied, and drew from these ten lessons that she highlighted. These are:

Elrena van der Spuy

1. Lingering conceptual fuzziness: The demand for, and implementation strategies undertaken in pursuing, police reform in Africa have rarely been clearly defined – what exactly is police reform, and how will it actually be undertaken and implemented in the daily practice of policing? Considering the consequences, it would therefore be wise to be less 'fuzzy' about such conceptual concerns, sharpening focus on the precise requirements and obligations, and the reasons for these. As she noted, 'Who constitutes the police? We have relied on definitions that themselves do not relate to institutional contexts in Africa. Who are the police in Africa?'

2. Ad hoc experimentation has given way to programmatic engagement: Modern 'interventions' have become programmatic, which can be positive but may also have negative consequences. There is now much more attention to and focus on policing reform project design, programme management, indicators, and measurements. Managerial practices have, in short, descended on police reform projects, and with them the demand for measurements, data and outputs. While programmatic strategies have utility at the managerial level, police reform at the pragmatic level must be far more substantive than mere rhetoric.

3. The ongoing requirement of local contextualisation: Policing reforms, as managerial projects, are often compromised in attempting to 'adapt' them, or imposed on local police forces in a manner not dissimilar to colonial enterprises. African contextual realities are often not suited to project management practices, yet project management models become an obligatory requirement of funding. The result is an uneasy fit in which funding may drive rhetorical reforms that only cause further problems.

4. Local buy-in and ownership: The religious zeal with which reform projects are implemented and which require such outputs are often only as long-lasting as the funding. The result is that 'project reform' is often a self-serving practice in rhetoric, rather than an actual attempt at remedy.

5. Competitive funding creates isolated programmes: Police reform does not occur in isolation, as noted by Alemika as well, yet competitive funding programmes isolate individual projects and, as a result, reform is piecemeal and uncoordinated. It is only by embedding long-term forms of critically reflective reform strategies – not projects – that policing can be improved.

6. Reform and resources: Local buy-in should not be limited solely to acceptance by someone who may not even be an elected representative of the people regarding who should be 'reformed'. Contemporary resource allocation practices presuppose strategic capacity that is often just not available.

7. Politics: Police reform is inherently political, as a function of the power (or potential power) the police hold to shape society. Political policing becomes partisan, however, and invariably used for self-serving ends. Policing reforms therefore need to be both vertical and horizontal, and critically reflective of their ongoing impact.

8. Strategic engagements: Targeted engagements with police require understanding of police structures and agency. Police are not robots – and if their own agency is discounted, how can they be expected to take the agency of others seriously? The police, in short, need to be engaged as they are expected to engage the public.

9. Thinking about progress: Reform processes are not linear, despite the demand by funding organisations for linear 'targets' and results. Rather, there is a 'dialectics of reform', more akin to a waltz than a sprint race. Policing is complex and reforms will therefore also be complex, uneven and have a patchwork nature. This is perfectly fine, but needs to be taken seriously by those demanding 'results' from 'project reform'.

10. Reform is layered: Efforts to reconstitute the substantive framework in which policing is understood both by reformists and the police take place at multiple levels, including the normative, the organisational and the technical levels. All are needed and must be included, but they may not necessarily be aligned – nor can they be reformed in line with one another. As a function of funding and demand, reformists have missionary-like agendas, often practising ceremonies in conformity rather than effectiveness.

Reform has become a business, in short – one in which there is a commodified product, the need for a competitive edge, and one in which profit margins are important. It is therefore fundamentally important to ask who is doing the selling, to what end, and for whom.

4 Policing the ungoverned border spaces of Zimbabwe

Ronald Nare

Ronald Nare (Zimbabwe Peace and Security Programme, Zimbabwe) focused attention on the manner in which conceptual concerns shape the daily practice of policing in a local context, namely the ungoverned spaces that have emerged at Zimbabwe's borders. Drawing on the results of a mixed-methods study, he highlighted how policing has become shaped by individual officers' economic needs, themselves magnified by the steady weakening of the national economy.

In situating the discussion, Nare noted that the contemporary Zimbabwe Republic Police have their origins in, and evolved from, a commercial enterprise, the British South Africa Company (BSAC). This is important to note as it reveals that, despite having been 'reformed', the modern police organisation has its roots in commercial enterprise, especially as the BSAC was a key facilitator of the pioneer column and colonialism, and original allegiance was to economic interests. Moreover, its primary objectives were to provide regime security, discover mines, and find suitable plantations. Human rights or the upholding of civil laws were never a key concern or focus, and perhaps this remains true considering the numerous challenges that persist in the manner in which they continue to operate.

The study of policing, Nare noted, should also not be divorced from the larger changes shaping a society. While there have been a number of studies focusing on the larger Zimbabwean police organisation, far less attention has been paid to those units or individuals operating near the borders of the country. This is surprising, considering that the borders are now some of the most important economic areas in the country, having emerged as such from the economic reconfiguration driven by the state's failed macro-economic and agrarian reforms. As a result of this economic power, the borders have also come to serve the interests of the political regime, in part resulting in state activities blurring with illicit economic ones, driving corruption, crime, human rights violations and forms of domestic terrorism. The economic fragility of the state, in short, has shifted power to the borders, and it is in this wider context that their policing has become seen as a privilege and opportunity for officers to pursue their own financial ends – itself not unreasonable, considering the economic problems fracturing the Zimbabwean state.

Nare and Chirambwi used a mixed-methods study comprising a media analysis and qualitative interviews to explore how and why significant levels of police abuse occur in these regions. They found that a statistical confluence between the reporting levels of particular subjects – corruption and smuggling, for instance – and the differing coverage given to these by state-owned and private media platforms. They found, for instance, that coverage of firearm-related matters was not reported by state media sources as frequently, most likely because such acts directly bring into question the state's authority and control over its own means to enforce the law.

The study reveals that there are three tiers in a hierarchy of concerns, itself mirroring broader politico-economic problems in Zimbabwe. In terms of the first level, there seem to be significant levels of collusion between police officials and criminal networks. The redeployment of entire policing sectors is indicative of corruption and seriously impacts on service delivery, for instance. The second level of concern reveals worrying forms of manipulation by police management so that policing is instrumentalised for the personal benefit of individual police officers and not for the development of the community as a whole. This impedes governance, and brings into question the legitimacy of the police. Finally, the third concern focuses on the increasing trend of police officers harnessing terrorist agencies/criminal groups for their own economic ends, thus not only bringing the state's power into doubt but actually positioning themselves as in conflict with it. There are a number of reports, for instance, relating to the hiring out of firearms to poachers. State fragility is further magnified in such instances – when individuals who represent the state in protecting the rights of people begin to be complicit, then a threat, to personal safety, which heightens the ongoing instability of the tate.

Ronald Nara

The result, ultimately, is that border zones become ungovernable – not because there is no government, but because those tasked with governance become the primary enablers of disruption. While extremely problematic, Nare concluded that this is not so unsurprising, considering that the Zimbabwe Republic Police has its roots in a commercial enterprise aimed primarily at facilitating the expansion of colonial interests, irrespective of the human rights of those it encountered on that journey.

5 Insurgency and the roll-back of community partnerships in policing

Benson Olugbuo

Benson Olugbuo (CLEEN Foundation, Nigeria) focused attention on the Nigerian example, highlighting the conceptual and pragmatic difficulties experienced by the Nigerian Police in sustaining community policing undertakings. As he noted, such efforts started in 2004, and have primarily been focused in the north-east of the country, as it is here that terrorism organisations and activities have been most prevalent. Such efforts have, however, not only been made difficult by the ongoing conflict between the state and these organisations, but also by the conflict between and within state organisations themselves. The police, for instance, are primarily responsible for internal/civil security. However, in combatting terrorist activities, the Nigerian state has utilised the military, whose operational mandate should remain in control of the police but, in practice, whose power supersedes this control. Making such organisational arrangements even more complex, he noted that many civilian insurgency groupings who have vowed to fight the terrorist organisations often play a vital role in ensuring the success of military operations, despite remaining problematic in terms of civilian policing.

Drawing on a nodal governance model, Olugnuo focused attention on the different activities and operational mandates of these agents, highlighting how they should – and, in practice,

Benson Olugbuo

do – intersect. The deployment of the military has raised a number of issues, chief amongst which is that such operations may directly or indirectly undermine the human rights of the people in the areas of conflict. These challenges are further magnified by the military's lack of internal oversight mechanisms for the reporting of such abuses, and the powerlessness of the police to police the military. Moreover, the civilian groupings that aid the state do also seem to perpetuate human rights abuses, the result of which is that the terrorist organisations and civilian population may cooperate to settle interpersonal conflicts, as the police can no longer do so. Explaining this, he noted that many of the core functions of the police are now being taken away from them both by the military and by the hybrid military/civilian arrangements, to the extent that they have replaced the police in protecting some key state resources. Insurgents have also been used to establish relationships between civilian organisations and the military, a role that could have been taken on by the police. The police are therefore underpowered, underresourced, and circumscribed horizontally by new organisations that also have the backing of the state. Such contestations are ironically encouraged by the governance architecture, with state laws creating the legislative spaces for horizontally competitive civilian–military organisations that conflict with the mandate of the federally legislated police force, thus creating a dynamic in which the federal state is seen as more distant and unresponsive despite primarily backing military deployments internally.

He concluded that the police are reinforced both materially and socially by programmes that legitimate the service provision aspects of their work, and to refocus attention on relationships between the police and the communities in which they operate.
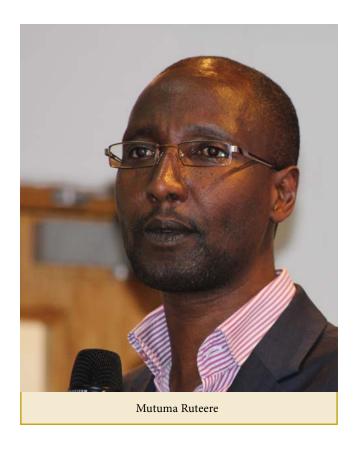
Community policing can therefore go far beyond the idea that the concept must include the police themselves – *community* policing rather than community *policing*. The complexity of the space in which policing occurs, and of policing, makes it difficult for the police to continue to find legitimacy and function as an effective agency of service delivery.

6 Policing and discrimination

Mutuma Ruteere

Mutuma Ruteere (Centre for Human Rights and Policy Studies, Kenya) continued the central focus of the conversation by reflecting on the manifestations and patterns of discrimination that have been witnessed in Africa, and which best practices might be adopted in combatting these. In agreeing with Alemika, he noted that policing is fundamentally a concern with consolidating a specific form of state power that is driven by western understandings of the Westphalian state model. While this has led to the rise of individualisation, upon which human rights are enabled, such a process has also made many of the state configurations seen in Africa seem weaker as

they may not have the power to protect individual rights. He noted that discrimination cuts across the notion of subjective rights, to be a focus of concern with policing, terrorism and conflict more broadly. The principle of non-discrimination is embedded in this concern. Policing, in having its foundations in the same discursive arena, has also always had a concern with the protection of the fundamental unit of economic production – the individual. As he questioned, 'Are different forms of policing in different contexts a reflection of discrimination, or a reflection of the dissonance between western understandings of the state and localised contexts that may not reflect the same structures?' Terrorism further refracts this problem because it is a primary topic of statehood in the contemporary state, yet also further emphasises the individual sovereignty of the nation state. 'Can a police force that is itself a product of a specific understanding of the state respond effectively to threats that undermine the concept of the state?'

Mutuma Ruteere

In structuring his analysis, he noted five definitive problems with policing on the continent:

1. There has been, and continues to be, a normalisation of extremism that creates a platform for human abuses and trafficking, further magnified by politicians' using these as a means of gaining power – the normalisation of discrimination of minority groups.

2. Increasing uses of surveillance of all facets of life, including religious, cultural and socio-economic concerns. This creates dissonance and alienation, further magnified in terms of minorities. This is exacerbated by the increased use of technologies to profile individuals, which has the effect of creating further differences and disenfranchising minority groups. This has led to pre-emptive policing that focuses on risk management rather than on reactionary force.

3. Using stop-and-search operational modalities to harass minority groups, which further breeds hatred and feeds into terrorism concerns. This legitimates differences, using policing duties as a core form of instilling a form of governance that breeds terrorism.

4. Restriction on migration and travel, primarily focusing on Muslim and indigenous populations. This has the effect of further undermining economic capacity and generates the need for forms of human trafficking, which can easily be abusive.

5. Criminalisation of asylum seekers so that entire nations become seen as pre-emptively suspicious of criminality.

7 The mistrust of human rights in the policing of terrorism in the Lake Chad Basin

Amadou Koundy

Amadou Koundy (Magistrate, Niger Republic) focused attention of the eastern region of Niger, where terrorism remains a significant contemporary threat to both statehood and the safety of the population. Despite this sense, terrorism as a threat is very difficult to quantify and define, as are the specific measures required protect populations against it.

With this in mind, he highlighted the importance of the question, 'How does one formulate a response that is neither inappropriate nor disproportionate to the threats posed?' Many responses by African states have been firm, but also repressive to civilian populations caught up in military operations. Moreover, such operations heighten the potential for human rights violations. As a result, many state responses have, from a humanitarian perspective, been sloppy, and should – minimally – be moving away from traditionally reactive systems to a proactive system. He noted, however, that such ideas are often easier to conceptualise than implement, although there does seem to be a framework of best practices emerging from the numerous and diverse strategies undertaken by a variety of African states. Some of the mechanisms for decreasing the human rights abuses perpetuated by government and security forces include sensitisation training, the tracking of search operations through the reference ticketing of those searched, soft interventions such as the discretionary funding of education programmes, family sponsorship programmes, and allowing police organisations to critique policy and legislative architecture where it is found to encourage the abuse of individual human rights or results in the normative criminalisation of minorities and/or entire populations.

Koundy brought to attention the often-underutilised role of criminal justice in dealing with forms of terrorism, asking four important conceptual questions that have immediately pragmatic implications:

Amadou Koundy

- Do the laws of criminal justice framework have to be violated in order to contain the threat?

- Do special courts needs to be devised to decide these cases?

- What is the legal status of the charges that are utilised?

- How can we normalise legal norms to protect the population from human rights abuses while preventing the widening of the powers or spread of organisations that can be considered or defined as terrorist?

As he noted in the conclusion, the laws enacted to deal with terrorism are often made exceptionally, yet are integrated into the wider legislative spheres. In this way, they may be weakened – as such, these laws should remain exceptional so that they maintain authority and sovereignty in responding dynamically to supra-state threats.
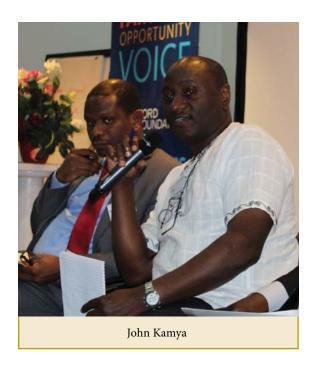
8 Controlling police excesses in counter-terrorism: The need for strong internal control

John Kamya

John Kamya (Commissioner of the Ugandan Police Force, Uganda) began by highlighting the significant number of terrorist attacks in Uganda over the course of some 20 years. He noted that, while police responses are normally swift and robust, detainees are often abused and not subject to civilian legal requirements; as the detainees are seen as terrorists, the normal oversight mechanisms related to human rights in terms of policing are not invoked by either the public or the police. However, international law requires that any measure taken to combat terrorism must still comply with human rights laws – reflected as both part of the enabling legal environment and as a mandate to protect the human rights of all people.

In Uganda, there are three primary terrorist forces: the Allied Democratic Forces (ADF), the Lord's Resistance Army (LRA) and Al-Shabaab. The LRA has created many internally displaced persons (IDPs). In urban areas, among the major terrorist incidents that have occurred, those at the Westgate mall and the massacre of students at Garissa University, both in Kenya, were extensively documented. Al-Qaeda forces have also undertaken terrorist operations in a number of areas. He noted that, while African responses need to be designed to take into account local dynamics, this is not to say that the international system of counter-terrorism has no applicability in the African context. Rather, individual responses need to draw on the best of both in finding an African solution to these concerns. This is a moral requirement, yet also a procedural one, in which strong leadership is pivotal to the upholding of these rights. In detailing this, he proposed seven best practices that may find wider applicability:

John Kamya

1. Setting clear guidelines for the interviewing of terrorism suspects: these should be clear and step-by-step, and officers should not use torture or other cruel, inhuman or degrading treatment or punishment;

2. Developing clear police oversight mechanisms: these should be independent;

3. Setting up strong and robust police ethical codes and disciplinary codes;

4. Establishing comprehensive Standard Operating Procedures that have human rights embedded in the procedures and framework itself, and with limitations on the use of coercive measures, including force and firearms;

5. Emphasising individual accountability for officers and ensuring that impunity is not reserved for individuals acting in task forces and interviewing suspects;

6. Providing extensive training, both in terms of operational/tactical responses and the interviewing/ extraction of information from suspects; and

7. Ensuring strong supervision and leadership.

9 Rights-compliant policing and the fight against Boko Haram in Cameroon

Polycarp Forkum

Polycarp Forkum (Commissioner of the Cameroon Police Force, Cameroon) began by noting that respecting human rights challenges traditional policing measures in the quest to quell terrorist activities. There is a need to build intelligence and operational measures, and to further develop human rights training for police officers engaged in operational and investigative measures against terrorist cells or organisations. He further argued that terrorism is not removed from the context in which it frequently occurs, with poverty, social divisions and a weak presence of the state driving the movement of individuals towards radicalisation and joining terrorist organisations. Sometimes, organisations can be driven to terrorist tactics when conventional measures fail to deliver the expected results. There are numerous mechanisms and strategies that terrorist organisations may draw on in pursuing their causes, and which, in themselves, may either be traditionally responded to by military or civilian police organisations – these include traditional measures taken in warfare, but also the use of children or surreptitious attacks targeting civilians. Such measures have significant social ramifications beyond the direct impact of the terrorist operations themselves – an increase in gender-based forms of violence often occurs in confluence with the use of women by terrorist organisations as a result of their ability to pass through blockades more easily.

Polycarp Forkum

Responses to terrorism and terrorist-based activities cannot remain solely focused on traditional mechanisms of attack or defence, but must engage significantly and strategically with the socio-economic and political drivers of the violence to move beyond symptomatic or reactive strategies. The latter can also be defined as a trap for democratic rule of law, as the law often reacts in a terrorist fashion to terrorism through the excessive use of force, thus drawing its legitimacy for distinguishing between terrorists and other people into question. He further highlighted that there are numerous challenges to the protection of human rights in responding to terrorism, including oversight mechanisms not finding traction in their discursive opposition to terrorism, the need for investigative capacity

that is well trained and well disciplined, and the move to more civilian forms of interrogation as many terrorist responses deploy military responses to interrogation and the treatment of suspects.

As such, continuous training, capacity building and the use of exercises that emphasise and entrench the important role of human rights, as enshrined in the legislative architecture of democratic countries and the operational mandates of just and legitimate police forces in both Cameroon and other African countries, are important. He noted that these measures will work towards creating a paradigm of human-rights-based policing. The measures would themselves be bolstered by independent police oversight and accountability organisations that have legitimacy in the eyes of the public. Such institutions require power within the police to conduct credible investigations, and a sufficiently broad legislative mandate to prosecute offenders in a fair and just manner, in confluence with international standards that define the parameters in which human rights are themselves conceptualised.

10 Rights-based policing in an age of terror: Reflecting on Kenya's counter-terrorism

Andrew Songa

Andrew Songa (Kenya Human Rights Commission, Kenya) noted that police reform has been an ongoing concern in Kenya for 15 years, as part of a larger democratisation process. Presently, a pivotal challenge is the slow pace of reform entrenching professionalism, integrity and accountability – fighting the tenacity to police in the same old way, which is the primary means by which the population experiences policing. Moreover, African police have often been characterised as a tool for advancing and safeguarding political interests and as the state's primary tool for domination, repression and oppression. Such concerns are not new, and are based historically as a means of continuing colonial enterprise.

He noted that changes also have a long history, with calls for police reforms in Kenya remaining an ongoing process, although they began in the period 2002–2007. However, these reforms have been piecemeal, primarily constituting making policing a national priority by enhancing operational capacity. This was thrust of the Kenya Police Draft Strategic Plan, which did have a human rights component, though not as a priority area. Reforms, Songa noted, presuppose assessment, itself a programmatic process, but one that has negligible impact on the realities of policing for Kenyans. Public confidence is still low, with police-related killings an ongoing issue. A lack of political has

Andrew Songa

had an adverse impact on transparency and accountability, and remains the biggest platform for corruption. Terrorism has made this more complex and highlights the false notion that respecting human rights is incompatible with ensuring security for the population.

In attempting to engage with these concerns, new laws were enacted in 2014, notably the Prevention of Terrorism Act and the Security Laws Amendment Act (SLAA). The SLAA is particularly wide-ranging. It allows for the interception of communications and authorises the fighting of terrorism by a wide range of policing bodies. Despite this, there are a number of primary areas of contestation:

1. The use of force: Further training and oversight mechanisms required for the use of force in a civil setting;

2. Surveillance: Enhanced discretion on the use of surveillance based on traditional understandings of policing;

3. Oversight and accountability: Lack of trust in internal processes and multiple attempts to interfere with the internal affairs unit, including threats to civil society organisations (CSOs); and

4. Police–community relations: The aim is to encourage participation and operational engagement with communities. However, there are still relatively low levels of trust and a reluctance of communities to engage with the police. Police operations can be damaging to communities as well.

11 Rights-based policing in an age of terror: Insurgency and violence in Kenya

Stephen Musau

Stephen Musau (Independent Policing Oversight Authority (IPOA), Kenya) noted that there are numerous issues relating to adherence to the constitution from the perspective of the oversight body for the police. Despite the entrenchment of Bill of Rights in the constitution, political interference and legislative gaps mean that policing in Kenya continues to be fraught with issues.

He argued that the primary difficulty is ensuring that the police follow the prescriptive norms relating to human rights at an operational level relating to leadership, public participation, community engagement and legitimacy. Terrorism has compounded these issues in many areas of the country, especially in rural areas. Further, operational preparedness and readiness are not often coordinated, resulting in responses being primarily driven by personal concerns. As such, dealing with these challenges requires the concept of terrorism to be based on the requirements and understandings of state law.

Musau highlighted that much of the discussion on policing in

Stephen Musau

Africa focuses on the results of policing terrorism, rather than on reform as it applies to the operational preparedness of the policing services. Kenya's Prevention of Terrorism Act is primarily normative and consequentialist. Security interventions would be far better placed if they were locally specific. The organisational culture of the police service may also drive the normative framework that encourages a punitive response to terrorism, which is itself often violent in nature. As a result, police often work on securing areas, rather than working with communities. Lack of coordination and leadership compound these challenges. Social dynamics, beyond the legal framework, need to understood and entrenched in the operational mandate of the police force itself. Policing issues are, therefore, ongoing symptoms of systemic issues that define and underwrite governance practices more broadly. Continuing, he asked 'How do we move away from the empty promises of hardware policing to the more useful and sustainable software-based responses that may speak to the organisational culture and perspectives of the police force?' Bolstering rights-based responses further – including through providing adequate salaries and access to various forms of service provision – are required to disincentivise police from engaging with corrupt practices out of economic necessity. Kenya has been reluctant to entrench real and substantive oversight practices in the police services to encourage lasting reforms in the domain of human-rights practices.

The independence of the authority of the oversight mechanisms is fundamentally important and should be complementary to the operational mandates and undertakings of the police services in Kenya.

12 Rights-based policing in an age of terror: Police organisational capacity in Nigeria

Solomon Arase

Solomon Arase (Inspector General (ret.) of the Nigerian Police Force, Nigeria) provided a pointed and purposeful overview of his work and the issues facing the Nigerian police in relation to terrorism and the upholding of human rights. He noted that many of these challenges occur in the north-eastern territory, with Boko Haram remaining the primary threat. In engaging with these concerns, he outlined a broader, multitiered policing strategy which includes:

1. Hearts and minds approach: Dissuading radicalisation;

2. Military approach: Placing emphasis on fusing sectors in the security cluster in a sustainable manner that does undermine civilian operational dynamics; and

3. Community partnerships: These are crucial as they are consensual. He noted that one failure of the police's terrorism response was that the police were cut off from the traditional partnerships that provided consent for policing.

Speaking to his career, he noted that retired officers could act as hubs of intelligence-driven community policing. Resources as they exist on the ground could be more effectively used to drive community-based policing. Political pressure often drives policing responses – this results in an enforcement strategy that undermines a human-rights-based strategy. Moreover, there is a need for support services far beyond the individual officer when officers are killed on duty. The creation of a foundation for the children of officers killed on duty creates a sense of well-being. A similar programme has been started for the ownership of houses. Police require the protection of their own human rights and to feel valued in order to prevent corruption. This instils loyalty.

On the whole, police organisations need to cement themselves further into communities so that they have the consent of the communities in

Solomon Arase

which they operate. Intelligence-driven operations help mitigate or reduce human rights abuses as they use evidence as a means of interrogating suspects. Peacekeeping operations extend beyond simply policing communities – the provision of water tankers and the supply of medical assistance helps cement the police in communities and provides platforms for the collection of evidence.

The role of civilian partnerships remains important, and is a pivotal aspect of the relationship from both directions. Policing is a symbiotic relationship with the community, one that has to be developed to ensure compliance in both directions and the upholding of human rights and the rule of law. Platforms for providing information and feedback from the police are also an important avenue for the development of community relationships; these encourage substantive relationships.

13 Rights-based policing in an age of terror: Internal security organisations in Nigeria

Daskyes Gulleng

Daskyes Gulleng (University of Jos, Nigeria) outlined how Nigerian armed forces have been increasingly engaged in internal security matters, alongside or above the police and numerous non-state actors. The majority of deployments are attributed to the failure of the police to secure the communities in which they operate, particularly in the north-east. There have been numerous allegations of human rights abuses. There have also been allegations that the security cluster, more broadly, has been involved, to various extents.

Drawing on empirical data, Gulleng's research aims to determine the extent and patterns of abuses by security forces, identify drivers and factors, and examine whether post-conflict operations have any effect on the removal of illegal firearms. The UN has identified a number of good practices with regards to military operations directed at civilian populations. These include minimal checkpoint deployment and oversight, the provision of social and medical services, and measures to ensure that operations do not impede emergency responses, or prevent access to land, water and other resources that are normally accessible to the community.

The specific violations that frequently occur – not only by the military, but all those involved in conflict – include arbitrary arrest, detention, torture, intimidation and rape. Parties in conflict also invade traditional lands, destroy farm crops and undermine the right of community members to work or farm their lands.

There are frequent accusations of bias in policing or security services, primarily demarcated along religious lines. These allegations also provide the discursive fuel for accusations and contribute to undermining the legitimacy of the security services, including military and policing activities involving the community. The effectiveness of security operations is a function, then, of a wider set of drivers, including educational, cultural, leadership and operational conditions. Leadership of the Multinational Joint Task Force is specifically important and is the primary location of charges of bias relating to religious allegiance. Indeed, vigilante groups can be effective mechanisms for bridging the divide between security forces and community members, and can be an effective way

Daskyes Gulleng

of garnering intelligence and providing basic security services. However, there is little oversight or accountability, and minimal strategic coordination, of these groupings in relation to the wider security cluster. They are also the primary harbourers of illegal firearms and the primary means by which community members can gain access to military hardware, which they may use for protection – but they may also may become targets for terrorist actors who seek to bolster their armouries.

The resulting hubris of different sectors, religions, crimes and concerns makes the provision of security, as a whole, very difficult to govern. The military has attempted to bridge these divides through arranging social gatherings and paying respects to families, and is involved in providing medical and other emergency services.

Justice Olufunlola Adekeye

Simon Howell

14 Oversight and the ongoing need for reform in Nigeria

Justice Olufunlola Adekeye

Justice Olufunlola Adekeye (Police Service Commission, Nigeria) focused on two central concerns – the need for continued efforts to entrench oversight mechanisms in police structures, including those which focus on leadership, and the need for justice not to be undermined by the technical aspects of legislative processes. She provided a detailed account of these concerns in Nigeria, including some of her own experiences, and measures that are still needed to entrench accountability mechanisms into the structures of governance. Such accountability measures, she argued, were especially important in contexts in which governance was weak, or had been weakened by insurgency actions or terrorist activities. In instances where both civil police and military units are deployed collectively to engage with such threats, the need for consistent and harmonised oversight mechanisms becomes indicative of good governance; constraints to accountability cannot be a by-product of heightened security pressures.

Adekeye argued that there is then a need for effective cross-pollination of mechanisms of management and control, which is codified and clearly defined to ensure that reporting channels are expedient and effective. Parliaments can provide oversight of the military as a whole; however, individual leadership roles are required to enforce accountability in the daily operations of both the police and the military, and in the manner in which they engage one another. Here, clear lines of command and clarity in the manner in which the military and police relate to one another are required. This should be supported by a legislative architecture that provides direction even in instances of complexity. In such instances, it is these structures that should provide a model for society as a whole to follow, by remaining legitimate and by consistently holding their own organisational structures to account. Such processes, she warned, should strive to remain effective and not be constrained by technical processes that discount public oversight and prevent the expedient review of cases.

15 Report-back: Situating the discussion

Simon Howell

Simon Howell (APCOF, South Africa) provided an overview of the discussions and content of the dialogues, moving into the third day. He noted that much had been discussed and that a number of important considerations had resulted from those conversations. In distilling these, a thematic framework was highlighted as one means of understanding the different levels of conversation that had characterised the various presentations – the macro, legal, and organisational levels. Each of

these levels were further detailed and pragmatically orientated towards implementation; below is a summary of each.

Speaking to the macro-level conversations first, Howell noted that the socio-economic context and drivers of terrorism and criminal activity need to be actively addressed – policing involves much more than just the police. Furthermore, macro-governmental concerns need to prioritise said drivers – those factors and social conditions which exasperate or facilitate the emergence or strengthening of entities and activities that may be defined as terrorism, insurgency, or violent crime – and that these need to be recognised for their complexity and depth. While development and security are intimately related, in short, governance – and, indeed, policing – cannot hope to strengthen the one without explicitly engaging with the other. Of pivotal importance at this level is the coordination and harmonisation of efforts – whether in response to terrorist threats, or in the facilitation of shared policing objects. To this end, such regional and continent-wide conversations may best be facilitated by the UN or the AU.

Following from this, the second conversation was frequently about legislative challenges. As such, regional groupings should aim to harmonise their respective legislative frameworks so that they may facilitate the provision of justice and thus the safeguarding of human rights. Similarly, structures of oversight and accountability need to be logically mirrored at the macro and operational levels, so that leadership is consistent and regulatory measures well defined. Such replication increases consistency and aids familiarity, so that the safeguarding of rights and the leveraging of service delivery become entrenched practices within police organisations in Africa.

Finally, at the organisational level, Howell noted that police reform cannot occur in isolation from broader reviews of governance practices. Taking seriously the idea that policing is an embedded practice, calls for police reform must be embedded in broader theories of change. As such, accurate assessments, scoping and deployment strategies require capacity building at both the national and international level and, moreover, would ideally be harmonised to make information sharing and compliance procedures more efficient and consistent.

16 Donor discussion: United Nations Development Programme perspective

Kehinde Bolaji

It was noted that the centre/periphery divide is a primary means of driving terrorism uptake and membership – the state was not operational in the areas where many radicals are drawn from. Poverty is a causal factor. The misuse of religious discourses may also facilitate the justificatory narratives adopted by terrorist organisations. These pathways, as noted by the UNDP publication *Journey to Extremism* (2017), are the central means by which terrorism is facilitated. Yet, they have not been sufficiently engaged with by governments, civil society, and other actors.

A lack of education prevents the critical thought needed to counter the uptake of extremism and leads to mass unemployment of the youth, who then seek to create an identity using religion. Such disparities lead to anger and violence against the state. As such, the state becomes seen as the enemy. Another challenge is civilian self-defence groups. These have taken on many important roles and often serve as important bridges between the civilian population and the military; they are responsive organisations that aid intelligence collection. However, they have been urged to not take on roles at the point of operations; furthermore, as they are neither police nor military organisations, they are not subject to the regulatory paradigms of those institutions. The result is that they can be fertile breeding grounds for the inhuman treatment of suspected terrorists, and have frequently been recorded utilising vigilante-style methods of dispensing justice, and extortion.

Some of the mechanisms for decreasing the human rights abuses perpetuated by government and security forces include sensitisation training, the tracking of search operations through the reference ticketing of those searched, soft interventions through the discretionary funding of education programmes, family sponsorship programmes, and allowing police organisations to critique policy and legislative architecture where it is found to encourage the abuse of individual human rights or result in the normative criminalisation of minorities and/or entire populations.

17 Donor discussion: Ford Foundation

Innocent Chukwuma

Of key concern in this discussion was the relationship between donors and recipients of funding. It was noted that there needs to be a more proactive relationship between funders and programming operators so that they develop each other mutually and align their respective goals according to well-researched and well-reasoned goals. At present, this is not always the case, with funding dominated by concerns about supply-side justice reform. This may not always be without problems, as supply-side justice becomes constrained by individual perspectives and concerns, rather than continuing the process of identifying and targeting resources according to a broad ambit of needs. As a result, they tend to focus on capacity building, resource acquisitions, and sustaining past relationships. With this in mind, it was noted that there are four key areas requiring extensive work:

1. Governance of security and safety in conflict-affected areas;

2. Security abuse resulting from security operations;

3. Understanding the composition of security forces – the government/security nexus; and

4. Understanding the lure of terrorism and terrorist organisations – keeping young people in school and in employment.

Undertaking such projects requires a long-term commitment from all those involved – both in terms of doing the work, but also in sustaining the relationships between organisations – and the rewards may not be achieved in a linear manner. As such, two areas of particular focus are needed: structural factors and resources. Speaking to the former, these need to be able to contemplate democratic forms of governance as ineffective, and identify the deficiencies. Consistent measurements to determine how well the organisation has imagined its own role are also needed. In terms of the latter, these measures need directly to encourage better policing. Poor leadership, lack of effective resource management, structural issues, lack of transparency, the need for strategic institutional management, ineffective criminal justice systems, corruption, torture, lack of investigative capacity, brutality/lack of accountability.

In line with this, the Ford Foundation has identified three programmatic areas:

1. Power and participation;

2. Youth transitions: From primary and secondary education; and

3. The physical justice programme.

Ultimately, CSOs are facing existential crises, in which everyone is treated is a contractor and there is a lack of coordination. To overcome this, CSOs need to build capacity to be more effective.

Kehinde Bolaji

Innocent Chukwuma

Catherine Kyenret Angai

Louise Ehlers

18 Donor discussion: Open Societies Foundation

Catherine Kyenret Angai and Louise Ehlers

It was noted that a human rights-based agenda is still relevant and that there is still a need for a response to the erosion of human-rights-based discourse, such as the profiling of suspect communities. These policies are ineffective, and try to establish a false dichotomy between security and rights.

The Human Rights Initiative is trying to complement the good work that others are doing, primarily by asking civil society to hold the state to account. It does this by supporting public awareness through changing the discourse about what constitutes security, encouraging a shift away from state-led interventions, and building the evidence base.

Finally, there is a need to strengthen oversight architecture – especially civilian oversight. This requires prioritisation and focus on human rights issues. This also requires the guiding of public institutions to strengthen the frameworks within which they operate, while also bolstering the oversight mechanisms that are as applicable to the donor organisations as they are to the organisations which form the subject material of the studies and research that remains ongoing. It is therefore a mirrored requirement of all parties involved.

19 Key discussion points and closing

The dialogue covered an extensive array of topics and much analytical ground, as was noted by Sean Tait in closing. While it is difficult to summarise the discussion neatly, below is a number of key points that repeatedly emerged in the discussions, and which can also be seen as actionable items in continuing to entrench human rights in policing practices in Africa.

At the broadest level, national security policies need to pay attention to internal security concerns, but also aim to coordinate the multiple agencies and structures that are drawn upon in responding to terrorism and insurgency. Moreover, while there have been numerous reform measures, these have not found adequate traction in the operational environment, and therefore need to be pragmatically orientated. Civil society should aim to make significant contributions here, while also identifying key individuals and leaders at all levels who will champion such reforms and continue to ensure that they are implemented. Doing so requires more than rhetoric, with suggestions and recommendations requiring serious consideration and attention.

It was noted, moreover, that the sharing of intelligence and even resources is necessary to protect communities from supra-state threats such as insurgency. Doing so, however, requires moving beyond the Westphalian model of statehood, especially in Africa, and adopting community-focused arrangements at national and lower levels. This applies also to oversight and accountability measures and, indeed, can be a very useful means of facilitating the leadership needed to sustain reforms on

the continent. The pivotal requirement of such efforts is, then, harmonising legislative frameworks, the aim of which would, in part, be to ensure that criminal justice systems are effective and responsive.

In moving towards such aims, the dialogue brought to the fore the following key principles and focal points:

- Accountability: Collaborative arrangements between oversight agencies can yield strategic results, such as the South African Independent Police Investigative Directorate and the Inspector of Intelligence to address corruption in South African Police Service crime intelligence. The same can be possible acorss police and military oversight to address abuses.

- Leadership in insurgency operations: The police should take leadership; however, militaries have a role to play in supporting and acknowledging the civil duties of the police.

- Illegal possession of firearms in post-conflict zones: The process of removing these firearms is a civil and policing issue, not a military one. The problem is that the military may end up dominating operations, as a result of the discourse of the militarisation of the police and the firepower of the military.

- Auditing of arms: State security services should be accountable for their use of arms and ammunition. There are international conventions that provide for this, which states should ratify and implement.

- More extensive and more consistent forms of oversight are required: Records could be digitalised, recorded and safely stored. This should be aimed at making case handling more efficient and expediting the processes of the criminal justice system. These would be best harmonised at regional level.

- The balance between human rights and security: This is not limited to the security cluster. These concerns also extend to civil society, and can be further caught up in aspects of corruption and governance, so they require treatment on a broad scale.

- Resource balances: There needs to be a balance in the provision of resources between military and police organisations in responses to terrorism and insurgencies. This requires the development of a framework for the provision of resources in an effective and expedient manner. Exposure and capacity building in environments of accountability, which can be created by civil society, would be one such pathway.

- Legislative frameworks: These require significant interrogation to identify gaps at the policy and legislative levels. Such frameworks additionally require mechanisms of applicability to translate them into actionable forms of oversight that hold individuals accountable.

- Donor interventions: These require accurate scoping, yet the donor world has created a narrative that focuses on suspect communities, which prevents resources being directed towards state accountability and holding state institutions accountable at the administrative and individual level. Legislative reform can also be dangerous in the creation of suspect communities, which are – ironically – very similar to the profiling activities that traditional policing models use.

Ultimately, then, the discussion was concluded with the following considerations, posed as questions: How do we translate these types of conversations into the practice that defines the experience of policing and security felt by the citizenry on the ground in the day-to-day fulfilment of security provisions in African countries? How practical, and how useful, are the suggestions and conversations, and who will actually implement the suggestions at an operational level – whether tactically, legally, or in terms of resource deployment? How do we operationalise the systems of oversight and accountability so that they become entrenched and de facto?

Participants

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The African Policing Civilian Oversight Forum

The African Policing Civilian Oversight Forum (APCOF) is a not-for-profit trust working on issues of police accountability and governance in Africa. APCOF promotes the values which the establishment of civilian oversight seeks to achieve, namely: to assist in restoring public confidence; developing a culture of human rights, promoting integrity and transparency within the police; and good working relationships between the police and the community. While APCOF is active in the field of policing, its work is located in the broader paradigm of promoting democratic governance and the rule of law.

APCOF achieves its goals through undertaking research, and providing technical support and capacity building to state and non-state actors including civil society organisations, the police and police oversight bodies in Africa.

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