

Security Sector Reform in Kenya

Overall Context of Reform

The Kenyan presidential and parliamentary elections of December 2002, which were widely perceived as free and fair, ended the 24-year rule of Daniel arap Moi. The political climate accompanying the change in leadership raised considerable hopes among the populace that the long-promised transition toward democratic consolidation and respect for the rule of law would finally be realized.¹ Indeed, during 2003 and 2004 the newly elected government of Mwai Kibaki of the National Rainbow Coalition (NARC) embarked upon an ambitious series of social and economic reforms. Particular attention was devoted to a constitutional review process, an anti-corruption campaign and the strengthening of judicial independence. However, according to a number of observers the probability of success remains highly questionable. The main obstacles are thought to be encountered in the overall fragility of the NARC coalition, which comprises more than a dozen political parties, as well as severe resource constraints coupled with ambiguous attitudes on behalf of major external donors.² For the most part of the reform process, specific results are still outstanding, somewhat tarnishing the highly optimistic attitude of late 2002. As the Freedom House report on Kenya concludes, “it is too early to definitively conclude that Kenya is on a sustained trajectory toward full compliance with international norms and good governance.”³

In terms of the security sector, Kenya faces a number of demanding challenges, which make up the overall frame of reference for any discussion on reform in this sensitive area. With the Sudan in the North, the Great Lakes region to the West and Somalia in the East, Kenya is surrounded by a host of violent conflicts. Whereas Kenya has managed to successfully quell some wars by way of active mediation, regional instability continues to exert a direct impact upon its both external and internal security interests. For example, it provides shelter to approximately a quarter of a million refugees including Ugandans who periodically cross the border to seek protection from the Lord’s Resistance Army (LRA).⁴ Somali refugees in particular are perceived of as a security problem, since they are commonly blamed for the high levels of criminality in the country.⁵ Furthermore, throughout the first half of 2005 violence frequently erupted in the border region to Somalia as ethnic clans competed over pasture, water and business opportunities, prompting Kenyan authorities to bolster the presence of security forces and temporarily close the border.⁶ Due to the widespread availability of illegal firearms,

¹ Freedom House. *Freedom In The World 2004*. <http://www.freedomhouse.org>

² Freedom House. *Freedom In The World 2005*. <http://www.freedomhouse.org>

³ Freedom House, 2004.

⁴ CIA World Factbook. 2005. <http://www.cia.gov/cia/publications/factbook>

⁵ Murunga, 2005.

⁶ United Nations, 2005a.

the traditional practice of cattle rustling among pastoral border communities has also become increasingly violent over the past couple of years. In July 2005, at least 40 armed cattle rustlers from Uganda were killed by Kenyan security forces as they crossed the border.⁷ Other security issues include the continual internal threat of “terrorist” attacks and criminal activity such as money laundering, massive corruption and relatively high levels of narcotics-associated activities.⁸

Given this wide range of problems, it is clear that Kenya requires an effective security apparatus suited to deal with a complex and manifold array of threats. Whereas numerous reforms have been initiated over the past couple of years, some of which with promising results, many shortcomings still need to be adequately addressed and corrected, however. Rampant corruption in the security sector, insufficient resources and capacities, an overall lack of transparency as well as frequent violations of international human rights norms stand out as the principal difficulties in this regard.

Defense Reform, International Military Assistance and Regional Cooperation

By regional comparison the Kenyan armed forces are relatively small and professional. In contrast to, for example, Ethiopia, Uganda and Tanzania, Kenya counts less than one soldier per 1.000 citizens.⁹ Furthermore, the country is an important contributor to peacekeeping operations of the United Nations (UN). In October 2005 the Kibaki government decided to dispatch 820 soldiers, including a demining company, to southern Sudan in support of the UN mission.¹⁰ The need for military reform is acknowledged by the Interim Poverty Reduction Strategy Paper (IPRSP) of 2000, which explicitly takes the defense forces into account when promising a “functional rationalization” of the entire public sector.¹¹ Concrete reforms aimed at improving the efficiency of procurement, logistics and personnel management within the Department of Defence (DoD) and armed forces have been instigated and were ongoing as of 2003.¹² However, the IPRSP also alludes to the importance of the military in achieving sustainable development goals. Forces not directly involved in countering external threats are expected to play a “secondary role” by participating in activities such as “borehole drilling, road improvements to open up remote areas and provision of health services, which target the

⁷ United Nations, 2005b.

⁸ CIA World Factbook 2005.

⁹ Autor?, 2004. paper 38.

¹⁰ Obat, 2005.

¹¹ *Interim Poverty Reduction Strategy Paper (IPRSP) 2000, Implementation Matrix – 5.1. Public Administration Sector*: “Rationalize and reduce operational structure of the entire public service to reflect well defined core functions [...] Complete functional rationalization covering civil service, defense and security forces.” At <http://www.imf.org/external/np/prsp/2000/ken/01>.

¹² Hutchful and Fayemi, 2003.

disadvantaged and poor communities.”¹³ Between 2002 and 2004 there have been no significant reductions in military personnel.¹⁴

The Kenyan armed forces receive international military assistance from the United States (US) and the United Kingdom (UK). Whereas a comprehensive defence review has not been carried out yet, following the al Qaeda attacks in Nairobi in 1998 and in Mombassa in 2002, the US has supported Kenya in undertaking threat assessment reviews so as to incorporate counter-terrorism strategies in the country’s defense doctrine.¹⁵ US military assistance is administered through its International Military Education and Training (IMET) programme and Foreign Military Financing (FMF) funding, which also seek to strengthen Kenya’s border and coastal security as well as its peacekeeping capacity. In addition, in 2006 FMF funds will be used to procure various military equipment such as patrol crafts, radar systems, communication devices and weapons.¹⁶ UK military assistance is coordinated by a British Peace Support Team (BPST), which mainly conducts capacity building measures related to peacekeeping activities. The BPST in Kenya consists of three elements, namely the International Mine Action Training Center, the Peace Support Training Center (PSTC) and a presence in the Kenyan Defence Staff College.¹⁷

More recently, the UK Ministry of Defence has also helped in devising the Planning Element for the future installment of an East African Standby Brigade (EASBRIG) in Nairobi.¹⁸ EASBRIG is conceived of as the regional component of an “Africa Standby Force” (ASF), which was agreed upon by the Heads of State and Government of the African Union (AU) at the Durban Summit in 2002 and is expected to be fully operational by 2010. The mandate of the ASF not only includes peace support missions in post-conflict regions, but also robust intervention to prevent massive human rights violations and genocide.¹⁹ First steps toward the establishment of EASBRIG were taken in February 2004 at a meeting of the Eastern African Chiefs of Defence Staff (EACDS) in Jinja/Uganda.²⁰ The budget was approved at a second meeting in April 2005.²¹ While the Inter-Governmental Authority on Development (IGAD) is to act as “interim coordinator”, all together thirteen East African states agreed to contribute to EASBRIG. Kenya has offered to

¹³ IPRSP, 2000.

¹⁴ Compare: International Institute for Strategic Studies (IISS). 2004/05.

¹⁵ Hutchful and Fayemi, 2003.

¹⁶ US Department of State. 2005.

¹⁷ The British Army. British Peace Support Team: <http://www.army.mod.uk/-aroundtheworld/ken>.

¹⁸ Ramsbotham, Bah and Calder, 2005.

¹⁹ African Union, 2002.

²⁰ Inter-Governmental Authority on Development (IGAD). 2004.

²¹ Eastern Africa Standby Brigade. 2005. *First EASBRIG Assembly of Heads of State and Government*. Addis Ababa, Ethiopia. 11 April 2005. http://www.iss.co.za/AF/RegOrg/unity_to_union/-pdfs/igad/easbrig/sumdec1apr05.pdf.

provide one light infantry battalion, one medical company and one squadron of engineers. It also offered the training capacities at the PSTC in Nairobi.²²

Defense Budget, Public Oversight and Corruption

The security sector of Kenya is overseen by the Parliamentary Committee on Defence and Internal Security, the Public Accounts Committee and the Auditor-General's Office. However, public scrutiny and democratic oversight of the Kenyan defense forces are a lot less effective than the existing control mechanisms would make believe on first sight.²³ This observation applies in particular to the limited possibilities of public insight into the exact utilization of military expenditure. Lack of transparency, control and effective implementation of the defense budget may be regarded as the main problem, which in turn engenders an extremely high prevalence of corruption in the security sector.

The Kenyan military budget slightly increased from 1.4 to 1.7 percent of GDP between 1999 and 2003, although it does not appear as overtly excessive in comparison to neighboring countries such as, for example, Ethiopia and Uganda.²⁴ This upward trend can neither be explained in terms of an increase in troop numbers, nor in terms of large acquisitions, but is rather related to a significant increase in military salaries.²⁵ Indeed, the Department of Defence receives the third-largest share of recurrent public expenditure, being surpassed only by the Ministry of Education, Science and Technology and the Office of the President.²⁶ In order to oversee the proper handling of public finances, the Kenyan constitution provides for an independent *Controller and Auditor General (C&AG)*.²⁷ However, it has been pointed out that the C&AG is neither fitted with a suitable prosecution authority, nor has it the required financial and human resources at its disposal.²⁸ Furthermore, the Parliament, which needs to approve the budget plan, lacks the necessary amendment powers, institutional structures and technical expertise to effectively scrutinize budget proposals.²⁹

Over the last couple of years, a number of initiatives on behalf of the Kenyan government have sought to address and remove these shortcomings in the budget process. Already in 1999 a *Budget Monitoring Department* was established, which drafted a *Medium Term Expenditure Framework (MTEF)* for the next three fiscal years. Its success was evaluated in 2003 by the first *Public Expenditure Review (PER)* for six years. However, the PER could only identify a moderate improvement in the

²² Compare: Alusala, 2004.

²³ Stockholm International Peace Research Institute, 2003.

²⁴ Stockholm International Peace Research Institute, 2005.

²⁵ Omitoogun, 2004.

²⁶ Republic of Kenya, 2004.

²⁷ The Constitution of Kenya, Chapter VII (Finance) §105

²⁸ Mwenda and Gachocho. 2003.

²⁹ Institute of Economic Affairs. 2000.

handling of public finances. Moreover, despite its large share in government expenditure, the Department of Defence was not considered as one of the eight ministries evaluated in the PER.

Mismanagement in the Kenyan budget process was sharply criticised by a UNDP report from March 2004.³⁰ As the PER 2004 noted, ministries dealing mainly in administrative matter as well as the Ministry of Defence regularly overspend their allocated budget for recurrent expenditures, which is not least due to excessive spending on wages.³¹ In contrast, development expenditure in more service-oriented government offices tends to stay below the originally planned budget allocation. As a consequence of such spending imbalance, measures taken to fight poverty and improve health-services often remain inadequate.³²

Widespread corruption remains a serious problem throughout Kenya's public service including the security sector. Indeed, in the "Kenya Bribery Index 2004" of *Transparency International* (TI), the police forces score first and the Department of Defence second.³³ The "Corruption Perceptions Index 2005" of TI ranks Kenya on place 144 out of 159 surveyed countries.³⁴ President Kibaki launched a five-year national campaign against corruption in 2003, which included the establishment of an independent Anti-Corruption Commission. A concrete reform measure was the "Public Officer Ethics Bill" under which every public official must declare his or her wealth every year.³⁵ However, although the Anti-Corruption Commission has investigated more than 3.000 cases of alleged corruption since its inception, its "track record of initiating successful prosecutions has been modest."³⁶ In spring 2004 there were rumors that a high-ranking politician was trying to make personal profit out of a US \$100 million purchase of military communications equipment. A commentary in a major Kenyan newspaper remarked that "equipment, modernisation and operation budget are closely guarded secrets in any military outfit." As the article went on to argue, "keeping the new breed of itchy-fingered politicians out of the military coffers may still be an issue the Chief of General Staff will have to deal with even in the era of zero-tolerance to corruption."³⁷

³⁰ Wandera. 2004. "Budgetary Process Criticised". *East African Standard*. 6 March 2004.

³¹ PER 2004: 30.

³² Republic of Kenya. *Public Expenditure Review 2003*. Kenyan Ministry of Planning and National Development. P- 80-1. <http://www.planning.go.ke/pdf/per.pdf>.

³³ Transparency International (TI) Kenya. 2004. *Kenya Bribery Index 2004*. <http://www.tikenya.org/documents/BRIBERYINDEX2004.pdf>.

³⁴ Transparency International (TI). 2005. *Corruption Perceptions Index 2005*. <http://ww1.transparency.org/cpi/2005/cpi2005.sources.en.html>.

³⁵ Freedom House, 2004.

³⁶ Freedom House, 2005.

³⁷ *The Nation*. "Issues That Head of Armed Forces Must Address". 23 March 2004.

Police Reform

Violent crime involving small arms is widespread in Kenya and can be regarded as an important cause for social and economic degeneration in poor communities.³⁸ Indeed, the *Interim Poverty Reduction Strategy Paper* (IPRSP) of 2000 explicitly refers to high levels of insecurity as the main obstacle to further development.³⁹ A 2002 survey of residents in Nairobi concluded that 66 percent of respondents had been victims of crime, while 86 percent had witnessed crime within the city. It also found that “levels of insecurity are increasing, and there is a clear sense among the population that crime has become more violent, more ruthless and also more organized.”⁴⁰ Ineffectiveness of public security services, lack of police capacity, systematic corruption and distrust between police forces and local communities significantly contribute to this development and thereby curtail economic and social recovery. Whereas the Administration Police, the Regular Police and the General Service Unit already take over half of the total recurrent expenditure of the Office of the President, the PER 2004 acknowledges that “enormous [additional] resources are required for [the] enhancement of public safety and security.”⁴¹ Kenya has only one police officer for every 900 citizens.⁴² The international norm, however, is a ratio of 1:500.⁴³

According to various reports by credible human rights organizations, Kenyan police forces committed unlawful killings and arrested citizens arbitrarily on many occasions. For example, in July 2004 security forces killed a number of demonstrators demanding a new constitution in Nairobi and Kisumu.⁴⁴ Although a law was passed in 2003 to prohibit the use of confessions made under duress as evidence in criminal proceedings, police allegedly still revert to physical violence in order to extract information from suspects.⁴⁵ The Kenya Human Rights Network claims to have recorded 485 cases of torture and extrajudicial shootings in 2003.⁴⁶ In March 2005, *Amnesty International* (AI) accused Kenya of violating the rights of suspects detained during anti-terrorism operations following the 2002 hotel

³⁸ Sonia Rai, 2005. “Police Reform and Conflict Prevention,” in: *Global Future – A World Vision Journal of Human Development*. First Quarter.

Available at <http://www.saferworld.org.uk/media/Police%20reform%20article.pdf>.

³⁹ IPRSP, 2000. *XIII. Public Safety, Law and Order*. Available at <http://www.imf.org/external/-NP/prsp/2000/ken/01/INDEX.HTM>.

⁴⁰ Stavrou, Aki, 2002. *Crime in Nairobi: Results of a Citywide Victim Survey*. Safer Cities Series No. 4. Nairobi: UN Habitat.

⁴¹ PER, 2004: 141.

⁴² Ibid.

⁴³ Rai, op.cit.

⁴⁴ Freedom House, 2005.

⁴⁵ Amnesty International (AI). 2005. “Country Report Kenya. 2005.” <http://web.amnesty.org/report2005/ken-summary-eng>.

⁴⁶ Freedom House, 2005.

bombings in Mombasa. AI appealed to the Kenyan police force to train officers properly in human rights law to avoid unlawful and arbitrary arrests and harassment.⁴⁷ Indeed, there is a common public perception that the police are often either involved in or complicit to criminal activity.⁴⁸

In response to human rights violations and corruption, there was a complete overhaul of the police force's top officers in March 2004. In April 2004, an active duty army officer replaced the police commissioner. The government also arrested and prosecuted a number of police officers for human rights abuses. However, it did not provide details on how many of the indicted officers were convicted and imprisoned. At the same time, police salaries were increased by 115 percent in order to reduce incentives for corruption.⁴⁹ The overall framework for police reform is the ambitious draft of a "Kenya Police Service Strategic Plan 2003–2007", which was presented by the Police High Command at a validation workshop in March 2004.⁵⁰ The plan recognizes that institutional unaccountability, impunity and corruption are endemic in the police force. Hence, there is a clear need for the Kenyan police to engage in a democratic reform process adhering to the rule of law and upholding international human rights. The plan thus generally proposes to move from a traditional approach to policing that prioritizes law enforcement, to an approach that prioritizes crime prevention and citizen safety.⁵¹ One concrete recommendation refers to the establishment of a Police Oversight Board "with the powers to investigate and take corrective action on complaints of police misconduct and human rights abuses."⁵² Be this as it may, the draft has been criticized by human rights group for suggesting "no specific plans or strategies designed to inculcate culture change within the force." Instead, "the priority has been placed only on modernisation, which will include purchasing modern equipment, improving conditions of service and retraining."⁵³

Besides its ostensibly one-sided focus on "force modernisation", the police has, however, also participated in pilot projects on "community policing", which are supported by both local and international NGOs such as *Saferworld*. The two project sites are located in the rural area of Isiolo and in Kibera, the largest slum in Nairobi. The overall aim is to maximise the impact of an overburdened police force by

⁴⁷ IRIN. "Amnesty says Kenya mistreated terror suspects". 24 March 2005.

⁴⁸ US State Department. *Country Reports on Human Rights Practices: Kenya 2004*. 28 February 2005. <http://www.state.gov/g/drl/rls/hrrpt/2004/41609.htm>.

⁴⁹ Ibid.

⁵⁰ The Kenya Police Service. *Strategic Plan 2003-2007*. Draft 2. Available at http://www.humanrightsinitiative.org/programs/aj/police/ea/articles/draft_strategic_plan_2003-07.pdf

⁵¹ Michelle Kagari. "The Kenya Police Service Strategic Plan 2003-2007. A Commentary". Commonwealth Human Rights Initiative (CHRI). http://www.humanrightsinitiative.org/programs/aj/police/ea/articles/strategic_plan_analysis.pdf

⁵² The Kenya Police Service. *Strategic Plan 2003-2007*. Draft 2. p. 23.

⁵³ Kagari, op.cit.

fostering cooperation between police officers and members of civil society in order to develop local crime prevention and victim support strategies. For example, in Isiolo the introduction of mobile phones enhanced the ability of community members to communicate with the understaffed and only thinly spread police forces in the area. In Kibera, the establishment of so-called “Drop Boxes” has encouraged people to report crimes and send tip-offs to the police. Also, a Community Police Forum has been set up, which includes both the police and representatives of civil society. Since projects were launched in February 2003, crime records in Isiolo and Kibera have reportedly dropped by 30 percent. The concept of “community policing” has thus proven to be highly successful, since it encourages “an understanding of law and order in a place where crime has traditionally gone unreported in the assumption that nothing can or will be done.”⁵⁴

Judicial and Penal Reform

The judiciary is widely perceived of as the weakest branch of government in Kenya. In July 2002, the court system was examined by a panel of Commonwealth judicial expert, which found it to be “among the most incompetent and inefficient in Africa.”⁵⁵ As a report from *Human Rights Watch* (HRW) contends, “judges commonly accepted bribes and many were subject to political influence [...]. The courts are also understaffed and underfinanced, and Kenyans awaiting trial face long delays that violate their right to due process.”⁵⁶ As a reacting to these shortcomings, major judiciary reforms were initiated in 2003 with the Kibaki government creating a Ministry of Justice and Constitutional Affairs. One of the first tasks of the new ministry was to establish a mechanism for the immediate identification and dismissal of corrupt judges.⁵⁷ In February 2003, the Chief Justice Bernard Chunga resigned following the installment of a tribunal by the Kenyan government to investigate allegation against him of torture and corruption.⁵⁸ Later that year, the newly created Anti-Corruption Commission put forward charges of corruption and misconduct against 5 out of 9 Appeal Court Judges, 18 out of 36 High Court Judges and 82 out of 254 magistrates.⁵⁹ All 23 senior judges as well as 38 magistrates were suspended, the remaining 44 magistrates transferred.⁶⁰ Although this move represented a significant step in the fight against corruption, it also lead to an increase in case

⁵⁴ Rai, op.cit.

⁵⁵ Human Rights Watch. 2002. *Kenya's Unfinished Democracy: A Human Rights Agenda for the New Government*. December. Available at <http://www.unhcr.ch/cgi-bin/texis/vtx/home/-opendoc.pdf?tbl=RSDCOI&id=3e3141727>.

⁵⁶ Ibid.

⁵⁷ Freedom House. 2004.

⁵⁸ Ibid.

⁵⁹ US State Department. *Country Reports on Human Rights Practices: Kenya 2004*. 28 February 2005. <http://www.state.gov/g/drl/rls/hrrpt/2004/41609.htm>.

⁶⁰ Freedom House. 2004.

backlogs and was criticized by human rights organizations on the grounds that “the expulsion of judges considered – but not yet found – guilty of corruption, ineptitude or improper conduct amounts to a denial of due process.”⁶¹ However, a report by the UN office on Drugs and Crime (UNODC) nevertheless concludes that “a silent ‘revolution’ against corruption is currently or about to take place in Kenya, especially in the justice system. In this regard, Kenya deserves to be supported and assisted.”⁶²

Further measures to improve the effectiveness of the judiciary are suggested in the PER 2004. These include the need to provide incentives to the poorly paid magistrates and paralegal staff, as well as the need for more resources “to rehabilitate existing courts, build new ones where there none at the moment, purchase four-wheel drive vehicles for ease of mobile courts, and hire additional magistrates.”⁶³ Judicial reforms are supported by the Justice and Security Sector Reform (JSSR) Team of UNDP’s Bureau for Crisis Prevention and Recovery (BCPR), which seeks to enhance “access to justice” and promote capacity-building for legal staff.⁶⁴ For example, UNDP in Kenya has published a “Bench book for magistrates in criminal proceedings”.⁶⁵

The Kibaki government has also initiated reforms in the penal system. According the U.S. State Department’s Human Rights Report for the year 2004, inmates are allowed “to receive education and improved medical treatment, to wear shoes and to vote, and to have greater visitation rights, including inspections by human rights groups.”⁶⁶ Furthermore, prison staff has participated in human rights training courses and corporal punishment for prisoners was outlawed.⁶⁷ However, overall prison conditions still remained harsh, mainly due to excessive overcrowding. Kenya’s 92 prisons with a capacity of 19.000 are currently estimated to hold more than 50.000 inmates. As Amnesty International reports in 2005: “The lack of basic health, nutrition and sanitation provision amounted to cruel, inhuman and degrading treatment. Understaffed and poorly trained prison wardens used

⁶¹ Human Rights Watch, 2004. *Human Rights Overview 2003: Kenya*. <http://hrw.org/english/docs/2003/12/31/kenya7271.htm>.

⁶² United Nations Office on Drugs and Crime. *New Government’s Commitment to Sector Reform*. http://www.unodc.org/unodc/en/corruption_projects_Kenya_New_Government.html.

⁶³ PER, 2004: 141.

⁶⁴ United Nations Development Programme (UNDP). Justice and Security Sector Reform Team (JSSR). http://www.undp.org/bcpr/jssr/3_projects/index.htm.

⁶⁵ UNDP Country Office Kenya. *Good Governance for Poverty Eradication*. <http://www.ke.undp.org/Good%20Governance.htm>

⁶⁶ US State Department. *Country Reports on Human Rights Practices: Kenya 2004*. 28 February 2005. <http://www.state.gov/g/drl/rls/hrrpt/2004/41609.htm>.

⁶⁷ Ibid.

excessive force to control inmates. Several people died in custody, allegedly as a result of ill-treatment.”⁶⁸

Privatization of Security

Since the 11 September 2001 the security climate in Kenya has significantly changed. Widespread feelings of insecurity coupled with an overall distrust in the police and ineffectiveness of public security provision have stimulated a considerable growth of the private security sector over the last couple of years.⁶⁹ It is estimated that some 2.000 private security companies (PSCs) currently operate throughout the country with an annual turnover of 3.2 billion Kenya shillings.⁷⁰ According to a recent survey by the Kenyan based *Security Research and Information Centre* (SRIC) the commercial security industry employs almost 50.000 people, most of which work as unarmed guards to businesses, banks, government agencies, embassies, international organizations, NGOs and private residences.⁷¹ Notwithstanding the vast number of PSCs, the security market is dominated by only a few key players. With approximately 10.000 employees spread across 68 different locations in the country, the Kenyan branch of *Group4Securicor* may be regarded as the by far largest PSC. Other dominant companies include *KK Security* with about 5.000 employees and *Security Group* with about 3.800 employees.⁷² Whereas some of the leading firms offer packages of advanced, integrated security solutions to their clients at a high price, the majority of PSCs confine themselves to low-skilled manned guarding services.⁷³

The Ministry of Internal Security, which is assigned to the Office of the President, bears responsibility for overseeing PSCs. However, despite the size and importance of the private security sector, at present no regulatory mechanisms or special requirements for either the training and vetting of guards or the registration and licensing of PSCs exists.⁷⁴ As Jan Kamenju, the director of SRIC, put it: “It is as easy to register a security company as it is to register a butchery.”⁷⁵ Hence, there is a warranted concern that the absence of regulation has provoked a marked proliferation of unprofessional PSCs providing poor services and ruthlessly

⁶⁸ Amnesty International (AI), 2005. “Country Report Kenya. 2005.” <http://web.amnesty.org/report2005/ken-summary-eng>.

⁶⁹ Hutchful and Fayemi, 2003.

⁷⁰ Kenya Institute for Public Policy Research and Analysis (KIPPRA). 2004. *Security Risk and Private Sector Growth in Kenya: A Survey Report*. Special Report No. 6. Nairobi.

⁷¹ Wairagu, Kamenju, Singo, 2004. *Private Security in Kenya*. Nairobi: Security Research and Information Centre (SRIC).

⁷² Abrahamsen and Williams, 2005. “The Globalization of Private Security. Country Report Kenya.” University of Wales Aberystwyth. <http://users.aber.ac.uk/rbh/privatesecurity/-country%20report-kenya.pdf>

⁷³ Ibid.

⁷⁴ Ibid.

⁷⁵ Kamau. 2004. “Govt to regulate security companies”. *Sunday Standard*. 29 August.

exploiting their employees. Furthermore, coordination and cooperation between PSCs and the police has not been formalized and thus tends to be unstructured and ineffective.⁷⁶

The potential dangers of an unregulated private security sector seem to have been recently acknowledged by the government. The National Security Minister Chris Murungaru stated in an interview that “there is a need to strengthen legal and institutional mechanisms [...] to ensure that the companies are run professionally, adhere to the labour laws as well as the rules governing privatisation.”⁷⁷ In August 2004, the Kibaki government thus drafted a Private Security Industry Bill that, if passed by Parliament, would set up a Private Security Industry Regulatory Authority overseen by the Minister for National Security and mandated to exercise “effective control” of PSCs by way of ensuring “trustworthiness” and high standards of training.⁷⁸ For example, the proposed authority will have the powers to inspect premises of PSCs applying for registration “to establish whether an applicant meets the requirements of registration.” The draft Bill also requires all former members of the armed forces and police to acquire a “clearance certificate” from the authority before working for a PSC.⁷⁹ Finally, the government proposed the enactment of a legally binding Code of Conduct for all security service providers, which will “ensure the payment of minimum wages and compliance with standards aimed at preventing exploitation or abuse of employees.”⁸⁰ At present, it is not clear when the Bill will go to Parliament. Also, controversy exists as to how committed and—indeed—able the government actually is to implementing a regulatory regime of the private security sector. Nevertheless, the recent move is a clear indication that it has recognized the importance of PSCs for the overall security situation in Kenya.⁸¹

Small Arms Control and Destruction

The spread and easy availability of small arms and lights weapons (SALW) throughout the country poses a significant security threat. Particularly in the pastoral regions of northern Kenya, political and economic marginalization combined with an inadequate presence of state security forces have provided fertile grounds for the proliferation of SALW and a concordant frequency of armed violence.⁸² In order to alleviate these problems, Kenya joined a number of other countries in the Great Lakes region in signing the Nairobi Declaration of 2000 and its ensuing Protocol for Prevention, Control and Reduction of SALW of 2004, both of which provided for a

⁷⁶ Abrahamsen & Williams, 2005.

⁷⁷ Kamau, 2004.

⁷⁸ Ibid.

⁷⁹ Abrahamsen & Williams, 2005.

⁸⁰ Kamau, 2004.

⁸¹ Abrahamsen & Williams, 2005.

⁸² Gilbert M. Khadiagala. 2003. *Protection and poverty: community weapons collection experiences in northern Kenya*. Oxfam. July 2003.

framework to institutionally address SALW related matters. Most notably, Kenya has since been actively involved in the implementation of the UN Programme of Action (PoA) to Prevent, Combat and Eradicate the Illicit Trade in SALW. To this end, a “National Focal Point” (NFP) has been set up, which is placed in the Office of the President and become fully operative in March 2003. Besides including members of several government departments, the NFP also comprises representatives from a number of civil society organizations. This specific make-up is regarded as highly significant, since it “has served to dispel previously held perceptions of mistrust between the Kenyan Government and civil society whilst providing a crucial link to local communities who are directly affected by the proliferation and misuse of small arms.”⁸³ The NFP has developed a “National Action Plan” (NAP) on small arms, which was formally launched in mid-2005. Some of the key recommendations contained in the NAP include the development of a new national policy and a review of existing legislation on small arms control, the collection and destruction of seized or surplus SALW, as well as a national education and public awareness raising program aimed at reducing the demand for small arms.⁸⁴ In July 2005, Kenyan authorities destroyed almost 4.000 illicit small arms recovered by police over the past two years.⁸⁵ During the Third Ministerial Review Conference of the Nairobi Declaration and Nairobi Protocol in June 2005, it was furthermore agreed to set up a “Regional Center on Small Arms and Light Weapons in the Great Lakes and Horn of Africa” (RECSA), which will be based in Nairobi.⁸⁶ The same month, Kenya and Uganda began planning a program to simultaneously disarm their border communities, which have perpetrated cross-border violence against each other for decades.⁸⁷

Constitutional Reform

The current constitution of Kenya was negotiated upon independence in 1963 and is widely regarded as outdated and oppressive. A “people-driven” process to rewrite the constitution was initiated with the establishment of the Constitution of Kenya Review Commission (CKRC) in 1997. Following the national elections, the CKRC convened a National Constitutional Conference in May 2003, which included representative of the government, opposition parties and civil society and aimed to

⁸³ International Action on Small Arms / Biting the Bullet. 2005. *Examining Implementation of the PoA*.

⁸⁴ Ibid.

⁸⁵ IRIN. “Nearly 4.000 illegal small arms destroyed”. 1 July 2005.

⁸⁶ The Third Ministerial Review Conference of the Nairobi Declaration on the Problem of the Proliferation of Illicit Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa. *Ministerial Declaration on Practical Implementation of Small Arms Action in the Great Lakes Region and the Horn of Africa*. Nairobi, 20-21 June 2005. <http://www.grip.org/-bdg/pdf/g4321.pdf>.

⁸⁷ IRIN. “Synchronized disarmament of border communities planned”. 6 June 2005.

reach a consensus on a 2002 draft for a revised Kenyan constitution. By placing a high value on human rights, the rule of law and the principles of transparency and accountability while at the same time reducing the excessive powers vested in the presidency, an adoption of the proposed draft would have provided for a useful legal foundation for the development and implementation of security sector reform efforts.⁸⁸ However, due to disagreements relating to the structure of the executive and the devolution of power, the constitutional process was continuously stalled. In March 2004, the conference dissolved following the withdrawal of the Kibeki government, which discarded the proposal for creating the post of prime minister and thereby significantly reducing presidential powers.⁸⁹ A new draft constitution was released in August 2005 by Kenya's attorney general, Amos Wako. Although the new proposal also provided for a prime minister, it left the supreme authority of the president in appointing and dismissing cabinet ministers intact, thus securing the support of the present government.⁹⁰ However, at a national referendum in November 2005 the draft constitution was rejected, which was widely regarded as a significant setback of the Kibaki government. Whereas Kibaki promised a continuation of the constitutional review process, it seems unlikely that a meaningful agreement between government and opposition parties can be reached at any time in the near future.⁹¹

Conclusion

Since the change of government in December 2002, Kenya has undertaken numerous efforts of security sector reform aimed at meeting the complex challenges presented by various security threats, particularly high levels of crime, small arms proliferation and regional instability. By establishing a Peace Support Training Center (PSTC) in Nairobi and participating in the creation of an East African Standby Brigade (EASBRIG), the military has displayed its sustained commitment to continually participating in both international and regional peacekeeping missions. Furthermore, the "Kenya Police Service Strategic Plan 2003-2007" as well as successful pilot projects of community policing have demonstrated the willingness of the police forces to undergo institutional reform. Also, the installment of an Anti-Corruption Commission and the "Public Officers Ethics Bill" indicate the government's strong dedication to fighting corruption, especially in the judiciary apparatus. As it is finally suggested by the drafting of a Bill to regulate private security services and the government's participation in inter-state and civil society fora to combat small arms misuse and proliferation, its comprehensive approach to security sector reform is not simply confined to national ministries and public

⁸⁸ Kagari, op.cit.

⁸⁹ IRIN. "Government walks out of constitutional review process". 17 March 2004.

⁹⁰ IRIN. "New draft national constitution made public". 24 August 2005.

⁹¹ IRIN. "New constitution rejected in referendum". 22 November 2005.

agencies, but also includes the both the commercial sector, civil society and international organizations.

Despite these promising developments, however, many substantial problems remain. The transparency and public oversight of the defense and security budgets is weak and calls for urgent improvements in efficient public expenditure management. Indeed, in combination with an overall lack of government resources, it tends to continuously promote massive corruption in all of the public security sector branches. Notwithstanding reform efforts, the judiciary continues to be largely ineffective. Reports of human rights abuses by state security forces abound. As such, it is yet too early to conclusively evaluate the success of the government's ambitious measures to improve the performance of the security sector. Moreover, with the failure to replace the outdated 1963 constitution, for the time being, security sector reform efforts continue to lack an overall constitutional reference point, which would assure their formulation within an overriding political framework of democratic values.

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