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Memorandum on the National Police Service Act, 2011 Regulations and Guidelines

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ABOUT TISA

The Institute for Social Accountability (TISA) is a civil society organization committed towards the achievement of sound policy and good governance in local development, to uplift livelihoods of, especially, the poor and marginalized in Kenya. TISA has been operational since March 2008, and is a locally registered Trust that has engaged with various relevant state and non-state actors in the quest to promote effective local governance in Kenya.

INTRODUCTION

Overall, the proposed amendments seek to strengthen accountability of police officers and clarify systems, which is commendable. We have however note the following concerns:

1. The National Police Service (Handling of information Regulations)

The regulations fail to provide for transparency and accountability. How will the IG ensure the Police service remains accountable to the people it serves. How do the guidelines ensure the information restrictions are not abused to infringe rights or abet corruption?

2. The National Police Service Community Policing Guidelines, 2013

- Fails to provide for intergovernmental relations and appears to silo the NPS and IPOA structures.
- It fails to link the regulations to the nyumba kumi structure
- Fails to provide for Alternative Dispute resolution mechanisms
- If fundamentally misses the point of community policing – which is a community lead process
- We propose these guidelines be withheld until these aspects are addressed.

3. The National Police Service (Private Use of Police Officers) Regulations, 2014

The regulations seek to regularise the selfish practice of using police officers for the protection of members of parliament and cabinet officers. This should be forbidden considering the low police to citizen ratio. The bill also seems to have identified the use of police officers for commercial purposes. This is likely to demotivate regular assignments and also impact security and should not be permitted.

4. The National Police Service (Promotion of Human Rights) Guidelines, 2014

The constitution of Kenya recognizes women, youth, persons with special needs and children as special groups. Therefore, the guidelines on promotion of human rights should stretch its scope to match constitutional provisions.

General provisions

Deprivation of liberty should be under the general provisions

Human rights of women

The service should recruit sufficient female police officers to ensure fair gender representation and protection of the above women rights in police stations.

There should be provisions to ensure that there is no victimization of women and other gender sensitive enforcement strategies.

There should be provisions for the service to apply due diligence in prevention, investigation and arrests in relation to acts of violence against women whether committed in home, official institutions or the community either by public officials or private individuals.

There should be provisions to ensure that women arrested or detained do not suffer discrimination or abuse by providing that arrested women be handled by female police officer or there is presence of a female police officer at all times in all stations

Help desk/ Gender desks

Guideline 11: The scope of the help desk should broaden to cover instances of gender-based violence

It follows that the person operating the desk shall have training in relation to gender-based issues in addition to childcare concerns as follows:

- ✓ Psycho-social support of GBV victims
- ✓ Be in possession of a rape kit for rape victims

Child protection

The guidelines should clearly illustrate that the rights provided are for children above the age of criminality as provided by section 14 of penal code

The act should provide measures for establishing section 14 (2) of the penal code to ensure that the child in question if below the age of 12 years had the capacity to know that s/he should not have committed the act or omission.

Guideline 13 on the deprivation of liberty should provide for the right to legal aid as a mandatory right of a child in custody.

The service shall implement programmes and strategies that seek to reduce the occurrence of juvenile crimes in the community through community policing structures.

Promotion of human rights for persons with disabilities

Guideline 27 There should be provisions on reporting mechanisms for persons with disabilities particularly deaf and mute persons who are victims of gender based violence

The responsibility of the service in relation to women offenders with children under their custody should be provided.

Provisions on the application of international humanitarian law should be under the general provisions enforcing the role of the police during armed conflict in respect to Kenyans.

Given that the National Police Service Act does not provide provisions for the role of the police in armed conflict, it is important for the guidelines to illustrate the role of the police through provisions with the following effect

1. That the police are non-combatants during armed conflict unless formally incorporated into the armed forces.

Human rights during armed conflict

Provisions of humanitarian law should be under the general provisions to broaden the scope of the role of police during armed conflict.

Guideline 14 should provide the role of the police in accordance with section 10 of the children's act

The should also be provisions on the promotion of human rights in respect to refugees and asylum seekers

5. The National Police Service (Use of Force) Regulations, 2014

The act should provide measures for accountability in instances of use of force by ensuring:

1. All instances of use of force and firearms should be reported for review to the Independent Police Oversight Authority
2. In instances of abuse of police powers, officials higher in command shall take responsibility of actions of junior police under their command who apply unlawful use of force. Especially if such incidents were not reported to IPOA, either as an express offence or an incident of use of force for review.

3. Immunity shall be granted to junior officers acting under the orders of officials to use force and in some cases; such immunity shall not be granted. IPOA shall apply its discretion in such matters.

Reports to IPOA: The guidelines should have provisions for citizens to report instances of use of force to IPOA.

Guideline 9: Conditions for use of force

The section should provide that force is used after: The officer in question has given a clear warning and allowed adequate time for the warning to be obeyed.

Guideline 12: Should include persons with disabilities