



# GOVERNING SECURITY IN KENYA

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# OUTLINE

- Introduction
- Law, democracy and security governance
- Security governance in Kenya
- Security Actors, the post-2007 elections crisis and international human rights and humanitarian law
- Conclusions



# INTRODUCTION

- Examine security governance in Kenya in the context of the post-2007 elections crisis.
- In doing so, examine international principles and standards on democratic governance of security, and whether Kenya adheres to them.
- Also look at how international human rights and humanitarian law treats situations of non-international armed conflict
- Argument - Kenya does not have strongly institutionalized mechanisms that would ensure the democratic governance of security



# GUIDING QUESTIONS

- How should citizens be policed, especially during war?
- How should joint operations of police-armed forces be conducted in a democracy?
- How should allegations of improper conduct by citizens against security forces be handled in a democracy?
  - How can citizens hold security forces to account in times of peace and in times of war?
- How should (international) human rights law respond to the conduct of hostilities by security forces in situations of non-international armed conflict?



# THINKING ABOUT SECURITY GOVERNANCE

- Security – state/quality of being secure; freedom from danger, fear, anxiety.
- Human beings form the state to provide security.
  - Provision of security is thus constitutive of the state.
- Governance – manner in which people are ruled and affairs of the state administered and regulated.
- Governance arrangements that are participatory & accountable to the citizenry are “democratic”.
- Security is a critical affair of the state; it should thus be governed in democratic manner – i.e., responsive to citizens and answerable to them.
- Undemocratic security governance => anarchy



# LAW & REGULATION OF SECURITY PROVISION

- Security provision entails delicate balancing exercise between efficiency & democracy
  - i.e. Ensuring citizens have security, and that such security is legitimate & does not trample on their rights.
- This balancing task falls to law, which empowers security organs to provide security, and establishes regulatory frameworks to facilitate their answerability to the citizenry.
- Thus law reconciles provision of security with respect for human rights and the rule of law.



# INSTITUTIONAL MECHANISMS FOR DEMOCRATIC SECURITY GOVERNANCE

- Democratic governance (DG) entails oversight/control and review of activities of security forces – i.e., supervision/management of on-going activities and ex post facto exam of activities that have occurred.
- DG thus requires establishment of suitable accountability mechanisms
- It is useful to think of these mechanisms in terms of “horizontal” and “vertical” accountability.



# FORMS OF ACCOUNTABILITY

- HORIZONTAL ACCOUNTABILITY
- Implies relationship among equals
- Restraint of state institutions by other state institutions, i.e, 3 government branches & other public agencies.
- E.g., oversight by Parliament (!!), ombudsman.
- VERTICAL ACCOUNTABILITY
- Relations among those with unequal power.
- Efforts of citizens, media, civil society to hold security officials to account.
- Also, principal-agent relationships within security orgzns



# SECURITY GOVERNANCE IN KENYA

- Key institutions – President, Defence Council, KPF, Admin Police Force, Armed Forces, NSIS, Provincial Administration.
- President is C-i-C and has virtual monopoly over security & defence policy
  - Traits – Executive Monopoly & Secrecy (see Official Secrets Act)
- Constitution does not regulate security forces.
- Security forces are instruments for regime maintenance => illegitimate security provision in many cases: authoritarianism & human rights abuses.
- It is not clear when army should be deployed in internal conflicts.



# IS SECURITY GOVERNANCE IN KENYA DEMOCRATIC?

- Security institutions are not sufficiently accountable to citizens.
- Parliament has played no meaningful role
  - E.g. CIPEV is initiative of the Executive!
  - No role in deployment of armed forces
- Culture of judicial deference inhibits courts from holding security actors to account
- KNCHR – power to investigate violation of human rights;
- KNHCR’s ‘powers of a court – judge in its own cause?!; this can impact negatively on its legitimacy.
- Need for internal separation of powers.
- Required – Civilian oversight of security agencies. See Bomas Draft Constitution – NSC, PSC



# SECURITY FORCES & HUMAN RIGHTS LAW

- Concern - Human rights law & internal armed conflicts.
- Allegations – police used excessive force; police/army committed war crimes against SLDF.
- Distinguish – IHL/IHRs Law
- Whereas international armed conflicts are elaborately regulated by IHL, non-international armed conflicts are not – coz of doctrine of state svrgnty.
- Argument – internal armed conflict would be best regulated using IHRs law (esp. conduct of hostilities) – e.g., ICCPR, Convention against torture, African Charter on Human & People’s Rights.
- Govt’s oblgn to investigate & punish; if not ICC



# CONCLUSION

- It is self-serving for security forces to investigate their own & purport to be objective.
- Democratic governance requires that the actions of security actors should be overseen by independent parties. Security provision can only be legitimate if it is accountable.
- The Bomas Draft Constitution is good starting point in quest for democratic governance of security.
- Human rights organizations should hold security agencies for crimes committed after December 2007 elections; if need be security actors should be tried in the ICC.