

YOUR GUIDE TO:

THE NATIONAL POLICE SERVICE ACT,

THE NATIONAL POLICE SERVICE COMMISSION ACT

AND

THE INDEPENDENT POLICING OVERSIGHT AUTHORITY ACT

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Foreword

Police reforms in Kenya have been a key concern to many stakeholders. Specific concerns have been raised as to the adequacy of policing, police accountability and respect for human rights. Kenya faces an acute crime challenge and the police have been found to be lacking in their response to this challenge.

Further the police stand accused of gross, systematic and widespread human rights abuses. The promulgation of the constitution provided great impetus for wide-ranging police reforms. Parliament passed the National Police Service Act, the National Police Service Commission Act and The Independent Policing Oversight Authority Act. However, the process of implementation has been slow and there is doubt as to whether there is political will and commitment to the full and faithful implementation of the reforms.

Already, there has been concern that there are attempts to delay the reforms on the pretext that the reforms cannot be completed before the next general elections yet it is imperative that the reforms be completed before the elections given the fact that in 2007, the police were accused of gross human rights violations, including extra-judicial executions.

Extra-judicial executions continue to be a matter of grave concern. RPP and other organizations have documented numerous cases of these killings. It would be impossible for any reforms to have meaning if police continue to kill civilians unlawfully and without being held to account. Police reforms under the new legislation will bring greater accountability in the Police and contribute to the reduction in extra-judicial executions while offering victims a chance for redress.

It is RPP's hope that this publication will contribute towards police reform by enabling ordinary citizens to understand what the new legislation on policing entails. An enlightened citizenry will thus be able to play an active and meaningful role in this process.

Odhiambo Oyoko

Ag. Executive Co-ordinator

THE NEW NATIONAL POLICE SERVICE:

Background

Introduction

With the new Constitution providing for sweeping reforms in the police, the government had to set up a new police system to reflect the changes.

The laws setting out the system have now been passed by Parliament, and the new police system is being established.

WHY DID THE SYSTEM CHANGE?

The Constitution of Kenya, made law in 2010, established a new National Police Service and a National Police Service Commission. New laws were required to reflect the changes to the police system made under the new Constitution.

The changes made to the police system were prompted by many factors, including the Police Reform Taskforce Report (also called the Ransley Report) that reviewed the police structures and systems after the 2007/8 post-election violence and recommended wide-ranging reforms to the police service. The goal of the police reforms is to transform the Police to a professional, efficient and accountable police service that is trusted by the public.

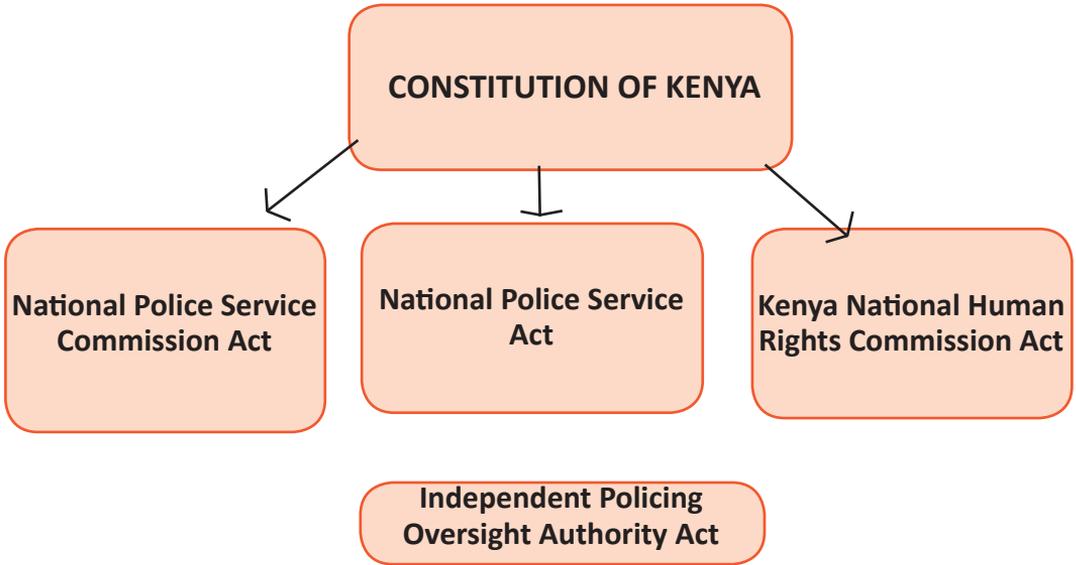
The Ransley Report recommended the restructuring of the police services to include new organisations, including the Police Service Commission and the Independent Policing Oversight Authority.

THE CONSTITUTION SETS UP:

- ✓ A **Bill of Rights**, which guarantees the rights and freedoms of the people including: freedom from torture and cruel, inhuman and degrading treatment or punishment; right to freedom of assembly; right to life; rights of arrested persons; and rights of persons detained, held in custody or imprisoned. The Kenyan government must ensure that the rights are guaranteed through the law, policy and standards.
- ✓ **National values and principles** that must be adhered to in interpreting, applying or enacting the Constitution, laws and public policy. These national values and principles include the rule of law, democracy, sharing of power, participation of the people, human rights, good governance, transparency and accountability and more.
- ✓ **Values and Principles of public service** including high standards of ethics, responsive and impartial provision of services, accountability and transparency and provision of timely information.
- ✓ **Principles of national security** including that national security will be pursued in accordance with the law and with the utmost respect of the rule of law, human rights, democracy and fundamental freedoms.
- ✓ **National Security Organs:** includes the National Police Service, Kenya Defence Forces and the National Intelligence Service. These bodies must work in accordance with the law with respect for human rights. They are not allowed to be biased for particular people, and they are governed by the people of Kenya through the Parliament.
- ✓ **Human Rights Commission** and other commissions like the independent Ethics and Anti-Corruption Commission.
- ✓ **County governments** to be established under new legislation and are made up of county assemblies and other county government structures.

THE CONSTITUTION

The Constitution is the supreme law of Kenya, and is superior to all other laws.



Apart from the new laws, what else guides the police?

Other Kenyan laws

The Criminal Procedure Code, Evidence Act and Penal Code also guide the police in their operations. The Penal Code sets out the criminal offences in Kenya. The Criminal Procedure Code sets out the process by which a person can be arrested, charged and tried in court, and also sets out some of the powers of the police. The Evidence Act sets out the evidence required to prosecute a person for an offence.

International law

Kenya is also bound by international law, and must follow international human rights law. Every international treaty that Kenya has ratified is now automatically a law in Kenya – so this means that the government must make sure that they follow these laws as well.

Internal procedures, Service Standing Orders

Internal policies and procedures also govern the operations of the Police. The Police have ‘Service Standing Orders’ that set out the specific rules and procedures that the Police must follow in order to carry out their work. They provide direction for the Police in all the various, distinct areas that face Police in their daily work.

The Service Standing Orders can only provide direction to the police on how to carry out their duties and must be consistent with the Constitution, the National Police Service Act and all other Kenyan laws. These Service Standing Orders are meant to be available to the public wherever possible, so if you are interested in reading these orders, please ask at your local police station.

New Service Standing Orders will be made to reflect the new Police Laws.

The Police also have a Code of Conduct that guides their general behaviour.

How is the police organisation structured now?

Who is doing what?

The different police organisations carry out different functions, and are structured a little bit differently.

- **National Police Service (NPS):** works to maintain a safe and secure community; detecting, preventing and investigating crime; maintenance of public order.
- **National Police Service Commission (NPS Commission):** manages recruitment, employment, professional standards and discipline of the National Police Service.
- **Independent Policing Oversight Authority (IPOA):** investigates complaints made against the police, investigate all deaths in police custody, investigate matters that are not the subject of an individual complaint but that the IPOA think it should investigate, and make recommendations for action and report to Parliament.
- **County Policing Authorities (CPAs):** are also new bodies, established under the National Police Service Act. The CPAs are a key way for the local county community

to be involved in the policy direction and strategy of the police in their own County. Community Policing Committees will also be established in each area.

NPS

- Public safety and security
- Investigate and prevent crime
- Maintenance of peace and public order

NPS Commission

- Recruitment, employment conditions
- Training
- Discipline police officers

IPOA

- Independent investigations into complaint against police - including all deaths in custody
- Recommendations for action/discipline

County Policing Authorities

- Implement community policing
- Ensure police accountability to the public

NATIONAL POLICE SERVICE ACT:

A simple guide

The National Police Service is established under Article 243 of the Constitution and *The National Police Service Act 2011*.

The purpose of this chapter is to explain the new law establishing the National Police Service, *The National Police Service Act*. The chapter will explain how the Service is set up, how the leaders of the Service are appointed, the role of the police, the powers of the police, how the community can get involved in policing and the workings of the police internal investigation unit.

THE NATIONAL POLICE SERVICE IS MADE UP OF:

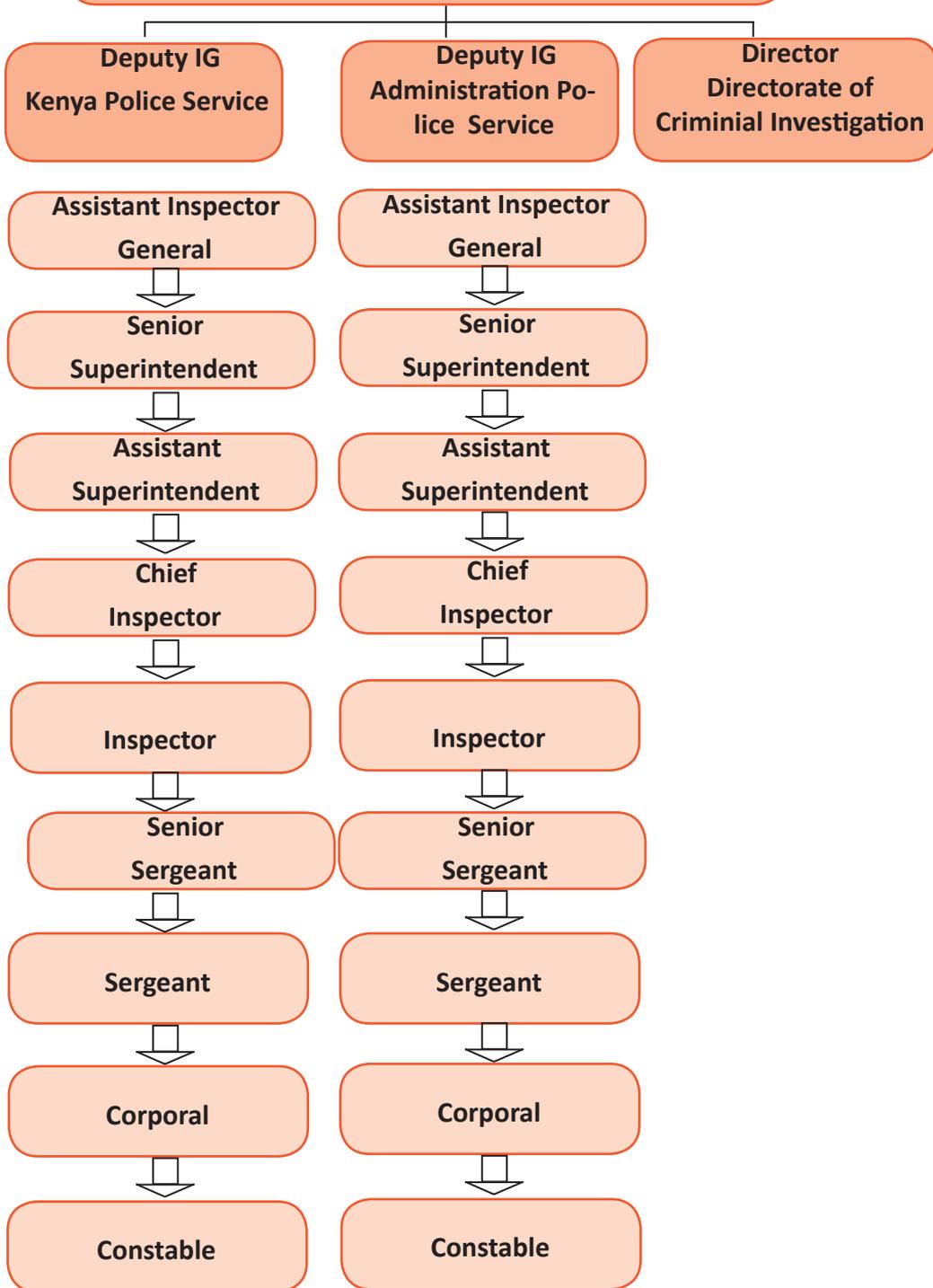
- The Kenya Police Service
- The Administration Police Service
- The Directorate of Criminal Investigation

This is different to the previous system, as now both police services – the Kenya Police and the Administration Police - fall under one organisation, the NPS. They are both governed by the same Inspector-General of Police.

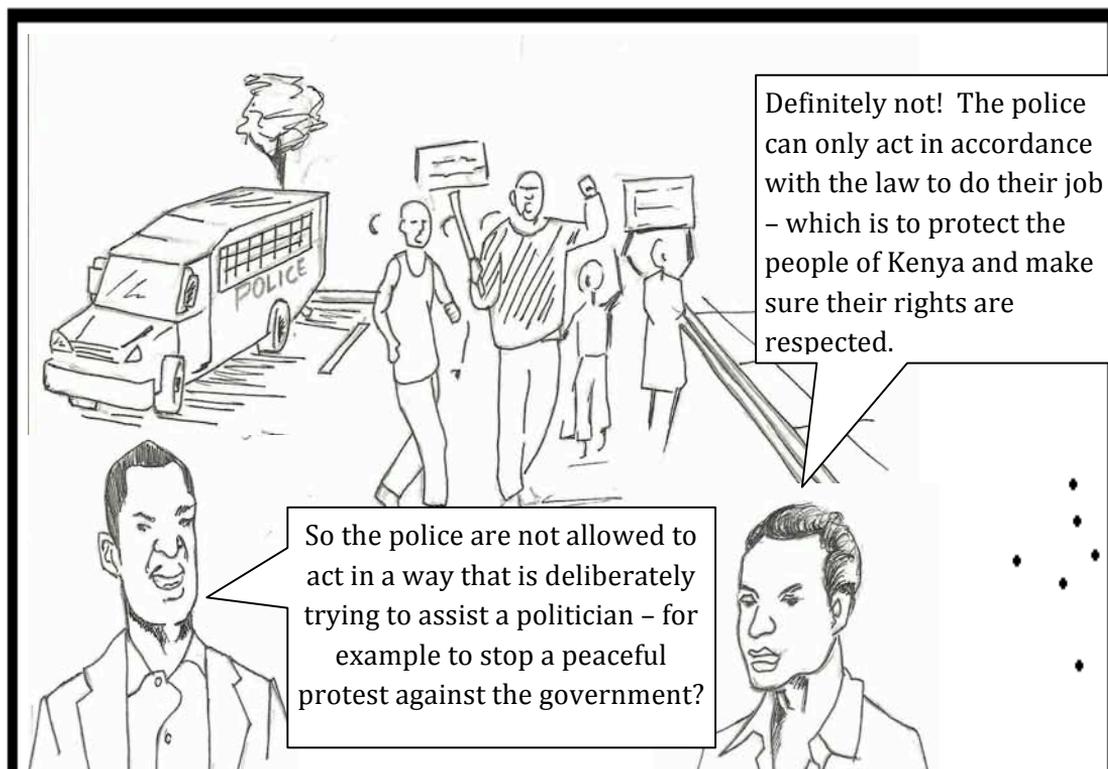
There are two Deputy Inspector-Generals: one for the Kenya Police Service and one for the Administration Police Service.

There is also a separate Directorate of Criminal Investigation which is overseen by the Director, whose overall boss is also the Inspector-General for Police.

Inspector - General National Police Service



- acting in a biased manner
- furthering a political interest or cause
- prejudicing a political interest or political cause that is legitimate (legal)



The Constitution says the police are subject to civilian authority. This means that the people of Kenya, through the Parliament, govern the police. They are also overseen by other civilian oversight organisations such as the Independent Policing Oversight Authority and the Kenya National Commission on Human Rights.

The powers and responsibilities of the police

The police are given powers so they can carry out their job properly. The job of the police is set out earlier in this booklet, under the question “What are the different roles of the KPS and the APS?”. The law also sets out the rules on how the police can use their powers, to make sure that they are not abused. The police also have responsibilities to make sure the rights of civilians are upheld and that police facilities are maintained to the right standard.

The Criminal Procedure Code also sets out some of the powers of the police in relation to arresting a person, obtaining a warrant etc.

Use of force by police officers

There are regulations regarding use of force and firearms by police officers in Schedule 6 of the NPS Act. Broadly, the schedule states:

Attendance at the station

Search and Enter - including confiscation of property

Can the police make me come to the police station?

A police officer can ask a person in writing to come to the local police station if they think that person has information that can help an investigation. You have to go to the station unless you give a reasonable excuse.

A person is not required to answer any question if the question might result in the person being charged with an offense or having to pay a fine.

If I do answer, will they write it down?

Yes. The police have to write down what you say as a "statement", but they **must** warn you, before you answer any question, that the statement may be used as evidence if the matter goes to court.

Also the police officer must read out the statement he/she has recorded, and you can make any corrections to it that you need to.

I heard that the police just demanded entry into Tom's home and searched it! Without a warrant! Are they allowed to do that?

They can demand entry to a property and search it, without a warrant – but they have to have a reasonable belief that:

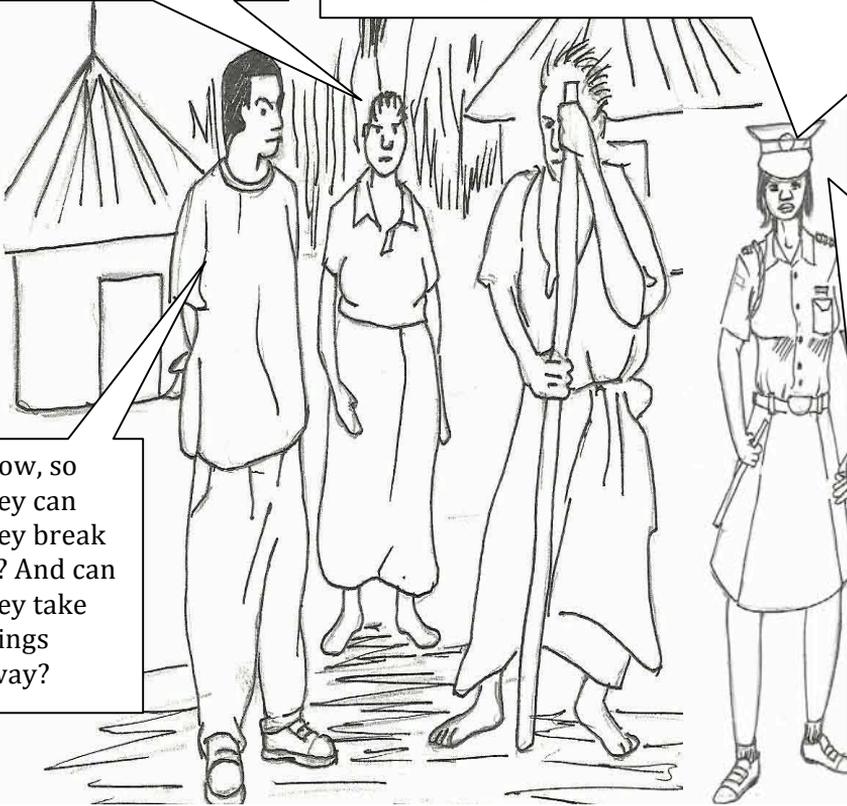
There is something in the property that is needed for a criminal investigation and it would jeopardize the success of the investigation to wait until they obtained a warrant

OR

A person who has a warrant out against them – and is suspected of committing a cognizable (serious) offence – is in the property

Wow, so they can they break in? And can they take things away?

They can break in if it is necessary to get into the property. But they do always have to identify themselves before entering a property, make a record of the incident, make a record of any things taken from the property and give a report to their supervisor



Searching vehicles

A police officer may stop, search and detain any vehicle which the police officer has reasonable cause to suspect it has been used to carry out a crime.

If the driver does not stop when requested by the police, the driver commits an offence. A police officer may arrest the driver, without a warrant, unless the driver gives his or her name and address and satisfies the police that they will answer any summons or proceedings issued against them.

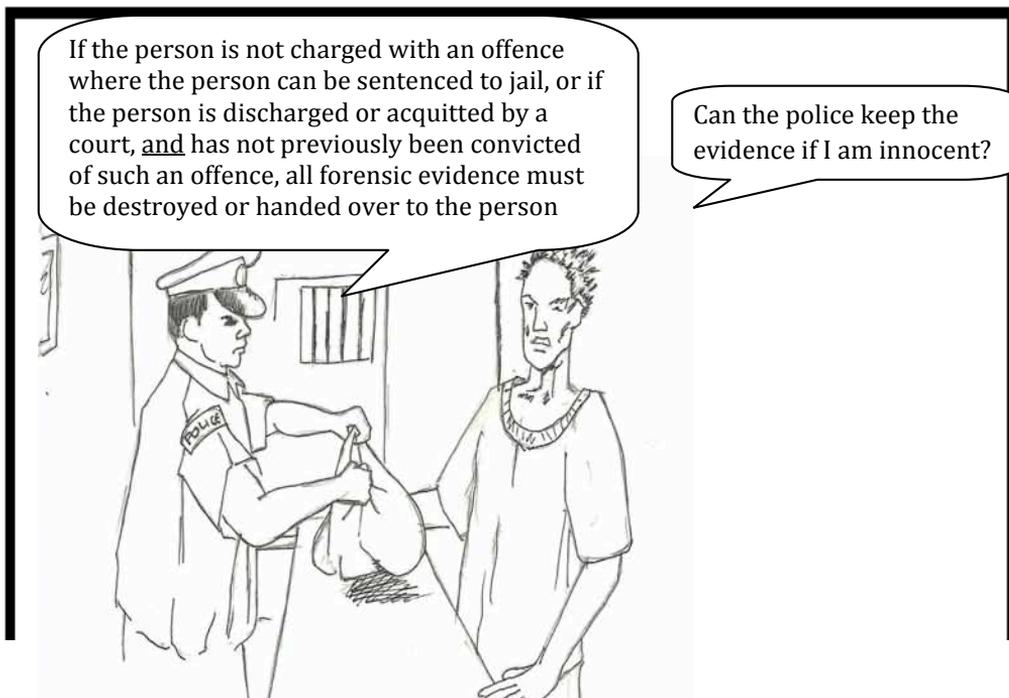
Getting evidence (photos, fingerprints and forensic evidence)

A police officer may take forensic evidence from any person in lawful custody or who is under

police supervision.

This includes:

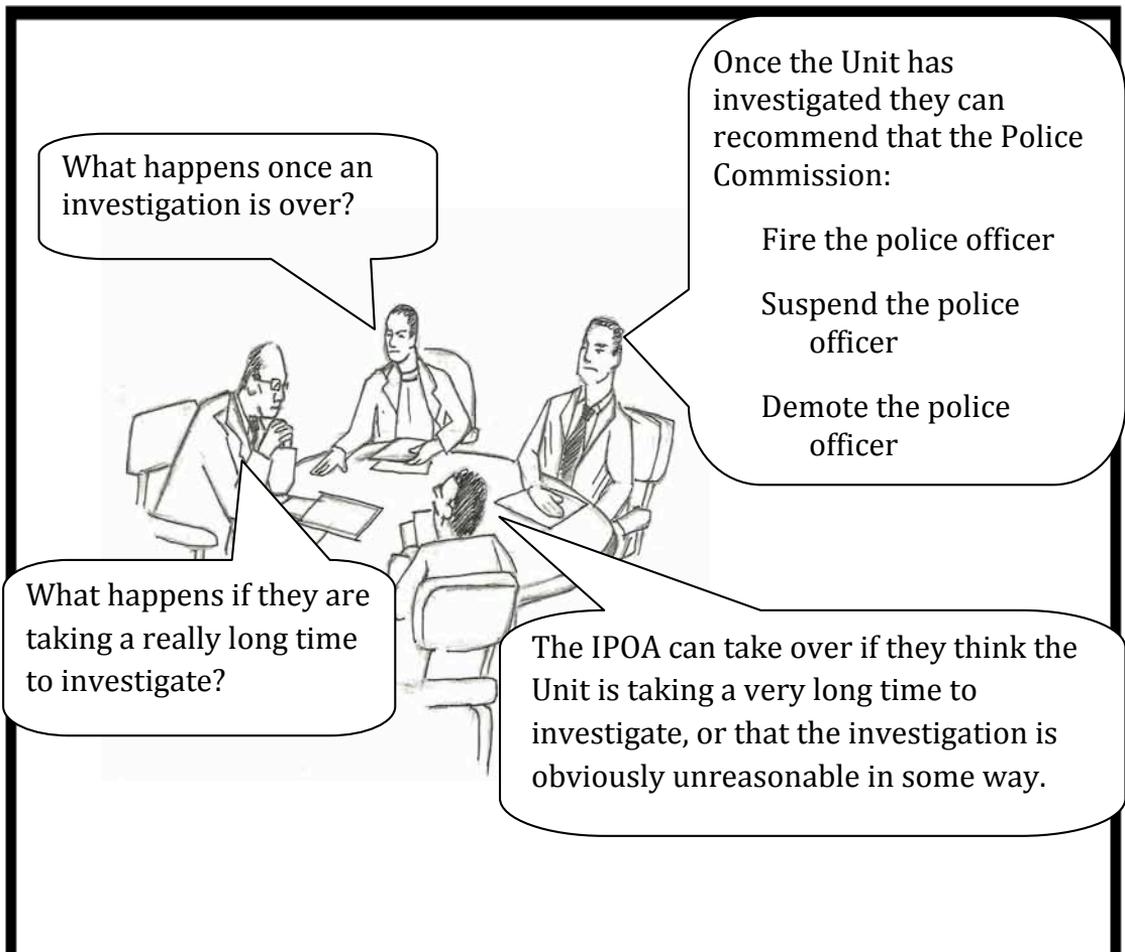
- Measurements
- Photographs
- Footprints and casts and palm-prints, finger-prints
- Other forensic evidence



Recording of statements

A police officer has to record any statement made to him or her. The police officer must warn the person, before recording the statement, that the statement could be used as evidence. The statement recorded must be read out to the person in a language which the person understands, after which the person can make any corrections to the statement before signing it. If a police officer does not follow the right procedure the statement can't be used as evidence in any court proceedings.





The Unit will report directly to the Assistant Inspector-General, who then reports to the Inspector-General. The Unit will be located in separate offices to the rest of the police.
 Relationships with other bodies

The Unit has to have an effective, working relationship with, and report regularly to:

- IPOA
- NPS Commission
- Coroners Service (The law is yet to be passed)
- Chief Firearms Licensing Officer

How do I make a complaint to the Internal Affairs Unit?

A police officer or a member of the public can make a complaint against the police to the Internal Affairs Unit. The Unit must record the facts of any complaint made and any subsequent investigation.

Every police station must have the ability to receive, record and report complaints about police misconduct – so a member of the public can make a complaint to any police station.

NATIONAL POLICE SERVICE COMMISSION ACT:

A SIMPLE GUIDE

This chapter aims to explain the new law establishing the National Police Service Commission.

The National Police Service Commission is established under Article 246 of the Constitution of Kenya and The National Police Service Commission Act 2011.

WHY WAS THE COMMISSION SET UP?

- The National Police Service Commission is an important organ that will drive the overall reforms to the system of policing in Kenya.
- The changes made to the police system were proposed by the Police Reform Taskforce Report (the Ransley Report) that reviewed the police structures and systems after the 2007/8 post-election violence.
- Along with many other recommendations, it recommended the establishment of a Police Service Commission to improve recruitment and deployment of police officers (make sure the right person is in the right job), and to properly investigate and discipline police misconduct.
- The new Constitution of Kenya, which was promulgated in August 2010, also provided that a National Police Service Commission be established.

STRUCTURE OF THE COMMISSION

THE NPS COMMISSION IS MADE UP OF 9 MEMBERS:

A chairperson, who is a senior lawyer qualified to be appointed as a High Court Judge. The Inspector-General of Police. Two Deputy Inspectors-General, each being the head of regular police and administration police.

Two retired police officers, who held the rank of senior superintendent or above. One of these officers must be a woman. One must be retired from the Kenya Police Service, one from the Administration Police Service.

Three other people of integrity who have served the public with distinction, and have at least 10 years experience in either:

- Finance and administration
- Economics
- Human resources development and management
- Public administration
- Labour laws
- Law
- Human rights

INDEPENDENT POLICING OVERSIGHT AUTHORITY ACT: A SIMPLE GUIDE

The purpose of this chapter is to explain the new law establishing the Independent Policing Oversight Authority.

The Independent Policing Oversight Authority (IPOA or Authority) is a new body established under the Independent Policing Oversight Authority Act 2011.

It is an independent body that investigates complaints of police misconduct, and must investigate all deaths and serious injuries caused in police custody, or which were the result of police actions (caused by the police). The IPOA also monitors the operations of the police that affect the public, patterns of police misconduct and oversees the handling of complaints by the National Police Service Internal Affairs Unit. Based on its investigations and monitoring, it can make recommendations to improve the police or hold particular police officers accountable.

The new body will improve the police service by making sure that police officers are held accountable for their actions. The IPOA will help in making the National Police Service professional, disciplined, transparent and accountable. This is good news for both the Police Service and the public, and will greatly boost and enhance the trust of the public in the police, which will in turn make policing more effective in Kenya.

Why was the IPOA set up?

- The Authority was established as part of the wider police reform process.
- The changes made to the police system were prompted by many factors, including the Police Reform Taskforce Report (the Ransley Report) that reviewed the police structures and systems after the 2007/8 post-election violence.
- Along with many other recommendations, the Ransley Report called for the establishment of an Independent Policing Oversight Authority to independently investigate police misconduct, ensure errant police officers are held accountable and therefore help improve the image of the police and public trust in the police. The Report of the Commission of Inquiry on Post-Election Violence (the Waki Report) also recommended the establishment of an 'Independent Police Conduct Authority' to investigate allegations of police misconduct and provide civilian oversight.

