

**Strengthening Democracy and Human Rights in Africa through Police Reform
Submission to AfriMAP on the proposed Joint EU-Africa Strategy
Commonwealth Human Rights Initiative
November 2007**

This is a Commonwealth Human Rights Initiative (CHRI) submission to AfriMAP on how the proposed “EU-Africa Partnership on Democratic Governance” can best support initiatives to strengthen democracy and respect for human rights in Africa through support for democratic police reform.

This submission is broken into three sections. The first section looks at why police reform is essential to democracy and human rights and sets out the background on democratic police reform in Africa, the EU-Africa partnership and CHRI. The second section looks at how the European Union should support police reform, democracy and human rights, through both national and regional interventions. The third section provides a summary of the basic principles of democratic policing.

1. Background

1.1. Democratic police reform essential to strengthen democracy and respect for human rights

Ensuring access to justice is an essential part of any programme aiming to strengthen democracy and respect for human rights. Policing is the first – and often last – experience that people in communities have with the justice system and good policing is a key component of good governance. The role of police is to support and underpin democracy and respect for human rights; in too many African countries, poor policing undermines democracy and leads to human rights violations.

The African Commission on Human and Peoples’ Rights has recognised the critical role that police organisations throughout Africa play in “the maintenance of law and order, the administration of justice, the respect for the rule of law and enhancing peace and the security of persons and property in every state.”¹ The Commission has also noted that “policing is increasingly recognised as a basic foundation in building democracy, promoting human and peoples’ rights and alleviating poverty without which democratic practices, economic and social development and the promotion of human rights are constrained and even jeopardised.”²

1.2. Democratic police reform in Africa

In Africa, human security, as well as economic and social development, is hindered by poor policing. In many countries, budgetary pressures mean the police are not adequately resourced. Dictatorial or colonial legacies and a lack of expertise prevent the growth of an accountable, democratic police service. Illegitimate political interference in policing by politicians and governments that benefit from partisan, brutal policing, means oppressive policing for the community. A lack of capacity within local, national and regional civil society groups prevents the development of community-driven pushes for police change.

Africa also provides examples of successful democratic police reform processes, such as the post-apartheid police transformation process in South Africa.

1.3. EU-Africa Strategic Partnership

In December 2005, the Heads of State and Government of the European Union (EU), adopted a new strategy for Africa, “The EU and Africa: Towards a Strategic Partnership” (the Joint Strategy), to support Africa’s efforts to reach the UN Millennium Development Goals and make Europe’s

partnership with Africa more efficient. The Joint Strategy recognises that without good governance and peace and security, no lasting progress is possible. The Joint Strategy also recognises that more support is needed to achieve a safe environment for people living in African communities.

1.4. Commonwealth Human Rights Initiative

CHRI is an independent, non-partisan, international civil society organisation working towards the practical realisation of human rights in the Commonwealth. In recognition of the key role that access to justice plays in strengthening democracy and the realisation of human rights, CHRI developed a programme aimed at increasing police accountability, particularly in less developed jurisdictions in the Commonwealth, including Africa. This submission is based on CHRI's experience working in Commonwealth Africa to promote police accountability, particularly in East Africa and through its office in Accra, Ghana.³

2. Joint Strategy must prioritise support for democratic police reform

The Joint Strategy must prioritise support for democratic police reform if it is to achieve its objective of strengthening democracy and human rights in Africa. This support must take the form of both:

- a) jurisdiction specific engagement by assisting civil society capacity to advocate for police reform and engage with reform processes and supporting government justice law and order sector reform processes; and
- b) regional engagement by assisting regional mechanisms to lead and support reform processes (for example, through the development of standards of policing for Africa) and supporting the work of regional and international organisations on police reform and accountability.

Further detail is set out below.

2.1. Jurisdiction specific engagement

2.1.1. Support for national governments

National governments must be supported to implement police accountability and incorporate police reform into their governance and justice sector programmes. This support must be both financial and technical, enabling the implementation of programmes and ensuring the effectiveness of those programmes. Technical support should assist with the development of cross-jurisdictional learning within Africa and also the provision of information on policing and reform process good practice from the European Union. In many jurisdictions, this support can be built into existing donor-government partnerships looking at justice and law and order sector reform (for example, the Governance, Justice and Law and Order Sector programme in Kenya).

2.1.2. Support for local civil society

It is essential that the community is represented in and engaged with any police reform process. Currently, there is a lack of capacity in African civil society to engage with reform processes. The Joint Strategy must support the development of capacity within local and national level civil society to alleviate the risk of closed reform processes that are not open to or representative of the community.

An example of European national government support building civil society capacity in Africa was the Royal Netherlands Embassy support of a civil society training workshop on policing in Uganda, facilitated by local organisations – Human Rights Network Uganda (HURINET-U),

together with the Foundation for Human Rights Initiative (FHRI) and Uganda Prisoners Aid Foundation (UPAF) in August 2007. This training workshop built capacity into 30 Ugandan organisations and institutions working on issues of human rights, good governance and democracy to engage with issues of policing and police reform.

2.2. Regional engagement

2.2.1. *Regional mechanisms*

The Joint Strategy aims to incorporate a regional approach and guide interaction between Europe and regional mechanisms such as the Africa Union. To achieve this, it is important that the Joint Strategy support development of both financial and technical capacity in regional mechanisms to lead on police accountability and reform. Examples of support for two different regional mechanisms, the African Union and the African Commission on Human and Peoples' Rights, are set out below.

There is scope to assist the African Union to develop standards on policing, as well as to develop cross EU-African dialogue and learning. In 2001, the Council of Europe adopted a European Code of Police Ethics in recognition of the role that criminal justice plays in safeguarding the rule of law and the essential part that the police play in an effective criminal justice system. The Code is a set of recommendations for member states on internal police legislation, practice and codes of conduct for police organisations. Among other things, the Code regulates police powers with regard to public order (including the power to use force) and police training and recruitment. The Code draws from with relevant articles of the European Convention on Human Rights – just as a code for Africa could draw from relevant articles of the African Charter on Human and Peoples' Rights. The process of drafting and implementing this Code provides a valuable foundation for assisting the African Union to develop a similar set of principles indigenous to the African continent.

As noted above, the African Commission on Human and Peoples' Rights has already begun work on policing and has passed a resolution on police reform, accountability and civilian police oversight in Africa. The Joint Strategy must target the Commission and support this work. Particular examples of the type of work that the Joint Strategy must focus on include supporting the Commission to ensure that parties to the African Charter take measures to ensure that police organisations respect the dignity of the individual, adopt laws and regulations to implement the guidelines contained in the Robben Island Guidelines (on the prohibition and prevention of torture, cruel and inhuman and degrading treatment) and to establish independent civilian policing oversight mechanisms.

2.2.2. *Regional organisations*

The Joint Strategy must also support capacity building within regional and international organisations that work on police accountability and reform in Africa. There are a small number of organisations working on policing or with scope to work on policing – capacity must be built both within these existing organisations to more fully achieve their mandate and also to encourage new organisations to take on policing. Regional groups provide an invaluable opportunity to develop a solid basis of African lessons on policing and police reform, share experiences and develop solutions to the problems posed by undemocratic policing that are effective and suited to implementation in the African context. International groups provide an invaluable opportunity for Africa to share those lessons with other developing jurisdictions and regions around the world, taking a leading role in democratic policing. They also provide an opportunity for African groups and governments to learn lessons taken from other unreformed, reforming and reformed jurisdictions.

An example of the kind of regional organisation that will help develop an African expertise on policing, accountability and oversight is the African Police Civilian Oversight Forum (APCOF). APCOF is a network of African policing practitioners drawn from state and non-state institutions that aims to create and sustain public confidence in police, develop a culture of human rights, integrity, transparency and accountability within the police, promote good working relationships between the police and the community and promote good working conditions within the police. APCOF's mandate includes exchange of information and better practices among policing oversight bodies, standard setting for policing and civilian policing oversight bodies in Africa and encouraging and supporting the formation of regional networks to promote police reform.

An example of an existing regional network that has a mandate to work on policing, but has focused on military issues, is the African Security Sector Network (ASSN). The ASSN's mandate is to support the advancement of the principles of democratic governance of the security sector in Africa. The ASSN has been extremely effective in engaging with issues around the military in Africa, and has shown the impact that a regional network can have on achieving substantive change through advocacy, capacity building, research, training and the development of security literacy. However, it has only engaged in a very limited way on issues of policing. This limited engagement has shown that it is not possible to apply the themes of the military debate to policing – the roles of the different institutions, the governance environment and the expectations of both government and the community of each are just too different. Capacity to work on policing issues and achieve policing change must be nurtured.

3. Democratic policing

Democratic policing is based on the idea that the police are protectors of the rights of citizens and the rule of law, while ensuring the safety and security of all equally.

Increasingly, the fundamental purpose of policing is seen as being the protection and fulfilment of human rights for all. As the primary agency responsible for protecting human security, the police are particularly responsible for turning the promise of human rights into reality. Unlike any other agency of government, the police are given wide powers, including the authority to use force. This power to infringe on people's freedoms carries with it a heavy burden of accountability. Good systems of governance require that the police account for the way they carry out their duties, especially for the way they use force. This ensures that the police will carefully consider the methods that they use to protect peace and order and that incidents of police misconduct or abuse of their powers will be dealt with harshly.

Democratic policing is both a process – the way the police do their work – and an outcome. A democratic police organisation is one that:

- is accountable to the law, and not a law unto itself. The rule of law applies to police and the government as it applies to the people. Democratic policing requires that the police act within their boundaries, within international laws and standards, and within internal disciplinary systems and the criminal law;
- is accountable to democratic structures and the community. To ensure that the police do not become overly controlled by a single seat of power, democratic police independently answer to all three branches of governance, as well as to the community;
- is transparent in its activities. Most police activity should be open to scrutiny and subject to regular reports to outside bodies;
- gives top operational priority to protecting the safety and rights of individuals and private groups. The police must primarily serve the people and be responsive to the needs of individuals and members of groups – especially those who are vulnerable and marginalised;
- protects human rights. This requires the police to protect the right to life and dignity of the individual, as well as the exercise of democratic freedoms – freedom of speech, freedom of

- association, assembly and movement. They must also ensure freedom from arbitrary arrest, detention and exile, and impartiality in the administration of the law;
- provides society with professional services; and
 - is representative of the community it serves.

A key feature of democratic policing – in line with the checks and balances that characterise democratic systems of governance – is that the police are formally held to account in a number of ways for their performance, as well as any misconduct. CHRI advocates an oversight model comprised of external oversight by the three arms of government plus one independent body. The three wings of government include democratically elected representatives, an independent judiciary and a responsible executive. The independent body could be a statutory civilian body, such as an Ombudsman or Human Rights Commission, but is ideally a body set up to deal solely with public complaints about the police.

¹ Resolution on police reform, accountability and civilian police oversight in Africa, Africa Commission on Human and Peoples' Rights, 40th ordinary session, Banjul, The Gambia, 15-29 November 2007.

² Resolution on police reform, accountability and civilian police oversight in Africa, Africa Commission on Human and Peoples' Rights, 40th ordinary session, Banjul, The Gambia, 15-29 November 2007.

³ CHRI has produced a series of reports on police accountability in each of Ghana, Kenya, Uganda and Tanzania, as well as reports to the Commonwealth on police accountability and the impact of anti-terrorism laws on policing. For access to electronic copies of these reports, visit the CHRI website (www.humanrightsinitiative.org).