

Where are the Police?

**The Mystery of Police in the
Invisible and Unabated Domestic
Burglary in Kwale County**



A Special Investigative Report



Human Rights Agenda,
January, 2023

Where are the Police?

**The Mystery of Police in the
Invisible and Unabated Domestic
Burglary in Kwale County**



“

No service of government is more fundamental than protecting people’s bodies and possessions. Indeed, the relationship between personal security and government is tautological: if people are not provided with protection at some minimum level, government is not considered to exist.

”

Johan Prinsloo and Coen Marais, Nov. 2006

Visit <https://go.gale.com/ps/i.do?id=GALE%7CA158524573&sid=googleScholar&v=2.1&it=r&linkaccess=abs&issn=10131108&p=AONE&sw=w&userGroupName=anon%7Ee232821a>, accessed Thursday, January 19, 2023.

Contents

Executive Summary	5
Framing the Problem of Police Inaction in Suppressing Crime	9
Establishing the Crime	11
Kwale County Crime Outlook	11
Objectives of the Fact-Finding	11
Our Findings: What we Established	13
Nature of Burglary and Housebreaking Incidents	14
Re-victimization, Familiarity with the target, and convenience of the location	14
Offenders and Victims of Burglary	15
a) No adequate investigations to unearth and apprehend criminals were conducted by police	15
b) Non-Adherence to International Human Rights Standards of Policing	17
c) Failure to Establish Community Policing Structures	18
The Economic and Social Costs of Burglary and Police Inaction	19
a) Value of Property Stolen and Damaged	19
b) Defensive Expenditure	19
c) Emotional harm and Lost Output to the victim	19
Discussion and Analysis of Findings	21
Importance of Community Policing Forums and Committees	21
Police Responsibility to Reasonably Disrupt, Prevent or Suppress Foreseeable Crime	22
Violation of the Right of Victims to an Adequate Response to their needs	22
Violation of the right to peaceful enjoyment and protection of property by the state	22
Protection of Victims of Crime and Abuse of Power	23
Police failure to Investigate Crime Constitute a Constitutional Violation of Claimant's Rights	23
Police Inaction may spur Mob Violence	23
Compensation as a Right for Victims of Crime	24
Recommendations	25
Conclusion	28

Executive Summary

ncessant burglaries, stealing and theft continued to plague the Kwale Municipality within the headquarters of Kwale County in late 2021 to 2022. Over **40** incidents of housebreaking were reported in less than a year where burglars randomly struck at houses making away with electronics, cash, and jewelry collectively worth over five **(5)** million Kenyan shillings without a trace whatsoever.

For several months, the thieves and burglars were enjoying a free-run in the area despite claims of counter-measures by the officers at the Kwale Police Station. Disappointingly, the identity of the ostensibly invisible and exceedingly daring thieves breaking houses and stealing under everyone's noses remained but a mystery. It is this mystery and perceived police inaction over the unrelenting crime that led Human Rights Agenda (HURIA) into undertaking a fact-finding exercise to establish the severity of the public complaints over increased cases of burglary and police inadequate response to preventing continued crime in the area.

The criminal justice system places police officers at the primacy of its processes and as the first contact of a victim or defendant. Upon occurrence of crime, police officers are supposed to gather evidence with a view to identifying suspects and making an arrest. Police response to serious endangerment of private individuals safety and security is not a matter of moral virtue but a distinct duty. It is thus expected that investigations and overall police response will be swift, effective, fair, clear, and expedient hence negating delayed investigation as an antithesis of the rule of law.

This is a special Report attempting to unearth the causes and impact of unprecedented levels of burglary, housebreaking and stealing in the villages within the Kwale municipality and its environs. Specifically, the Report focuses on incidents that occurred within Tsimba-Golini and some parts of Kombani in Waa-Ngombeni Wards within Matuga sub-county.

Divided into five **(5)** sections, the Report is one in a series purposed to document and expose serious human rights violations and abuses perpetrated against vulnerable communities through commission or omission by duty bearers and private individuals. The first section of the Report begins by framing the role of police in suppressing crime and dissecting the problem of police inaction.

This Report further establishes the crime outlook in Kwale County and provides highlights of the crimes under the law. Section two discusses the purpose of the fact-finding exercise and methodology employed in the exercise. Importantly, the aforesaid section also discusses the key findings of the exercise. Section three and four on the hand provide further insights of the economic and social costs of the crime as well as further analysis and interpretation of the findings. Eventually, section five presents recommendations and conclusion of the Report. In this summarized section, we present highlights and preview of the findings and recommendations drawn from the whole Report.



Summary of Findings and Recommendations

In this summarized section, we handily present highlights and preview of the findings and recommendations drawn from the whole report

- 1) This Report reveals that indeed an unprecedented pattern of domestic burglary and house-breaking occurred within Kwale town, and particularly Kombani Centre, leading to the loss and damage of property of innumerable value which victims had taken considerable time and resources to invest in. The loss was further compounded by the fact that in all the cases, victims had no domestic insurance cover meaning the loss had devastating economic consequences to their livelihoods. *Accordingly, this Report recommends that the National Police Service (NPS) should employ innovative approaches to map out and reduce the demand for and disposal of stolen goods and property in pawn shops.*
- 2) Our findings further point out that Police at the Kwale Police Station failed to demonstrate a general sense of public duty of care for suppressing crime within Kwale town and Kombani centre. Our Report opines that no adequate investigations were conducted to unearth and apprehend criminals involved in the cases of burglary and house-breaking by officers at the Kwale Police Station hence condoning incessant crime in the said area. *Consequently, it is therefore recommended that the National Police Service Commission (NPSC) should consider initiating preventative measures for police inaction and or professional negligence. It is further recommended that Non-State Actors should consider filing the writ of mandamus (completion of action) by police where inaction is confirmed.*
- 3) Our assessment further reveals an increase in security defensive expenditures for victims and non-victim individuals and families within Kwale town, and particularly Kombani center, for fear of further victimization. Consequently, it was observed that most victims suspended more profitable family projects and diverted funds allocation to burglary prevention expenditures such as perimeter walls, private security guards, alarms and Closed Circuited Television (CCTV) cameras. *This Report recommends that Non-State Actors should explore practicality of compensation of crime victims through the courts.*
- 4) The findings further disclose the collapse and non-existence of Community Policing Structures (CPSs) during the period when the crime was rife. We note with concern that CPSs are legally recognized in law and failure by designated police officers to establish the structures does not only have legal repercussions but also encourages the thriving of crime. *This Report therefore recommends an urgent reconstitution and training of community policing committees in Matuga sub-county.*

- 5) This Report also observed that victims of the crime not only suffered economic impact from the loss and damage of their property but also psychological and emotional loss due to experiencing annoyance, anger, shock, fear of vulnerability and repeat victimization, insomnia, anxiety, depression and event bouts of crying tears. *This Report recommends that Non-State Actors should explore practicality of compensation of crime victims through the courts.*
- 6) Finally, this Report observes that the NPS failed to adhere to the basic standards of the United Nations Human Rights Standards for Law Enforcement Officials in conducting investigations. In one case for instance, a vulnerable woman victim was asked to personally serve her crime suspect with a letter requesting the suspect to avail himself to the police for interrogation and later on even granted a share of cash drawn from discharged suspects in order to forego her complaint.

This Act is principally against the standards of policing and would have endangered the safety and life of the victim. Basic Standards for Law Enforcement Officials require that police be especially vigilant to protect potentially vulnerable groups such as children, the elderly, women, and members of minority groups and treat all victims of crime with compassion and respect, and in particular protect their safety and privacy. In implementing this standard, police officers must ensure that, if needed, measures are taken to ensure the protection and safety of victims from intimidation and retaliation. Police should also develop investigative techniques that do not further degrade women who have been victims of violence. *This Report hence recommends that State and Non-State Actors should support Refresher Training for Police on International Human Rights Policing*

While domestic burglary has in the past years been recorded as perennial crime in Kwale County, it is our belief that no significant efforts have been made to understand its intricacies towards addressing the crime exhaustively. Accepting and trivializing burglary as petty crime and a way of life, may be out-rightly disastrous or dangerous. As the demand and monetary value of stolen items continues to rise, the risk of other more heinous crimes in the event of burglary such as rape, arson and murder equally grows higher. Stopping these unabated crimes is therefore inescapable.

Drawing from numerous Reports by police oversight institutions in Kenya, chief among them being the Independent Police Oversight Authority (IPOA), it is without doubt that police inaction is an ingrained misconduct across the service in the country. Whether due laxity, incompetence or lack of motivation to provide services, it is our hope that this Report will trigger a national conversation and intervention towards addressing the rampant police inaction in the service. We also pray that the recently constituted Former Chief Justice David Maraga led task-force will also explore into this deep-rooted issue in its mandate.

Finally, we strongly believe that where human rights are systematically protected, respected and fulfilled, police officers develop professionalism in their approach in solving and preventing crime and maintaining public order. In this sense, respect for human rights by police is, in addition to being a moral, legal and ethical imperative, also a practical requirement for law enforcement. The police service needs to appreciate, believe and work on the fact that violation of the rights of the individuals is not a requirement for a result-oriented performance.

It is our hope that this Report is not be misconstrued as an onslaught to the integrity and behavior of specific police officers but positively viewed as a solid and informed contribution towards securing our communities and better reforming our police service.

Yours,

Yusuf Lule Mwatsefu
Executive Director

Framing the Problem of Police Inaction in Suppressing Crime

The world over, police undertake a broad array of functions. Other than the traditionally-assigned tasks of pursuing, arresting and charging criminals, Part III, Section 24 of the National Police Service Act, not to mention the Security Chapter of the Constitution, outlines the functions of the NPS as provision of assistance to the public when in need, protection of life and property, investigation of crimes, collection of criminal intelligence, prevention and detection of crime, as well as maintenance of community relations.

In the discharge of these functions, the police are guided by national and international laws and standards to ensure their effective, prompt and efficient delivery of services. Despite the regulations, more often not, the police are blamed for various cases of misconduct that not only violate the rights of innocent civilians but also erode public confidence and trust on their ability to deliver on their functions.

In Kenya, amongst many cases of misconduct, police inaction is allegedly widespread and appears to be entrenched deeply amongst the service. This section of Report seeks to frame the problem of police inaction and failure to prevent crime. It is our belief that spending time to consciously define a problem is vital for successful change. Without proper framing, there is no certainty about the appropriate focus on the right issue. We also believe that how a problem is framed or described can determine the kinds of options considered to address the problem, stakeholders' perceptions of its importance and the achievement of the desired solution.

Police inaction essentially means not doing anything about a situation or a problem that might provide a solution. Police have been accused for failure in taking adequate measures to respond to, investigate and address crimes affecting civilians. Lack of swift consequences for criminal actions by whoever can only encourage people to and take the law into their own hands and sometimes in the full view of the police officers.

The role of the police in the criminal justice system as the first response and apprehension of criminals cannot be gainsaid. Regrettably, police inaction has perpetuated societal intolerance and administration of instant justice to suspects and accused persons as an "accepted" way of fighting crime in Kenya. Mob injustice is not the creature of an hour, the sudden outburst of uncontrolled fury, or the unspeakable brutality of an insane mob. It is the direct result of police inaction, persistent inability of our legal system to conclusively resolve so many criminal cases.

Reports by police oversight bodies in Kenya paint a grim and severe case of Police Inaction. To exemplify this situation, an analysis of the nature of complaints filed with both the Independent Police Oversight Authority (IPOA) and/or the Internal Affairs Unit (IAU) in their recent publicly available Reports, police inaction and negligence is revealed as the most notorious form of police misconduct.

According to IPOA's Annual Report of 2019, majority of the complaints recorded were cases of police inaction and negligence (1393), followed by harassment and physical assault at 320 and 298 respectively. Additionally, in another Report by the IAU, police inaction was also recorded as the highest number of alleged police misconduct with 430 cases out of 1043. This was again validated in a subsequent IAU Annual Performance Report of 2021 in which police inaction complaints were rated at 39% of all cases received on police misconduct. These statistics paint a grim situation that appears rooted and spread within the police service across the country.

Unfortunately, it is perhaps the trivialization of police inaction as a misdemeanor by several laws that inculcates it as a norm in the way police responds to crime in the country. Section 128 of the Penal Code that relates closely to inaction for instance, proclaims that every person employed in the public service who willfully neglects to perform any duty that the person is bound either by common law or by any written law to perform, provided that the discharge of the duty is not attended with greater danger than a person of ordinary courage might be expected to face, is guilty of a misdemeanor.

Further, Section 130 of the Penal Code may also interpret police inaction as disobedience of statutory duty discouraging everyone who willfully disobeys any written law by doing any act which it forbids, or by omitting to do any act which it requires to be done, and which concerns the public or any part of the public, being guilty of a misdemeanor and liable, unless it appears from the written law that it was the intention of Parliament to provide some other penalty for the disobedience, to imprisonment for two (2) years.

These laws do not therefore seem to provide effective deterrence of continued misconduct on part of the police further sustaining cases of misconduct. Any inaction on the part of the police not only leads to erosion of faith of the people in the efficacy of the entire machinery devised for administration of criminal justice, but also weakens the rule of law, which is the foundation of democracy.

Further to above, while independent institutions were established to address cases of misconduct amongst the police, they appear to be faced with both inherent and structural challenges that affect delivery of their mandate. Often, majority of the complaints on police inaction and administrative in nature were referred for action with an expectation of feedback and attention of various Police Commanders. However, very few cases are resolved with many delayed or thrown out without explanation. Further to the foregoing challenges, these independent police accountability institutions lack misconduct prevention strategies.

In some instances, victims alleged to have even provided clear leads and evidence of persons and marked cars involved but in vain.

Establishing the Crime

Following our assessment of the complaints, we established an unprecedented pattern of acquisitive crime perpetrated in several villages within Kwale town, located within Tsimba-Golini Ward and other villages within Kombani area in Waa-Ngombeni Ward. In the context of this Report, we define acquisitive crime as offences against possessions. This includes theft, domestic burglary and house-breaking.

In substantiating these crimes, we further define “theft” as an incident of crime in which a person’s property is taken from the owner without their consent, but does not involve using force or threatening to hurt them. Robbery on the other hand is taking someone’s property using force or threatening to hurt them while we define burglary as an offense when someone breaks into a building with the intention of stealing, hurting someone or committing unlawful damage.

In Kenya, the Penal Code considers acquisitive crimes; that is, house-breaking and burglary as felonies under Section 303 (1,2,3). The law prescribes that a person who is guilty of the felony of house-breaking is liable to imprisonment for seven years while a burglary offender is liable to imprisonment for ten **(10)** years. In view of the said definitions, the scope of our assessment and that of this Report, is on domestic burglary, house-breaking and theft herein referred to as acquisitive crimes.

Kwale County Crime Outlook

The 2021 annual crime Report by the National Police Service ranked Kwale county as number **41** with **901** crimes committed against a population of **866,820**. **168** of the total crimes were cases of breakings **(40)** and stealing **(128)**. In 2020, the National Crime Research Centre rated burglary and housebreaking percentage for Kwale County at **72.2%** higher than the national rate at **58.7%**.

Compared to neighboring counties, Kwale recorded the lowest number of five **(5)** of the complaints filed by the public to the IAU and IPOA within the larger Mombasa County **(43)** and Kilifi **(19)** County. In the 2021 Report the numbers for Kwale **(8)**, Mombasa **(29)** and Kilifi **(7)**. **39%** were on police inaction. **(359/919)**.

Objectives of the Fact-Finding

Upon receipt of the outcry from members of the public, this institution primarily sought to understand the nature and pattern of the alleged crime that was being perpetrated against the community. In this, we specifically wanted to establish the type of crime, the trend, the identity of the victims, the location where the crime was taking place, and further, the severity of the allegation.

Additionally, we also sought to understand how police responded to the Reports made by the victims. Importantly we also sought to establish whether the police made any efforts to prevent, disrupt or suppress occurrence of further or similar crimes in the area. Our assessment further sought to establish the existence and efficiency of community neighborhood watch structures in the areas with a view to prevention of recurring crimes. Above everything else, we also sought to know how the crime impacted on victims economically and socially.

Methodology

To understand the nature of complaint lodged, we first organized a half-day forum with village elders and the victims of the crimes in the area. Our meeting was held on Tuesday, the 6th December 2022 at the Kwale Social Services Hall convening **7** village elders and **20** victims. In this meeting, we specifically listened to the general overview of the complaints from the victims, members of the media, leaders of boda-boda association, residents and business owners. Consequently, we decided to specifically document the complaints as well as support

the victim's efforts to get justice. The documentation was done through one-on-one interviews with the victims highlighting the nature of crime, amount of property lost or damaged and other police Report details.

Thereafter, we held another meeting with opinion leaders and other victims of the perpetrated crime in the area. The follow up meeting was held on Monday, 12th of December 2022 at the Kwale school for the mentally handicapped convening a total of **15** persons. Besides undertaking desktop research on the subject matter, we also conducted physical interviews for over **50** victims of crime to establish further details and acquire personal testimonies of the criminal incidences.



Our Findings

What We Established

Our assessment drew important findings about the acquisitive crimes in the area as follows:

a) Pattern of Burglary and House-Breaking Recorded Distinctly Unprecedented

According to National Police Service Annual Crime Reports, acquisitive crime has been recorded as a perennial crime in Kwale County over years. However, the rate of burglary, breaking and stealing that happened in less than one **(1)** year between late 2021 across to 2022 within a few villages in Matuga sub-county is undoubtedly unprecedented.

Our fact-finding exercise revealed that an over **50** cases of burglary, housebreaking, use of master keys to access into private premises, stealing of electronic equipment and related accessories, gas cylinders, M-PESA fraud, as well as stealing of farm products and livestock had been going on in the neighborhoods unabated. According to the victims, the most distressing fact of the crime was that most of the incidents were happening during the day but the suspects had gone undetected and undeterred for quite long despite continuous reporting by victims to the police. In some instances, victims alleged to have even provided clear leads and evidence of persons and marked cars involved but in vain.

Testimony from a Victim

“

I have lived in Kwale town since childhood. While we acknowledge that the town has grown, this form of crime has never happened in this magnitude before. Kwale is a small town and we almost know each other. That people would break into households, steal repeatedly and carry their loot using marked vehicles and disappear without trace for months is a great mystery.

”

Excerpt of an interview with a local resident within Kwale town

Nature of Burglary and Housebreaking Incidents

In Kenya, burglary does not typically reflect large seasonal variations, although the Annual National Police Service Crime Reports indicate that burglary rates are high in the country, the Reports do not specifically indicate variations in the period of occurrence. In our assessment, we opine that burglary variations reflect local factors, including the demand for the specific stolen goods in the market. The surge in the burglary for specifically electronics such as TVs and home-theatres may have been motivated by the convening of the World Cup in 2022. Further, the length of days and availability of activities that take families away from their homes particularly during holidays and vacation affects occupancy and may have had some effect on burglary.

Most of the burglaries were reported to have occurred during the day and on weekdays. In most of the incidents, burglars were reported to have forced their entry by breaking door grills and locks of wooden doors in the respective targets. They were also reported to be using master keys and or heating padlocks with gas lighters to break them and gain access to their targets. It is not clear how much time the burglars spent at their specific targets but it is apparent that they were quite swift and agile. Burglars were reported to be taking the stolen goods from the scenes using different vehicles in each incident. It is the mystery involved in the identity of these vehicles that is still puzzling.

Re-victimization, Familiarity with the target, and convenience of the location

Most respondent victims alleged that the offenders must have taken time to study their movement carefully and were familiar with the target and convenience of the location. Two victims reported to have had their premises broken into multiple times in the reported period. Expert reports by the Center for Problem-Oriented Policing indicate that previously burglarized houses have a much higher risk of being burglarized than those never burglarized, partly because the factors that make them vulnerable once, such as occupancy or location, are difficult to change.

Compared with non-burglarized houses, those previously targeted are up to four **(4)** times more likely to be burglarized; any subsequent burglary is most likely to occur within six **(6)** weeks of the initial crime. There are a variety of reasons suggested for re-victimization: some houses offer cues of a good payoff or easy access; burglars return to houses for property left behind during the initial burglary; or even, burglars tell others about desirable houses. Burglars may also return to a target months later, to steal property the owners have presumably replaced. Numerous studies show that re-victimization is most concentrated in lower-income areas, where burglaries are the most numerous.

This Report observes that most burglars did not target occupied houses, taking great care to avoid them. It is suggested burglars routinely ring doorbells, or send beggars to confirm residents' absence. How long residents are away from home is a strong predictor of the risk of burglary, which explains why unoccupied homes houses routinely vacant during the day were more vulnerable.

Offenders and Victims of Burglary

Our assessment reveals that the victims were ordinary Kenyans who were mostly employed or engaged in private business. Due to their work or business engagements, they were likely perceived by the burglars to own valuable property and were mostly away due to their work engagements leaving their homes vulnerable for breaking.

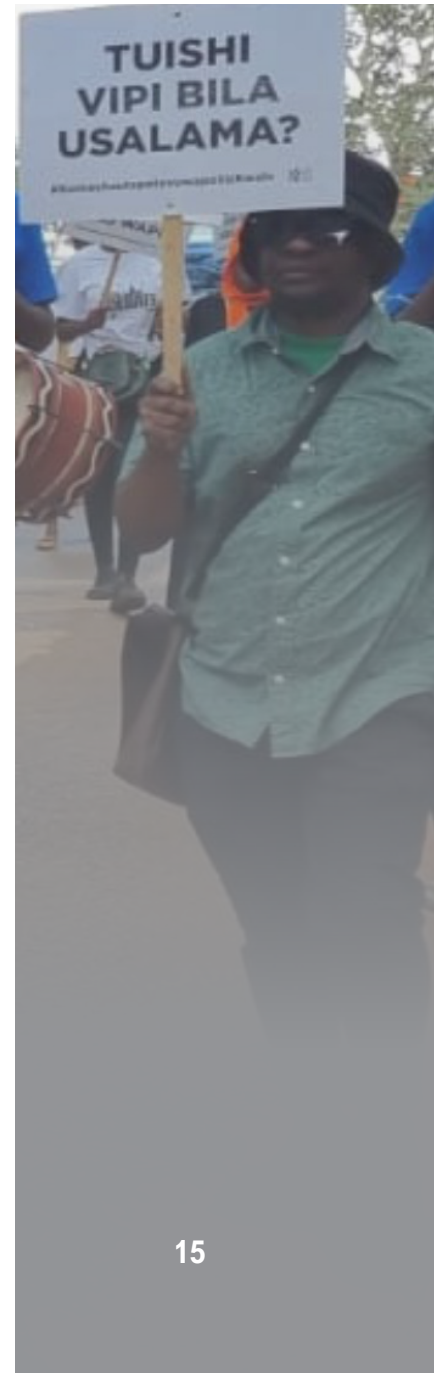
Respondents of our assessment revealed that the burglars were reported to be working in groups of about 3-4 male persons with others in the neighborhood who supported their surveillance. In most incidences, the offenders acted comfortably and like they were very familiar with their targets and therefore persons passing by or seeing the burglars carrying the loot were never keen to the point of being suspicious. In all the cases reported by the victims, the offenders were seen to have traveled to and from the scene of crime by vehicles and use the route to escape with their loot.

a) **No adequate investigations to unearth and apprehend criminals were conducted by police**

Our assessment revealed that most of the victims of the crime reported the incidents to the police at the Kwale Police Station. In most instances the police officers at the inquiry desk were uninterestingly said by the victims to have been already aware of the burglary and housebreaking trend in the area including the registration numbers of the vehicles alleged to be involved. In response to the reports made by victims at the station, police were said to have visited most crime scenes within a minimum of 2 hours, while in other reported cases, they were said to have visited the crime scenes after a couple of days or in some few instances not visited at all.

Victims also claimed that the police asked them to conditionally provide suspects of the crimes to trigger investigations but rarely bothered to collect statements from their witnesses. In a worst scenario, a victim was in one reported incident asked to personally take letters to a suspect sanctioning him to avail himself to the police station for interrogation. Even where victims provided direct leads to suspects and preliminary evidence, police were alleged to be reluctant in pursuing the leads or in generally conducting further investigations.

Most cases therefore ended up just being reported, police visiting the crime but no further follow ups nor investigations undertaken to unearth the culprits.



Testimony from a Victim

“

When I reported my case at the police station, I was allocated an investigating officer who was surprisingly not available at that moment. I was given his phone number and advised to call him. I called the officer’s phone severally and was only able to access him after three days. Speaking to him, the officer claimed he had been unwell but was also at the that particular moment assigned a traffic duty elsewhere. It took the intervention of my other police friends to finally have police officers visit the crime scene approximately 5 days after the burglary incident occurred. On arrival at the crime scene, everything had been tampered with and repairs for damaged doors and Wardrobe. Therefore, they could not acquire any fingerprints or evidence. Interestingly, no witness statements were also taken

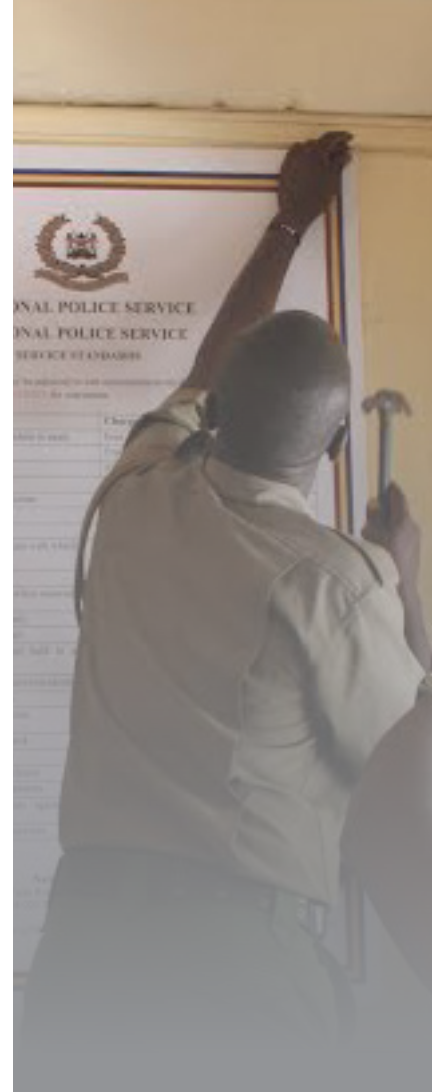
”

Excerpt of an interview with a victim from Kombani Centre

b) Non-Adherence to International Human Rights Standards of Policing

Our assessment further revealed that police failed to adhere to the standards of conducting investigations. In one case a victim was asked to personally serve her crime suspect with a letter requesting the suspect to avail himself to the police for interrogation. This act is principally against the standards of policing and would have endangered the safety and life of the victim. In another case, a victim alleged that police accused him of being the first suspect of burglary and housebreaking that happened at his own homestead and demanded to register his fingerprints for investigation. This act by the police appeared diversionary and misinformed.

The Basic Standard 1 of the United Nations Human Rights Standards for Law Enforcement Officials requires that police be especially vigilant to protect potentially vulnerable groups such as children, the elderly, women, refugees, displaced persons and members of minority groups. Additionally, the Basic Standard 2 requires police to treat all victims of crime with compassion and respect, and in particular protect their safety and privacy. In implementing this Basic Standard, police officers must ensure that, if needed, measures are taken to ensure the protection and safety of victims from intimidation and retaliation. Police should also develop investigative techniques that do not further degrade women who have been victims of violence.



Testimony from a Victim

“

It is ironical and offending that my father was alleged by the police officer as the first suspect of a burglary and breaking at our homestead. It was really annoying that the police officers were asking to take fingerprints of all our family members as suspects. Even after they dusted the doors and all entrances for forensic details, we have never gotten any feedback regarding the theft to date

Excerpt of an interview with Son of a victim of crime

”

c) Failure to Establish Community Policing Structures

Our assessment revealed that community neighborhood structures that would have otherwise supported police-community relations and sharing of security information were either disbanded, collapsed or completely non-existent in some areas. Our interviews with former members of the defunct Community Policing Committees (CPCs) in the area established that some senior police officers in the area allegedly and deliberately disbanded and ignored the work of the members leading to their collapse.

The respondents further alleged that police at the Kwale Police Station have appeared not to be very keen on the reconstitution of the community policing structures and did not seem to encourage the public to co-own the community policing initiative. The respondents further alleged that their relationship with the police was characterized by disrespect, selfish interests, with some village elders using it as a platform to settle scores.

Further, respondents also complained of low level of trust and confidentiality in the police due to police disclosure of identities of those who make reports. In view of the above, citizens were not able to provide the police with insights into the specific crime problems occurring within their neighborhoods and aid officers in intelligence collection and investigations.

d) The Economic and Social Costs of Burglary and Police Inaction

Our assessment further sought to establish the economic and social costs of the burglary and stealing on the victims. We specifically sought to understand the cost incurred by victims as a consequence of the crimes as well as the costs incurred in anticipation of the wave of crimes in the area.

To put the cost incurred by the victims as a consequence of the crimes into perspective, we asked victims to list down all their stolen and damaged property items as well as the estimated value of each. We also listened to victims' accounts of how they suffered emotional harm and reduced productivity at work or in their businesses as a result of their victimization. Our assessment further sought to establish the costs incurred by victims in anticipation of repeat crimes and protection of their property.



The Economic and Social Costs of Burglary and Police Inaction

Our assessment further sought to establish the economic and social costs of the burglary and stealing on the victims. We specifically sought to understand the cost incurred by victims as a consequence of the crimes as well as the costs incurred in anticipation of the wave of crimes in the area.

To put the cost incurred by the victims as a consequence of the crimes into perspective, we asked victims to list down all their stolen and damaged property items as well as the estimated value of each. We also listened to victims' accounts of how they suffered emotional harm and reduced productivity at work or in their businesses as a result of their victimization. Our assessment further sought to establish the costs incurred by victims in anticipation of repeat crimes and protection of their property.

a) Value of Property Stolen and Damaged

This is the cost of the value of the property stolen or damaged as a result of crime. Our assessment established that the minimum value of the property stolen from the victims per household is estimated to be about **Kshs. 100,000**. We also found out that most of the victims lost electronics such as television sets, home-theatre sets, laptops, cookers and gas cylinders amongst others. One victim's household was broken into four times with the cumulative value of the lost property and damage shooting to about one million Kenyan shillings. The value of property stolen and damaged represents a cost to the victim of a crime.

b) Defensive Expenditure

To prevent further crime, most victims incurred additional expenditure on installing anti-burglary grills and doors, padlocks, and CCTVs in their houses. Others have built wall fences around their homes, employed home caretakers or watchmen during the day to deter crime. Other victims shared that they also spent money on witch-doctors' rituals to identify the burglars, spell curse on them and prevent future crime in their households.

c) Emotional harm and Lost Output to the victim

This was the most exhausting session of the assessment. Victims shared their experiences of how the crimes have generally affected their emotional well-being and overall quality of life. Most victims claimed to have spent considerable amount of time away from work as a result of the crime. On average, victims alleged to have spent at least 5 days away from their work or businesses following up on the crimes or just pondering on the loss. Other victims shared that the crimes seriously traumatized them mentally and generally experienced reduced productivity at work as a result of the crime.



In this section, we share few accounts of victims whose names have been changed due to confidentiality matter

Testimony from Victims

“

When at work in Nairobi, I am always a worried man. I am not sure whether my kids and wife are safe. The burglars broke in when my family was away, what if they come again and break in violently and harm my family

”

“

It hurts me when my four years young girl calls me to inquire when I will replace the stolen TV. She decries that she can no longer enjoy watching her popular TV programs

”

1. Discussion and Analysis of Findings

This section of the Report provides insights and analysis of the findings made. It expounds and makes further observations based on social and legal perspectives.

2. Importance of Community Policing Forums and Committees

Community policing is a policing philosophy that promotes organizational strategies which support the systematic use of partnerships between communities and government policing agencies. Community Policing Initiative was initially launched in Kenya in April 2005. It also involves problem solving techniques that proactively address immediate conditions that give rise to public safety issues such as crime, social disorder and the fear of crime. Community policing, therefore, refers to the multi-agency and multi-faceted approach that includes citizens and the policing agencies to mitigate conditions that give rise to insecurity. An effective community policing strategy is one that provides a framework that allows and empowers the community members to participate in securing themselves, their property and national interests.

Part 11 of the National Police Service Act provides for significance of community policing contemplated in Article 244 of the Constitution. Further, section 96 of the Act provides that the service shall liaise with communities through community policing initiatives, with a view to establishing and maintaining partnership between the community and the Service; promoting communication between the Service and the community; promoting co-operation between the Service and the community in fulfilling the needs of the community regarding policing; improving the rendering of police services to the community at national, county and local levels; improving transparency in the Service and accountability of the Service to the community; and promoting policing problem identification and policing problem-solving by the Service and the community.

Further section 98 of the NPS Act provides for the specific establishment of area community policing committees and other structures. It requires that a police officer in charge of an area shall, in consultation with stakeholders, be responsible for and facilitate the establishment of area community policing committees and other administrative structures.

According to a Report by the KNCHR, police-public trust and implementation of the community policing models, operationalization efforts have been impeded by in-house problems within the police system, such as lack of human and economic resources, poor working conditions, training, management and leadership at various levels in the police. Moreover, the police reform, including people-centered policing and community policing policies, has not been translated into everyday police practices on the ground. Thus, it is paramount that policing agencies make it mandatory for their officers to deliberately go out of their way to partner with local communities in preventing crime.

3. Police Responsibility to Reasonably Disrupt, Prevent or Suppress Foreseeable Crime

From our assessment we believe that police at the Kwale Police Station did not adequately and reasonably work towards suppressing the cognizable offences of burglary. This stems from the belief that Police have an affirmative duty of care to protect citizens right to security of person and property as stipulated under Section 62 of the Criminal Procedure Code (CPC). The section requires that a police officer may interpose for the purpose of preventing, and shall to the best of their ability prevent, the commission of a cognizable offense.

Further, section 63 of the CPC gives powers to senior police officers to delegate and communicate information of a design to commit a cognizable offense to any other officer whose duty it is to prevent or take cognizance of the commission of the offense. The police further failed to invoke section 64 of the CPC which gives them powers to arrest to prevent the commission of a cognizable offense if it appears the offense cannot otherwise be prevented.

4. Violation of the Right of Victims to an Adequate Response to their needs

Article 47 (1) and (2) of the Constitution of Kenya provides that every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair and that if a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.

In view of the said section of the law, it is our view that the police infringed the rights of victims of burglary for failing to provide adequate responses to their cases after reporting. Most of the victims alleged that they never received any feedback nor Reports from the police after reporting. Providing feedback to victims is essential in easing up tension and also impact of the crime or re-victimization.

5. Violation of the right to peaceful enjoyment and protection of property by the state

The protection of property gives every person the right to peaceful enjoyment of their possessions and imposes an obligation on the State not to interfere with peaceful enjoyment of property; deprive a person of their possessions; or subject a person's possession to control.

The genuine, effective exercise of this right does not only depend on the State's duty not to interfere, but it may also require positive measures to protect property to be taken. This is particularly the case where there is a direct link between the measures a property owner may legitimately expect from the authorities and the effective enjoyment of his or her possessions. This right also imposes an obligation on the government to take necessary and reasonable steps to protect property. Any interference with this right must be subject to conditions provided for by law and must achieve a fair balance between the general public interest and the protection of an individual's property rights.

6. Protection of Victims of Crime and Abuse of Power

In 2014, Parliament enacted an Act to give effect to Article 50 (9) of the Constitution; which is to provide for protection of victims of crime and abuse of power, and to provide them with better information and support services to provide for reparation and compensation to victims; to provide special protection for vulnerable victims, and for connected purposes. The law provides that a person is a victim regardless of whether the crime perpetrated against the person has been reported to the police; whether the perpetrator of the crime has been identified, apprehended, prosecuted or convicted; and the familial relationships between the perpetrator of the crime and the victim. The law also recognizes that there may be vulnerable victims who, due to age, gender, disability or other special characteristics, may require the provision of special justice and support.

7. Police failure to Investigate Crime Constitute a Constitutional Violation of Claimant's Rights

In several precedents, courts found that State has a clear duty to investigate crime and found the failure to do so constitute a Constitutional violation of claimant's rights. Once a report or complaint is made it is the duty of the police to move with speed and promptly, commence investigation and apprehend and interrogate the perpetrators of the offense and the investigation must be conducted effectively, properly and professionally short thereof amounts to violation of fundamental rights of the complainant.

In another case, police were declared to owe a Constitutional duty to protect petitioners' right and that duty was breached by their neglect, omission, refusal and/or failure to conduct prompt, effective, proper and professional investigations and as such they violated the petitioners' fundamental rights and freedoms as entrusted in the Constitution.

Investigation should in principle be capable of leading to the establishment of the facts of the case and to the identification and punishment of those responsible. This is not an obligation of result, but not one of means. The authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident, including, inter alia, eyewitness testimony, forensic evidence, and so on. Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk failing foul of this standard, and a requirement of promptness and reasonable expedition is implicit in this context.

8. Police Inaction may spur Mob Violence

On the night of Monday, 26th December 2022, a group of boda boda cyclists caught a person who was alleged to have stolen a goat within Kwale town. Livestock theft was earlier registered as one of the crimes that had increased tremendously in the area despite no arrests or counter-measures. On this fateful night the group of boda boda got hold of the thief and beat him thoroughly forcing him to mention his associates and accomplices. Three other suspects were hence arrested by civilians and handed over to the police. This and many other similar cases happening in other parts of the country are an example of the growing despair due to the inadequate and ineffective investigations causing people to take it upon itself to cleanse the society of criminals, judging on the moral scale of warped mob mentality.

9. Compensation as a Right for Victims of Crime

Based on the Victims Protection Act, a victim has a right to restitution or compensation from the offender and the enforcement of both of them. The victim has a right to compensation by the offender for economic loss occasioned by the offence; loss of or damage to property; loss of user over the property; personal injury; costs of any medical or psychological treatment; and costs of necessary transportation and accommodation suffered or incurred as a result of an offence.

A victim has the right to restitution of any property or right to property of which the victim is deprived as a result of an offence in respect of which the victim is entitled to the rights and remedies specified in the Act. A compensation order made against a convicted offender may be enforced as a judgment in civil proceedings. The court may award compensation under the Act and such compensation may include financial compensation for expenses incurred as a result of the loss or injury resulting from the offence complained of which shall be charged from the Victim Protection Trust Fund.

A compensation or restitution order made by a court against a convicted offender is in addition to any other sentence or order the court may make against a person; is not, for any purpose, to be taken to be part of a sentence passed against the person and; is not a bar to civil proceedings. Where a person is convicted of an offence under any written law, the court may, in addition to any other penalty prescribed under that law, order the person to make restitution or compensate the victim for the cost of any damage to the property of the victim; the costs of any medical or psychological treatment incurred the victim; the costs of necessary transportation, accommodation and other living expenses relating to the court proceedings leading to the conviction; or any other relief that the court may consider necessary. Where the High Court orders payment of both a fine and compensation, the enforcement of the compensation order shall take precedence.

Further to the above, the international standards for protection of victims of crime require that when compensation is not fully available from the offender or other sources, States should endeavor to provide financial compensation to victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes; the family, in particular dependents of persons who have died or become physically or mentally incapacitated as a result of such victimization.

From the findings of the assessment, it is clear that victims of burglary discussed in this Report suffered both economic and psychological loss. It is also apparent that the offenders of the crime committed may not have been identified or known. In view of this, whether victims qualify for compensation under the regulations of the Victims' Protection Act is something that needs further re-examination.

10. The Directorate of Criminal Investigations should conduct Regular Inspection of pawn- and secondhand shops.

Police and other relevant officials should routinely visit and inspect pawn and second-hand shops in Kwale urban centers and other neighboring counties such as Mombasa, and Kilifi to encourage compliance with laws designed to inhibit stolen goods markets.

Recommendations

1

Non-State Actors should explore practicality of Crime Victims' Compensation

Victims or non-State actors acting on behalf of the victims who have suffered economic or emotional loss, damage of property, or physical injury or harm as a result of an offense can institute court proceedings to seek an award under the victim's protection fund. Whether the victims of crime such as the one discussed in this Report are eligible to an award granted by a court or qualify for the same in accordance with the criteria prescribed under the Victims' Protection Act is a matter that can be explored further by interested parties.

2

National Police Service Commission should consider initiating Preventive Measures for Police Inaction

In many instances, police officers are transferred to other areas when they are involved in misconduct. This practice does not provide proper solution to the problem and is always tantamount to transferring the problem to other areas. It is our view that the NPSC should consider other disciplinary and preventive measures that would discourage police inaction.

3

State and Non-State Actors should support Refresher Training for Police on International Human Rights Policing

To improve overall human rights performance of police officers, actors should consider organizing practical oriented training to impart basic competencies that police officers should have, what they should know about human rights, which skills they would need to acquire for successfully handling human rights principles in practical work, and which attitudes should underlie and support police work on the basis of a human rights approach.

4

Police should map out and cut down Demand for and disposal of Stolen Goods and property in Pawn Shops

Like any other economic market, stolen goods market is largely driven by supply and demand. As such, property crime can be understood as a function of the ease of theft and the availability of a pool of willing buyers. The Reports recommends that the police purposes to reduce property crime by shrinking the stolen goods market, by preventing supply and reducing the demand for stolen goods. Without an active market, disposal becomes difficult, risky and unrewarding. All of these factors have significant implications for an offender's willingness to engage in property crime.

5

Reconstitute and Train Community Policing Committees and related initiatives

The importance of community policing cannot be gainsaid. This Report therefore strongly recommends the evaluation of the status of community policing initiative in the sub-county, reconstitution and training of the committees as a matter of urgency.

6

Non-State Actors Should Conduct Publicity Campaigns to discourage buying suspected Stolen Goods

Victims or non-State actors acting on behalf of the victims who have suffered economic or emotional loss, damage of property, or physical injury or harm as a result of an offense can institute court proceedings to seek an award under the victim's protection fund. Whether the victims of crime such as the one discussed in this Report are eligible to an award granted by a court or qualify for the same in accordance with the criteria prescribed under the Victims' Protection Act is a matter that can be explored further by interested parties.

7

The Cabinet Secretary for Interior Needs to Establish County Policing Authorities

The County Policing Authority has not picked up in all the all counties despite the fact the regulations have already been gazetted. This responsibility rests with the County Governors who should seize this opportunity as it provides the only avenue for the Counties to be involved in matters of security.

USAI

**KOMESHA
UTEPEDEVU
POLISI KWAWA**

#KomeshautepevuwapolisiKw

Conclusion

While domestic burglary has in the past years been recorded as perennial crime in Kwale County, it is our belief that no significant efforts have been made to understand the intricacies of the crime with a view to reducing it. Coupled with the behavior of police inaction in some police stations, the crime may degenerate into more serious crimes that may become unabated. Accepting and trivializing criminality as a way of life, however petty it may be is out-rightly disastrous.

The cost of protection against residential burglary is exorbitant both in terms of human and infrastructural resources required. It is thus important that the police play its duty diligently to suppress crimes in our communities. Since police cannot be everywhere all the time, the reporting of crime also depends on the citizens.

Reporting is arguably society's most preferred method of dispute resolution for its citizens under the criminal justice system. It may be regarded as a contract between the public and the government and if the public starts to doubt the usefulness of the contract, they may turn to other methods. In places where police reporting is not a viable method of solving problems, residents may opt to the use of violence as an alternative method. If reporting is not the optimal option or even an available option, then it has implications for crime rates and all other problems that come with it. Therefore, it is essential that the police invest in strengthening its relations with the community and deal with police cynicism in order to improve citizens faith in their abilities.

Additionally, as the monetary value and demand for stolen items continues to rise, the risk of other more heinous crimes in the event of burglary such as rape, arson and murder is also higher. It is therefore critical we all work together to arrest the runaway crime in our communities to avert further suffering.

Police inaction may have a multi-dimensional impact in eroding public confidence, hampering effective prosecutions in court, isolating the police from the community, resulting in the guilty avoiding sentence, and the innocent being punished. It results in police agencies being reactive, rather than being responsive and preventive in their approach to crime, bringing agents and institutions of public authority into disrepute and even escalating civil unrest at times. Respect for human rights by law enforcement agencies on the other hand, enhances their effectiveness.

Where human rights are systematically respected, police officers develop professionalism in their approach in solving and preventing crime and maintaining public order. In this sense, respect for human rights by police is, in addition to being a moral, legal and ethical imperative, also a practical requirement for law enforcement. The police force needs to appreciate, believe and work on the fact that violation of the rights of the individuals is not a requirement for a results-oriented performance.

References and Notes

- 1) 10 Basic Human Rights Standards for Law Enforcement Officials, 1998, Amnesty International.
- 2) Annual performance and statistical Report, 2021, Internal Affairs Unit, National Police Service, Kenya.
- 3) Annual Report, 2021, National Police Service, Kenya.
- 4) Criminal Procedure Code Chapter 75, Revised Edition 2015 [2014] Published by the National Council for Law Reporting with the Authority of the Attorney-General
- 5) The Fair Administrative Action Act, 2015
- 6) Audit of The Status of Police Reforms in Kenya, 2015: A Joint Report by The Kenya National Commission on Human Rights & Centre For Human Rights and Peace (The University of Nairobi)
- 7) International Human Rights Standards for Law Enforcement: A Pocket Book on Human Rights for The Police, United Nations High Commissioner for Human Rights and Centre For Human Rights
- 8) IPOA Annual Report July 2017 - June 2018
- 9) Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power Adopted by General Assembly resolution 40/34 of 29 November 1985
- 10) Human Rights Standards and Practice for The Police Expanded Pocket Book on Human Rights for The Police, United Nations New York And Geneva, 2004
- 11) The Economic and Social Costs of Crime, Second Edition, Research Report 99 Matthew Heels, Sasha Reed, Mariam Tafsiri and Stuart Prince July 2018
- 12) Crime Reduction Research Series Paper 8, Tackling Theft with the Market Reduction Approach, Mike Sutton, Jacqueline Schneider and Sarah Hetherington
- 13) Service Delivery Charter, Revised Edition, Kenya Police Service
- 14) Crime and Violence Prevention Training 2016 Kwale and Bungoma County Crime and Violence Surveys
- 15) Police Liability in Negligence for Failure to Prevent Crime: Time to Rethink, PAPER NO. 39/2014 JULY 2014, Stelios Tofaris & Sandy Steel
- 16) Police and Crime Prevention in Africa: A Brief Appraisal of Structures, Policies and Practices, Elrena van der Spuy & Ricky Röntsch, Cape Town, Draft Reported on October 31st 2008
- 17) Patterns Associated with Residential Burglary in Nyeri County, Mute, M. John, C50/67728/2013

- 18) Penal Code Chapter 63, Revised Edition 2012 [2010] Published by
The National Council for Law Reporting with the Authority of the Attorney-General
- 19) Police Reform and Community Policing in Kenya: The Bumpy Road from Policy to Practice, Ingrid
Magnates Gjelsvik, Journal of Human Security | 2020 | Volume 16 | Issue 2 | Pages 19–30.
- 20) The Victim Protection Act 2014

huria.ngo

Our Rights, Our Agenda

Freedom House, Mathenge Road, Off Nyerere Avenue,
P.O. Box 41169-80100, Mombasa, Kenya. E: info@huria.ngo.

