

The Policing Lens

Quarterly Newsletter



IPOA

Independent Policing
Oversight Authority



A Kenyan Police officer helps a physically challenged woman on a wheelchair to cross a road in Nairobi.

THE INDEPENDENT POLICING OVERSIGHT AUTHORITY

The Communications and Outreach Department

December 2017

Issue No.12

IPOA NAIROBI | 1st Ngong Avenue, ACK Garden Annex, 2nd and 3rd floor P.O. Box 23035-00100 | Tel: +254-490725-327-289 | Website: www.ipoa.go.ke | Email: info@ipoa.go.ke

IPOA GARISSA | Off Kismayu Road, Behind Texas Petrol Station, P.O Box 1261-70100, Garissa | Tel: 0777040400, E-mail: garissa@ipoa.go.ke.

IPOA MOMBASA | Jubilee Insurance Building (Arcade) along Moi Avenue, P.O Box 99758- 80107 Kilindini, Mombasa | Tel: 0799019998, E-mail: mombasa@ipoa.go.ke

IPOA KISUMU | Central Square Building, Opposite Barclays Bank, P.O Box 3560-40100, Kisumu | Tel: 0799862244 E-mail: kisumu@ipoa.go.ke



IPOA Investigations

By Dennis Oketch, Head of Communications and Outreach

Since inception, IPOA has completed 674 investigations and is currently conducting 292 active Investigations with a further 53 cases in court today. To date, 1 case has been successfully convicted. The Authority also recently launched the Electronic Content Management System (ECM) which will ensure the most efficient approach to investigations completion through real-time tracking and management. IPOA has also opened offices in Garissa, Kisumu and Mombasa to enable grassroots presence and quicker response to investigation cases.

IPOA has through investigations held to account numerous culpable police officers and caused them to face the consequences of their misconduct through the judicial system and through the internal police disciplinary mechanisms of the police. This endeavour and commitment is made because the Authority recognises the task placed upon it as an important vehicle in the restoration of legitimacy and the building of professional capacity in the National Police Service, but more importantly the realisation of the envisioned recommendations contained in the National Task Force on Police Reforms report that caused the establishment of IPOA.

Between October and November 2017, IPOA has received nine fully reviewed files from the Office of the Director of Public Prosecutions (ODPP) with corresponding directions as below:

MURDER CHARGES TO BE PROFFERED AGAINST A POLICE CONSTABLE AND GREIVIOUS BODILY HARM CHARGES AGAINST HIS COLLEAGUE

IPOA conducted investigations into the alleged fatal shooting of Mr. Moses Chege Kanja and grievous injury of Mr. Edward Mathenge by two Police

Constables at Mihang'o Police Patrol Base that occurred on 27th April 2015 where the former had gone to report an assault. During the period, an altercation

ensued upon which the victims were shot, one fatally and another grievously.

Upon conclusion of the investigations, the Authority forwarded the file to the ODPP with a recommendation that one of the two officers be charged with murder while his colleague be charged with unlawful wounding. The ODPP concurred and directed that officers be charged as per IPOA's recommendations.

DEATH OF SALIM JUMA WHILE IN POLICE CUSTODY AT NYALI POLICE STATION, MOMBASA COUNTY

The Authority undertook investigations into the death of Mr. Salim Juma in Police custody on 20th January 2016 after arrest in Karama area of Kongowea Sub County alongside three others. The investigation sought to unravel circumstances that led to his death. IPOA investigated the case and forwarded recommendations to the Office of the Director of Public Prosecutions. The Authority recommended that an inquest be conducted into the cause of Salim's death. The ODPP concurred with the Authority's recommendations that the matter be placed before a court of competent jurisdiction for the matter to be disposed of by way of a public inquest.

DEATH OF JASON NDINDIRI CHUI WHILE IN POLICE CUSTODY AT KIBICHO POLICE STATION, KIAMBU COUNTY

The Authority undertook investigations into the death of Mr. Jason Ndindiri Chui in Police custody on 6th September 2012 after he was arrested for malicious damage to property. Mr. Chui was found dead in his cell allegedly after hanging himself by his shirt. IPOA investigated the case and forwarded recommendations to the Office of the Director of Public Prosecutions.

The Authority recommended that an inquest be conducted into the cause of Chui's death. The ODPP concurred with the Authority's recommendations that the

matter be placed before a court of competent jurisdiction for the matter to be disposed of by way of a public inquest.

DEATH OF NURA MALICHA ALLEGEDLY OCCASSIONED BY POLICE HURUMA POLICE STATION OFFICERS, NAIROBI COUNTY

Following a complaint from the Office of the Director of Public Prosecutions, the Authority undertook investigations into the fatal shooting of Mr. Nura Malicha at Soko ya Mbuji in Kiamaiko area allegedly by police officers based at Huruma Police Station on 21st February 2015. Mr. Nura was shot by two police officers who were responding to a distress call by a member of the public who Nura together with other accomplices had allegedly robbed. IPOA investigated the case and forwarded recommendations to the Office of the Director of Public Prosecutions.

The Authority recommended that an inquest be conducted into the cause of Nura's death. The ODPP concurred with the Authority's recommendations that the matter be placed before a court of competent jurisdiction for the matter to be disposed of by way of a public inquest.

DEATH OF JAMES KAIYONGI MBILI, NAROK COUNTY

Following a complaint that police officers from Narok Police Station killed Mr. Mbili and dumped his body in a quarry in Narok Town, the Authority undertook investigations into the death with a view of unravelling the circumstances that led to the death and whether the police were culpable as alleged. Prior. Mr. Mbili was rescued by the police on 11th March 2016 from mob justice and handed over to a local hospital where he was admitted for treatment. On 13th March 2016, Mr. Mbili's body was found in a quarry. IPOA investigated the case and forwarded recommendations to the Office of the Director of Public Prosecutions with a recommendation that an inquest be con-



ducted to establish the cause of Mbili's death. The ODPP concurred with the Authority's recommendations that the matter be placed before a court of competent jurisdiction for the matter to be disposed of by way of a public inquest. The inquest is currently underway before Narok Law Courts.

DEATH OF SAIDA HUSSEIN, ISIOLO COUNTY

Following a complaint from the Kenya National Commission on Human Rights, the Authority undertook investigations into the fatal shooting of Mrs. Saida Hussein, a teacher at Kilimani Primary School (Isiolo County) which occurred on 23rd March 2012 allegedly by police officers. On the fateful day, an operation to recover stolen livestock was underway when police accessed the deceased's compound in pursuit of the bandits. Saida was allegedly caught in the cross fire between the police and the bandits as she tried to secure her door.

IPOA investigated the case and forwarded recommendations to the Office of the Director of Public Prosecutions for review. The ODPP directed that the matter be placed before a court of competent jurisdiction for the matter to be disposed of by way of a public inquest.

ALLEGED SHOOTING AND INJURY TO IS-SAC ADAN MUHUMED AND OTHERS BY ADMINISTRATION POLICE OFFICERS IN AKTELEL AREA, WAJIR COUNTY

Following a shooting incident that involved Dayib Hussein, Isaack Muhumed, Siyad Adow, Ibrahim Gifey, Yusuf Kitifey and Muktar Bashir in Shitawario location in Wajir County on 13th September 2016 that resulted in injury, IPOA conducted investigations into the matter to establish circumstances of the shooting and whether the force used by the police was justified. Prior, the complainants had been alerted about an oil exploration exercise that was ongoing without the consent of local residents. Elders tasked the victims led by a local Chief to request temporary halting of the exploration exercise pending public engagement. They alleged that after this they were ambushed and shot by the police. Later, elders oversaw engagements that resulted in an amicable solution after alternative

dispute resolution engagements.

The Authority noted the same and made recommendations to the ODPP to have the matter closed based on the account of the complainants. The ODPP concurred with the Authority's recommendations.

ALLEGATIONS OF ASSAULT AND GREIVIOUS INJURY TO JULIUS MUTUKU KIOKO, TALA, MACHAKOS COUNTY

The Authority launched investigations into allegations of assault and grievous injury of Mr. Julius Mutuku Kioko in Sengani area by an Administration Police Constable on 12th October 2014. Kioko, who was arrested on suspicion of theft was beaten up and seriously injured by the constable while in transit to Sengani AP Camp. On completion of the investigations, the Authority forwarded the file to the ODPP with recommendations that the officer be charged with the offence of assault and causing grievous harm. The ODPP concurred with the Authority's recommendations that the constable be charged for assault and causing grievous harm in a court of law.

ALLEGATIONS OF ASSAULT AND GREIVIOUS INJURY TO RICHARD KIPSANG SIGEI BY ADMINISTRATION POLICE OFFICERS, SOTIK

Following a complaint from the Kenya National Commission on Human Rights, the Authority undertook investigations into the allegations of assault and grievous injury of Mr. Richard Kipsang Sigei upon arrest by Administration Police officers attached to Sotik Central DO's office on 13th and 14th May 2011. Sigei was arrested by the officers for defaulting to pay a loan from a local Sacco after the lender sought police intervention. The officers allegedly assaulted the complainant during arrest and at the DO's office compound, where he was unlawfully held.

On completion of the investigations, the Authority forwarded the file to the ODPP with recommendations that the officers be charged with the offence of assault and causing grievous harm. The ODPP concurred with the Authority's recommendations that charges be preferred against the officers for assault and causing grievous harm in a court of law.

CASES RECENTLY FORWARDED TO THE OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

ALLEGED FATAL ASSAULT OF BABY SAMATHA PENDO

Arising from the Presidential elections skirmishes in Nyalenda area, Kisumu County, IPOA launched investigations into the death on 15th August 2017 of baby Samantha Pendo, a six-month-old baby who sustained fatal injuries arising from an alleged assault by police officers in her parents' house. IPOA finalized investigations, compiled a report on the findings and has now forwarded the investigation findings together with recommendations to the Office of the Director of Public Prosecutions for review and direction. The Director of Public Prosecutions. The (DPP) concurred with IPOA's recommendations and directed that the case be disposed of by way of a public inquest. He further directed for the stern disciplinary action against the operation commander and several of the police officers in the operation.



Baby Samantha Pendo

ALLEGED FATAL SHOOTING OF MINOR STEPHANIE MORAA



Stephanie Moraa

This is an investigation that arose from the Presidential elections skirmishes in Mathare North Area 2, Nairobi County on 12th August 2017 in which nine year old Stephanie Moraa Gisemba was allegedly fatally shot by police on the third floor balcony of a three storeyed building in the



area. IPOA finalized investigations, compiled a report on the findings and has now forwarded the investigation findings together with recommendations to the Office of the Director of Public Prosecutions for review and direction. The DPP concurred with IPOA and directed that the matter be disposed of by way of a public inquest.

ALLEGED ASSAULT ON UNIVERSITY STUDENTS BY THE POLICE

The Authority on own motion launched investigations on the allegations of Police brutality on students of the University of Nairobi within the University premises along Lower State House road on 28th September 2017 in which a number of students sustained physical injuries. IPOA finalized investigations and submitted its report to the National Police Service Commission for stern disciplinary action against the responsible Commander. Further, the Authority also forwarded the investigation file to the Office of the Director of Public Prosecutions for review and direction. ODPP concurred with our recommendations for stern disciplinary action on the Operation Commanders.

ALLEGED RAPE BY A GENERAL SERVICE UNIT OFFICER

Following an allegation of rape lodged against a General Service Unit Police Officer at the GSU Headquarters in Nairobi City County on 9th February 2017, IPOA launched investigation to establish the factuality of the claim and whether the suspect was culpable. IPOA finalized investigations, compiled a report on the findings and has now forwarded the investigation findings together with recommendations to the Office of the Director of Public Prosecutions for review and direction.

ALLEGED FATAL SHOOTING OF MINOR GEOFFERY MUTINDA

IPOA learnt from media reports of an incident in which a police officer allegedly fatally shot a minor seven year old Geoffrey Mutinda on Tuesday 28th November, 2017 at Pipeline estate in Nairobi's Eastlands area.



University of Nairobi students in a lecture hall beg Police Officers not to harm them



Geoffrey Mutinda

Upon becoming aware of the incident, through its own motion and in execution of its mandate under Section 5(a, b and c) of the IPOA Act that provides for holding the Police accountable to the public in the performance of their functions; gives effect to the provision of Article 244 of the Constitution that the Police shall strive for the highest standards of professionalism and discipline among its members; shall promote and practice transparency and accountability; shall comply with constitutional standards of human rights and fundamental freedoms; shall train staff to the highest possible standards of competence and integrity and to respect human rights and fundamental freedoms and dignity; and shall foster and promote relationships with the broader society.

IPOA dispatched its Rapid Response Unit to investigate the incident with a view of establishing circumstances of the shootings and if culpability will be established, ensuring the officer responsible faces the full force of the law.

Upon conclusion, the Authority will make recommendations and forward the investigation file to the ODPP for his attention. Investigations for other elections-related cases are at an advanced stage. The Authority will make known the findings on conclusion of the investigations.

THE COMMITMENT OF IPOA

IPOA remains committed to being independent, impartial and shall continue to observe the rules of natural justice in the conduct of its work and assures all Kenyans that all cases received will be fully investigated. Further, the Authority encourages members of the public to come forth and volunteer information whenever they have it. IPOA treats all information with absolute confidence and has collaborative mechanisms for witness protection whenever it is required.



Mr. Boniface Manono a victim of police violence last year recounts his ordeal to IPOA



Defilement of Minors in Police Cells

By Rosemary Kamau, Principal Communications and Outreach Officer

The Independent Policing Oversight Authority has noted with concern increased cases of defilement cases of minors by police officers while in police custody. IPOA strongly condemns these criminal and lawless acts.

On the 6th day of October, 2017, the Daily Nation published a story about a defilement incident in Murang'a Police Station under the following heading "Cover-up bid after policeman defiles pupil, 13, inside cell". On the 9th day of October, 2017, The Standard Newspaper, published another article in Usenge entitled, "Justice demand for girl defiled by a police officer."

MURANGA POLICE STATION

On 29th September 2017, a 13 year old girl was arrested by police officers from Murang'a Police Station at around 3:00pm and charged with the offence of stealing a mobile phone. She was booked and placed in the adult female cell. It is alleged that several prisoners were also arrested on the same day. A male officer was seen by one of the prisoners entering and leaving the cell. The prisoner also saw the accused police officer throw a used condom on top of the toilet roof as well as used tissue paper. When the prisoner was released from the police station he turned to social media on his facebook page and whistle blew about the alleged defilement of the girl.

USENGE AP CAMP

In Siaya, Usenge town a fourteen year old girl was allegedly defiled by an Administration Police officer on 2nd August 2017. The officer attached to Usenge AP Camp defiled the minor after she was locked up in the camp's cell. The girl had been taken to the camp by her mother because of indiscipline. One police officer took advantage of the situation and repeatedly defiled the minor at night. A medical report from Got-Agulu sub-district Hospital confirmed that the girl was defiled. The officer threatened to kill her if she told anybody about the assault.

CHILDREN RIGHTS

Children have rights like any human being. However, children, by reason of their physical and mental immaturity, vulnerability, role in building the future of a society, dependence on or need for extra protection and guidance from adults, have some special rights of their own. These are called the 'Children's Rights'. For this reasons therefore, children need special safeguard and care, including appropriate legal protection within the justice system.

Categories of Children Rights

The following are the four categories of children rights as per Section 4 of the children Act:

1. Survival rights: e.g. Good medical and health care, Nutritious food, Decent shelter, Adequate clothing
2. Development Rights: Education; Play and leisure; Access to information; Social security; Parental love and care;
3. Protection Rights: protection from all forms of exploitation-sexual and economic; Disasters; Discrimination; Abuse; Drugs and abuse; and Neglect.
4. Participation Rights: To be part of (inclusion in societal activities); Take part in, (speak, right to participate, associate and express him/herself); and be heard (right

to air opinion). As such, children have a right to freedom of expression and say in matters that affect their lives.

Protection of Child Offenders

All children deserve protection in all matters regarding the law, whether they are in conflict or whether they require legal protective assistance. All efforts should be made to avoid children being held in custody unless absolutely necessary. Repeat and first time offenders should be assessed for Diversion projects dependent on the nature of their offences and be reintegrated back to the community.

Pre – Trial Detention

Before a child is taken to trial and has to be detained the following rights must be protected.

1. Arrest and detention as last resort
2. Detention for the shortest appropriate period of time
3. Case handled without unnecessary delay
4. Right to be presumed innocent until proven guilty by law
5. Right to be separated from adults ; right to be separated from convicted juvenile.



A child in an adult male police cell



6. Instruments of restraint only used in exceptional circumstance (no chains and iron chains)
7. No close confinement or reduction of diet
8. Right to maintain family contact.
9. Right to have prompt (& regular) access to (free) legal and other assistance (communicate with legal advisors within sight but not hearing of police)
10. Right to appeal / challenge legality of their detention
11. Right to adequate facilities and services: Design & physical environment



A good example of a Children and Gender Office at Buruburu Police Station

Sexual Offences Act

The Sexual Offences Act defines and criminalises defilement, indecent acts and spells out very stringent sanctions. It gives a minimum sentence for defilement of a child below 11 years to be life imprisonment. Defilement of a child between 12 and 15 years to be imprisonment of not less than 20 years while that of a child between 16-18 years to be imprisonment of not less than 15 years.

Section 6 (a) of the IPOA Act requires the Authority to investigate any complaints related to disciplinary or criminal offences committed by any member of the Service, whether on its own motion or on receipt of a complaint. Accordingly, the Authority invoked its powers under the Act, and commenced investigations on its own motion with a view to finding out the circumstances leading to the alleged defilement by a Police Officer.

While IPOA appreciates the role of the Police in prevention of crime and maintenance of law and order, IPOA will continue to play its rightful role of holding the Police to account for its actions. In doing so, IPOA will continue to undertake its investigations in a professional manner observing the highest standards of integrity.



Inside the Children and Gender Office at Buruburu Police Station, manned by a female police officer



Inside the Children and Gender Office at Buruburu Police Station, a bedroom for a child