

Legal Change Seen as Threat to Kenyan Police Independence

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Allowing a presidential staffer to sit on the selection board for top police chiefs looks like a reverse for efforts to depoliticise the force.

Civil society groups in Nairobi are considering mounting a legal challenge after the Kenyan parliament passed a law giving the presidential office a greater say in the selection of senior police officials.

The move comes amid wider concerns in Kenya about what some see as unwarranted interference by the ruling Jubilee coalition in security matters following a series of attacks that have killed more than 100 people since June.

Changes to the 2011 National Police Service Act passed earlier this year create a new selection panel and give the office of the president a direct role in selecting the inspector general who heads the police force, as well as two deputy positions. They were pushed through parliament by Jubilee legislators in the face of dissent from the opposition and civil society organisations. President Uhuru Kenyatta signed the amendments into law in June.

Over the last ten years, Kenya has undertaken a series of reforms to make the police force more independent from the executive arm of government. Critics see this latest move as a backward step.

Before 2010, when Kenyans voted to adopt a new constitution, the president had unfettered powers to appoint or sack the head of the police.

When brutal violence that broke out in early 2008 after a disputed presidential election result, the government was accused of misusing the police for its own interests. Demands grew to make the police independent from the executive.

Under the 2010 constitution, the independent National Police Service Commission (NPSC) has been in charge of interviewing and recommending candidates for top jobs. The president then selects the candidate from a shortlist, and his decision must then be approved by parliament.

The latest amendments, however, create a selection panel that includes a representative of the president's office to assess candidates and advise on appointments.

A representative of the Public Service Commission, a civil service oversight body which answers to the executive, will also sit on the panel.

Other representatives will come from the NPSC, the Independent Policing Oversight Authority (IPOA), the Law Society of Kenya, and the National Gender and Equality Commission.

LAW COULD ALLOW UNDUE INFLUENCE

Having someone from the president's office sit on the panel could open the way to overt political influence on the way senior officers are chosen.

"The creation of the selection panel to choose the inspector general of police is no doubt a setback to the independence of police from political interference," Peter Kiama, director of the Independent Medico-Legal Unit, a Kenyan non-governmental group that monitors police reform in Kenya, told IWPR.

"The previous arrangement which vested the powers of selection to the NPSC should not have been tampered with and any changes made are only taking us back gradually to the era of political interference [in] the police," he said. "Under the new procedure of selection, the IGP [inspector general of police] will be subject to undue political pressure since the office of the president will have a direct role in the selection of the office-holder."

The change in the law raises particular concerns after recent incidents in which the government was accused of interfering in the security services and of politicising security threats.

In its report on an attack in the town of Mpeketoni in the coastal region of Lamu in June which killed more than 60 people, Haki Africa, a human rights lobbying group based in Mombasa, criticised the government for holding the political opposition responsible for the attack.

Following the attacks, the governor of Lamu county, Issa Timamy, was arrested on suspicion of involvement. When he appeared at the high court in Mombasa on June 26, he had not been charged with any offence. The case against him was dropped completely on September 9.

In a separate move in May, police banned a political rally by the leader of the opposition, Raila Odinga, only for the ban to be lifted after the president intervened.

“In such an environment, police lose their independence to operate,” Hussein Khalid, executive director of Haki Africa, said.

Some observers worry that the new measures could allow the government to tighten its grip over the police, contrary to constitutional provisions designed to prevent this.

According to the constitution, the cabinet secretary responsible for police services has no power to direct the inspector general of police on matters relating to investigations, enforcement of the law, or the employment or dismissal of any member of the police.

Morris Odhiambo, president of the National Civil Society Congress, an NGO that monitors police reforms, is concerned that the new legislation erodes this dividing line.

“Kenyans wanted police leadership answerable to the public and not to the government of the day,” he told IWPR. “What we are seeing is this intention being defeated by politicians who are keen to control the police and make it serve their interests.”

Kiama fears that the move reflects an institutional reluctance to accept the principle of police independence.

“Despite the fact that the constitution envisioned an independent police service in all its senses, including selection of its top officials, our political culture is yet to come to terms and to internalise the spirit of that new framework,” he said.

Caleb Wanga, who works for the Usalama Reforms Forum, a lobby group which follows police reform, said that the amendment to the law was a backward step.

“One of the main motivations for police reforms was freeing the police from constant political interference,” Wanga said. “The changes that have been made are in bad faith and meant to undermine police reforms badly.”

Morris Odhiambo warned that failing to take action through the courts might encourage the executive to take further steps to “dismantle” the constitution.

“We have faith in the judiciary’s readiness and willingness to defend the constitution from being mutilated by political interests of the day,” he told IWPR. “We will go up to the highest courts to get a determination of this matter because the constitution is at stake.”

EXECUTIVE DEFENDS NEW LAW

The president’s representatives have defended the changes. Munyori Buku, Kenyatta’s senior director of public communication, insisted that the head of state must play an active role in selecting officials at the top of the police force.

“Whenever there is insecurity in the country, all eyes are always focused on the president. The buck stops with him,” he said. “If he is to be held accountable for insecurity of the country, then he must have a big say on who gets appointed in top security positions, including police.”

Others involved in police recruitment also back the new powers. The chairman of the IPOA, which has a seat on the selection panel, said that the process will not be controlled by the office of the president or the Public Service Commission because there are other interests represented on the panel.

Johnston Kavuludi, chairman of the NPSC, downplayed the effect of the amendments.

“The only thing that has changed is that the selection process of the [inspector general] and two deputies has only been expanded to make it more inclusive to other stakeholders,” he said. “There is no warrant to read too much into this. As a commission, we do not have a problem with that.”

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