

THE COMMISSION ON ADMINISTRATIVE JUSTICE

Office of the Ombudsman



“Hata Mnyonge ana Haki”

IN THE CHILD’S BEST INTEREST



**AN INVESTIGATION REPORT ON
USE OF EXCESSIVE FORCE BY POLICE OFFICERS AND
IMPROPER CONDUCT BY OTHER PUBLIC OFFICERS INVOLVED
IN QUELLING THE 19TH JANUARY, 2015 DEMONSTRATION AT
LANGATA ROAD PRIMARY SCHOOL.**

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Foreword

Pursuant to its mandate as stipulated under Section 8 of its constitutive Act, the Commission on Administrative Justice undertook investigation into the conduct of police officers involved in quelling the 19th January, 2015 demonstration at Langata Road Primary School and in particular, the alleged use of excessive force by the police against the school children.

CAJ also sought to investigate alleged improper conduct by other relevant public officers. The investigation was undertaken *suo motu* based on media reports.

The Commission notified the then Ag. Inspector General of police in writing of its decision to undertake investigation into the matter. Thereafter, CAJ investigators visited Langata Police Station and other relevant public offices to recover relevant documents and conduct interviews.

The compilation of this report was informed by analysis of documents recovered from Langata Police Station, Langata Sub-County Education and Administration Offices as well as interviews and statements obtained from the public officers.

The Commission has made appropriate recommendations to relevant authorities to take necessary remedial action based on the findings and conclusions drawn out of the investigation.

The full implementation of the recommendations herein will ensure that police officers and other public officers conduct themselves in a civil and official manner in similar situations in future.

Signed this.....day of July, 2015

Dr. Otiende Amollo, E.B.S

**Chairperson of the Commission on Administrative Justice
(Office of the Ombudsman)**

Preamble

The Commission on Administrative Justice (Office of The Ombudsman) is a Constitutional Commission established under Article 59 (4) and Chapter Fifteen of the Constitution, and the Commission on Administrative Justice Act, 2011.

The Commission on Administrative Justice (CAJ) has a mandate, inter-alia, to investigate any conduct in state affairs or any act or omission in public administration in any sphere of Government and complaints of abuse of power, unfair treatment, manifest injustice or unlawful, oppressive, unfair or unresponsive official conduct.

In addition to the CAJ's investigative powers under Article 252 (1) (a), Sections 26, 27, 28 and 29 of the CAJ Act gives the Commission powers to conduct investigations on its own initiative or on a complaint made by a member of the public, issue Summons and require that statements be given under oath, adjudicate on matters relating to Administrative Justice, obtain relevant information from any person or Governmental authorities and to compel production of such information.

Under Section 31 of its Act, CAJ has power not limited by other provisions to investigate an administrative action despite a provision in any written law to the effect that the action taken is final or cannot be appealed, challenged, reviewed, questioned or called in question.

After undertaking its investigations, the Commission is required under Section 42 of its constitutive Act, to prepare a report to the State organ, public office or organization to which the investigation relates. The report shall include the findings of the investigation, action the Commission considers to be taken and reasons whereof and recommendations the Commission deems appropriate.

CAJ may upon an inquiry into a complaint, undertake such other action as it may deem fit against a concerned person or persons where the inquiry discloses a criminal offence as provided for under Section 41 of the CAJ Act.

Section 8 (g) of the CAJ Act gives the Commission power to recommend compensation or other appropriate remedies against persons or bodies to which the Act applies.

Section 42 (4) states; If there is failure or refusal to implement the recommendations of the Commission within the specified time, the Commission may prepare and submit to the National Assembly a report detailing the failure or refusal to implement its recommendations and the National Assembly shall take the appropriate action.

Section 52 (b) and (d) of the CAJ Act 2011, provides that a person who knowingly submits false or misleading information to a member of staff of the Commission commits an offence and is liable on conviction to a fine not



exceeding five hundred thousand shillings or imprisonment for a term not exceeding two years or both.

Further, Article 59(2) (j) of the Constitution of Kenya, 2010 empowers the Commission to report on complaints investigated under paragraph (h) and (i) and take remedial actions.

The report addresses the following:

- Introduction to the investigation
- Investigations strategy
- Normative framework
- Analysis and Findings
- Conclusions
- Recommendations

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Acronyms

AEO	Assistant Education Officer
APC	Administration Police Constable
CAJ	Commission on Administrative Justice
CI	Chief Inspector
CTR	Crisis Response Team
DCIO	Division Criminal Investigation Officer
DPP	Director of Public Prosecutions
IP	Inspector
MCA	Member of County Assembly
OB	Occurrence Book
OC	Officer Commanding
OCPD	Officer Commanding Police Division
OCS	Officer Commanding Station
SSP	Senior Superintendent of Police

Executive Summary

On the 19th day of January, 2015, members of civil society, politicians and Langata Road Primary School children protested over the alleged irregular acquisition of Langata Road Primary School land by private developers.

The media reports indicated that police officers who had been deployed to ensure peace and order, lobbed teargas canisters at the School Children and other demonstrators when they teamed up to bring down a wall constructed around the land in question. It was reported that several school children were injured in the demonstration and were rushed to Langata Hospital for treatment.

The manner in which police officers handled the matter, and more critically, alleged use of excessive force against School Children, and alleged improper conduct by other public officers prompted the Commission to undertake investigations.

Summary of issues investigated

- i. Allegation of use of excessive force by police officers against School Children.
- ii. Allegation of improper conduct by other public officers in the process leading up to the demonstration, during the demonstration, and after.

Summary of findings

- i. Analysis of Police Operation Order dated 18th January, 2015 and signed by Mr. Benson Kibui, Nairobi County Police Commander revealed that one hundred and eight (108) police officers under the command of Mr. Elijah Maina Mwangi SSP, OCPD Langata, were deployed at Langata Road Primary School. The contingent of police officers was drawn from all the Police Divisions in Nairobi City County.
- ii. The commanders of the various teams/sectors were briefed by Mr. Mwangi, OCPD Langata on the morning of 19th January, 2015. According to the OCPD's briefing, the officers were to safeguard life and property, and ensure safety of the school children.
- iii. It was established that CI Gabriel Wanjala, in-charge of AP team and IP Leonard Chea Mayaya, in-charge of Kajjido North team were commanding the two police teams deployed inside the land in dispute where teargas canisters originated.

- iv. Investigations revealed that the demonstrators included Hon. Ken Okoth, MP, Langata, Hon. Joash Olum, MP, Kibra, Civil Society Members and Langata Road Primary School Children.
- v. It was established that teargas canisters were lobbed by police officers at the children and other demonstrators who were trying to gain entry into the disputed land.
- vi. Five school children were injured in the incident after Police Officers lobbed teargas canisters at them. They were all taken to Langata Hospital where four of them were treated and released while a standard seven girl, Lucy Njeri, was admitted for further medical examinations.
- vii. A police officer sustained injury on the forehead after a stone hit him. The Officer was rushed to Nairobi West Hospital where he was treated and released.
- viii. Three suspects (Mr. Boaz Warugu Atanga, Mr. Haughton Irungu Geoffrey and Mr. Vincent Ngangula Abulla) were arrested during the incident and put in custody at Langata Police Station. They were later released on cash bail following a directive from the DPP's Office.
- ix. Investigations revealed that the School Head teacher did not take appropriate intervention measures to protect the school children upon noticing heavy presence of anti-riot police officers. This was corroborated by a Ministry of Education's Report which faulted the School Head teacher for not taking administrative action to restrain School Children from leaving their classrooms to join the demonstration.
- x. It was established that the OCPD and County Police Commander (Mr. Elijah Maina Mwangi and Mr. Benson Kibui respectively) did not inform and advise the School Head teacher about potential danger to School Children posed by the demonstration.
- xi. CAJ noted that the OCPD, Mr. Mwangi learnt of his suspension through the media but he did not receive any official communication.

Conclusions

- i. Teargas canisters were lobbed by police officers to disperse school children and other demonstrators who were trying to gain entry into the land in dispute. As a result, five school children were injured during the incident.
- ii. CI Gabriel Wanjala, in-charge of AP team and IP Leonard Chea Mayaya, in-charge Kajiado North team, as the Commanders of the two teams deployed inside the land in dispute where teargas canisters originated, are collectively culpable of dereliction of duty. Both Commanders failed to control their charges with regard to lobbing of the teargas canisters at the school children. The two officers also failed to inform CAJ investigators which officer was responsible for lobbing the teargas canisters. Both Commanders ought to have known who among the officers used excessive force against vulnerable persons (school children).
- iii. The County Police Commander, Mr. Benson Kibui and the OCPD, Mr. Elijah Maina failed to inform and advise the School Head teacher about potential dangers posed by the demonstration to school children so that they could take precautionary measures. Therefore, both of them are culpable of dereliction of duty.
- iv. The Head teacher is culpable of professional misconduct in terms of the Third Schedule Section (b) (i) of the Teachers Service Commission Act of 2012 for failing to ensure that children did not leave their classrooms during the demonstration and for failing to ensure that the children were safe and did not take part in the demonstration during school hours.
- v. The suspension of the OCPD over the media by the then acting Inspector General, Mr. Samuel Arachi, was improper. This should only have been made after investigation, and done in writing to the officer and not over the media.
- vi. The politicians (Hon. Ken Okoth, MP for Langata, Hon. Joash Olum, MP for Kibra, Hon. Tabitha Ndigirigi, Nominated MCA and Hon. Alex Oguda, MCA Mugumoini) are in breach of section 5 (1) and (2) of the Public Order Act for failing to notify the regulating officer at least three days in advance of the intended peaceful demonstration.

- vii. Pursuant to section 36 of the CAJ Act, CAJ wrote to Mr. Benson Kibui the Nairobi County Commander of Police vide a letter Ref: CAJ/M.LAN/022/1106/15, dated 17th April, 2015, seeking his response on the findings, conclusions and recommendations drawn out of the draft report. Mr. Kibui did not respond to CAJ's letter and therefore, he was cited for unresponsiveness.
- viii. The Commission wrote to Mr. Elijah Maina Mwangi, OCPD Langata vide a letter Ref: CAJ/M.LAN/022/1106/15 dated 16th April, 2015 seeking his response on the findings, conclusions and recommendations drawn out of the draft report. Mr. Mwangi responded in a letter REF: SEC. Pol. 3/2/1/vol.vi/ (19), the contents of which CAJ has noted. The Commission concluded that there was dereliction of duty on his part.
- ix. CAJ also wrote to CI Gabriel Wanjala and IP Leonard Chea Mayaya vide letters Ref: CAJ/M.LAN/022/1106/15 and Ref: CAJ/M.LAN/022/1106/15 dated 2nd April, 2015, seeking their response on the findings, conclusions and recommendations drawn out of the draft report on account of collective responsibility. CI. Wanjala responded through his advocates Oduor Henry John Advocates in a letter dated 20th April, 2015, the contents of which CAJ has noted. The Commission went ahead to finalize the report. IP Chea did not respond to CAJ's letter and the Commission cited him as an unresponsive officer.
- x. Further, the Commission wrote to the Head teacher Langata Road Primary School, Mr. Peter Mugo vide a letter Ref: CAJ/M.LAN/022/1106/15 dated 2nd April, 2015 regarding the adverse findings, conclusions and recommendations contained in the draft report. The Commission noted contents of Mr. Mugo's response letter and concluded that Mr. Mugo is culpable of professional misconduct.

Recommendations

- i. The Teachers Service Commission should issue a warning letter to Mr. Peter Mugo, the Head teacher Langata Road Primary School in line with section 34 (3) (a) of the Teachers Commission Act.
- ii. The National Police Service Commission should take disciplinary action against Inspector Leonard Chea Mayaya and CI Gabriel Wanjalla in line with section 89 (b) and (d) of the National Police Service Act and section 11 (1) (j) of the National Police Service Commission Act by suspending the two officers for a period of six months and suspension of salary increments for a period of six months.

- iii. The National Police Service Commission should reprimand Mr. Benson Kibui Nairobi County Police Commander and Mr. Elijah Maina Mwangi SSP OCP Langata for dereliction in the performance of their duties.
- iv. CAJ cites the Nairobi County Police Commander, Mr. Benson Kibui and Inspector Leonard Chea Mayaya and has entered them in the CAJ Blacklist for being unresponsive.
- v. The Inspector General of Police should review and revise the Riot Manual according to current international standards contained in the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.
- vi. The Inspector General of Police should ensure that there is strict accountability with regard to weapons and chemical weapons usage.
- vii. The Principal Secretary, Education should ensure that a policy for a Safety Standards Manual for Schools in Kenya is implemented.
- viii. The Principal Secretary, Education should organize sensitization and awareness training for school administrators on how to deal with emergencies.
- ix. The Principal Secretary, Education should ensure that there is proper safety practice and maintenance of adequate and appropriate safety equipment in all schools.
- x. The Inspector General should report back to the Ombudsman within a reasonable period of time with regard to progress in the implementation of the recommendations.
- xi. The Principle Secretary, Education should report back to the Ombudsman within a reasonable period of time with regard to progress in the implementation of the recommendations.

Introduction

1.1 Introduction to investigations

On the 19th day of January, 2015, a demonstration involving politicians, activists and Langata Road Primary School children was featured in various media platforms protesting over an alleged acquisition of land by private developer(s).

The media reports indicated that the police officers who had been deployed to ensure peace and order, lobbed teargas canisters at the school children and other demonstrators when they teamed up to bring down a wall built around the land in dispute. It was reported that several school children were injured in the demonstration and were rushed to Langata Hospital for treatment.

1.2 Issues investigated by CAJ

Pursuant to section 8 of CAJ Act, 2011, the Commission decided to look into the manner in which police officers handled the matter and in particular, alleged use of excessive force against the school children and improper conduct by other public officers.

1.3 Investigative Process

1.3.1 Notification

The Commission notified the Ag. Inspector General of Police, vide a letter Ref: CAJ/M.LAN/022/1106/15 dated 21th January, 2015 of its decision to undertake investigations. **(See annexure A1).**

1.3.2 Offices Visited.

The following offices were visited for investigations:

- i. Langata Police Division/station
- ii. Langata Road Primary School

1.3.3 List of Interviewees

- i. Nairobi County Police Commander
- ii. Deputy County Commissioner, Langata Sub-County
- iii. OCPD, Langata Police Division
- iv. DCIO, Langata Police Division
- v. Langata Sub-County Education Officer
- vi. OCS, Langata Police Station
- vii. Deputy OCS, Langata Police Station
- viii. Chief Inspector Wanjala
- ix. Inspector Leonard Chea Mayaya
- x. APC Mary Nyambura

- xi. APC Karanja
- xii. Headmaster, Langata Road Primary School

1.3.4 Documents recovered

- i. Langata Police Station OB Extracts dated 19th January, 2015
- ii. Police Operation Order dated 18th January, 2015
- iii. Letter from State Council, Kibera Law Court dated 20th January, 2015
- iv. Letter from DPP's Office dated 20th January, 2015
- v. Deployment List
- vi. Statements by:-
 - Mr. Benson Kibue Nairobi County Police Commander
 - Mr. Elijah Maina Mwangi (SSP), OCPD Langata Police Division
 - Ms. Florence Maathai, Langata Sub-County Education Officer
 - CI Charles Otieno, Langata Police Station
 - CI Gabriel Wanjala, Langata Sub-County
 - IP Leonard Chea Mayaya, OC Crime Ngong Police Station
 - Mr. Peter Mugo, the Headmaster, Langata Road Primary School
 - APC Mary Nyambura

1.4 Normative Framework

Following are excerpts of the relevant provisions:

CONSTITUTION OF KENYA, 2010

Chapter Six – Leadership and Integrity

75. (1) A State officer shall behave, whether in public and official life, in private life, or in association with other persons, in a manner that avoids—
(c) demeaning the office the officer holds.

Sovereignty

(5) The general rules of international law shall form part of the law of Kenya.

Bill of Rights

37. Every person has the right, peaceably and unarmed, to assemble, to demonstrate, to picket, and to present petitions to public authorities.

Objects and functions of the National Police Service

244. The National Police Service shall—
(a) strive for the highest standards of professionalism and discipline among its members;
(b) prevent corruption and promote and practice transparency and accountability;

- (c) comply with constitutional standards of human rights and fundamental freedoms;*
- (d) train staff to the highest possible standards of competence and integrity and to respect human rights and fundamental freedoms and dignity; and*
- (e) foster and promote relationships with the broader society.*

INTERNATIONAL NORMS

UNITED NATIONS BASIC PRINCIPLES ON THE USE OF FORCE AND FIREARMS BY LAW ENFORCEMENT OFFICIALS

The Police should only apply non-violent means before the use of force, and only in proportion to the conduct and situation.

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (RATIFIED IN 1976)

A state may only impose restrictions on the right to peaceful assembly that are strictly necessary to maintain public order.

Chapter 14 - National Police Service Commission

11. Powers of the Commission

The Commission shall have all the powers necessary for the execution of its functions under the Constitution and this Act and without prejudice to the generality of the foregoing, the powers to-

- (j) Take lawful disciplinary action on any officer under its control*

246. (1) There is established the National Police Service Commission.

(3) The Commission shall—

- (b) observing due process, exercise disciplinary control over and remove persons holding or acting in offices within the Service.*

NATIONAL POLICE SERVICE ACT

24. Functions of the Kenya Police Service

The functions of the Kenya Police Service shall be:

- (a) Provision of assistance to the public when in need*
- (c) Preservation of peace*
- (d) Preservation of life and property*

Section 48. Subject to Article 244 of the Constitution and any other law enacted pursuant to Article 35 of the Constitution, a limitation of a right shall be reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom and shall be limited only for purposes of ensuring—

- (a) the protection of classified information;*
- (b) the maintenance and preservation of national security;*

- (c) the security and safety of officers in the Service;
- (d) the independence and integrity of the Service; and
- (e) the enjoyment of the rights and fundamental freedoms by any individual, does not prejudice the rights and fundamental freedoms of others.

Section 49. General powers of police officers

(5) Where a police officer is authorized by law to use force, the officer shall do so in compliance with the guidelines set out in the Sixth Schedule.

88. Disciplinary offences

- (1) Every police officer shall be an officer in the Service and shall be, subject to the law and regulations from time to time in force relating to the Service.
- (2) The offences against discipline include the offences prescribed under the Eighth Schedule.

89. Penalties for disciplinary offences

- (1) A police officer who commits an offence against discipline is liable to be punished by—
 - (a) reprimand;
 - (b) suspension;
 - (c) an order of restitution;
 - (d) stoppage of salary increments for a specified period of time, but not exceeding one year;
 - (e) reduction in rank;
 - (f) dismissal from the Service; or
 - (g) any combination of the punishments provided under this section.

THIRD SCHEDULE

[Section 34]

DISCIPLINARY OFFENCES

- (b) professional misconduct including but not restricted to—
 - (i) negligence of duty

SIXTH SCHEDULE

[Sections 61(2).]

A – CONDITIONS AS TO THE USE OF FORCE

- 1. A police officer shall always attempt to use non-violent means first and force may only be employed when non-violent means are ineffective or without any promise of achieving the intended result.
- 2. The force used shall be proportional to the objective to be achieved, the seriousness of the offence, and the resistance of the person against whom it is used, and only to the extent necessary while adhering to the provisions of the law and the Standing Orders.
- 3. When the use of force results in injuries—

(a) the police officers present shall provide medical assistance immediately and unless there are good reasons, failing to do so shall be a criminal offence; and
(b) shall notify relatives or close friends of the injured or affected persons.

4. A police officer who uses any form of force shall immediately, report to the officers' superior explaining the circumstances that necessitated the use of force and the supervisor shall judge the rightfulness and decide on the next step, subject to these regulations.

5. Any use of force that leads to death, serious injury and other grave consequences shall be reported immediately by the officer in charge or another direct superior of the person who caused the death or injury, to the Independent Police Oversight Authority who shall investigate the case.

6. The Inspector-General shall not be precluded by virtue of paragraph (5) from conducting investigations into the matter.

7. A police officer who makes a report to the Independent Police Oversight Authority in accordance with paragraph (5) shall—

(a) secure the scene of the act for purposes of investigations; and

(b) notify the next of kin, their relative or friend of the death or injury as soon as reasonably practical.

8. It shall be a disciplinary offence for a police officer to fail to report in accordance with these regulations.

9. An officer shall not tamper or otherwise damage any evidence from the scene of the act.

10. A Police officer in uniform shall at all times affix a nametag or identifiable Service number in a clearly visible part of the uniform.

11. Following the orders of a superior is no excuse for unlawful use of force.

12. The Cabinet Secretary responsible for Internal Security and the Inspector General shall make regulations for giving further direction on the lawful use of force, and the regulations shall include, among other things—

(a) a list of lawful means to use force;

(b) training requirements to be allowed to use these means;

(c) procedures for reporting the use of the means of force, indicating whether the use of such means was necessary or not.

B – CONDITIONS AS TO THE USE OF FIREARMS

1. Firearms may only be used when less extreme means are inadequate and for the following purposes—

(a) saving or protecting the life of the officer or other person; and

(b) in self-defence or in defence of other person against imminent threat of life or serious injury.

2. An officer intending to use firearms shall identify themselves and give clear warning of their intention to use firearms, with sufficient time for the warning to be observed, except—

- (a) where doing so would place the officer or other person at risk of death or serious harm; or
- (b) if it would be clearly inappropriate or pointless in the circumstances.

3. A police officer shall make every effort to avoid the use of firearms, especially against children.

- 4. Any use of firearm, even if there's no injury, shall immediately be reported to the officer's superior.
- 5. Any use of fire arms that leads to death, serious injury and other grave consequences shall be reported by the officer in charge or another direct superior of the person who caused the death or injury, to the Independent Police Oversight Authority who shall investigate the case.
- 6. The Inspector-General is not precluded by virtue of paragraph (4) from conducting investigations into the matter.
- 7. A police officer who makes a report to the Independent Police Oversight Authority in accordance with paragraph (4) shall—
 - (a) secure the scene of the act for purposes of investigations; and
 - (b) notify the next of kin, their relative or friend of the death or injury as soon as reasonably practical.

The Cabinet Secretary in consultation with the Inspector-General shall make further regulations on the use of firearms which shall include regulations—

- (a) that specify the circumstances under which police may carry firearms and the type of firearms and ammunition permitted;
- (b) that prohibit firearms and ammunition that cause unwarranted injury or present unwarranted risk;

EIGHTH SCHEDULE

[Section 88(2).]

Offences against discipline

- 1. It shall be an offence against discipline for any police officer to—
 - (t) Be negligent in the performance of his duty;

POLICE REGULATIONS NO 11A of 2011

PART II – OFFENCES AGAINST DISCIPLINE

- 3. Any inspector or subordinate officer who—
 - 24) Is idle and negligent in the performance of his duty; shall be guilty of an offence against discipline.

PUBLIC OFFICERS ETHICS ACT, 2003 [REV 2009]

- 10 (1) A public officer shall carry out his duty in accordance with the law
- (2) In carrying out his duties, a public officer shall not violate the rights and freedoms of any person under Chapter four of the Constitution.

PUBLIC ORDER ACT

Regulation of Public meeting and Processions

5 (1) No person shall hold a public meeting or a public procession except in accordance with the provisions of this section.

(2) Any person intending to convene a public meeting or public procession shall notify the regulating officer of such intent at least three days but not more than fourteen days before the proposed date of the public meeting or procession.

(3) A notice under subsection (2) shall be in the prescribed form and shall specify—

(a) The full names and physical address of the organizer of the proposed public meeting or public procession;

(b) The proposed date of the meeting or procession and the time thereof which shall be between six o'clock in the morning and six o'clock in the afternoon;

(c) the proposed site of the public meeting or the proposed route in the case of a public procession.

Restriction on use of force

14(1) Whenever in this Act it is provided that force may be used for any purpose the degree of force which may be so used shall not be greater than is reasonably necessary for that purpose; whenever the circumstances so permit without gravely jeopardizing the safety of persons and without grave risk of uncontrollable disorder, firearms shall not be used unless weapons less likely to cause death have previously been used without achieving the purpose aforesaid; and firearms and other weapons likely to cause death or serious bodily injury shall, if used, be used with all due caution and deliberation, and without recklessness or dereliction.

THE TEACHERS SERVICE COMMISSION ACT 20 OF 2012

33. Discipline of Registered Teachers

(1) The Commission may, subject to the regulations made under this Act, take disciplinary action against any person registered as a teacher under this Act.

34. Disciplinary Action

(2) Disciplinary offences include the offences prescribed in the Third Schedule or any other relevant law.

(3) the Commission, after interdicting a teacher, may take the following disciplinary actions against a registered teacher-

(a) Issue a warning letter;

(b) Surcharge;

- (c) Suspend for such a period not exceeding six months;
- (d) Cancel a registration certificate and remove the name of the teacher from the register;
- (e) Retire in the public interest;
- (f) Dismiss;
- (g) Terminate services; or
- (h) Undertake any other lawful action as it may consider appropriate.

SAFETY STANDARDS MANUAL FOR SCHOOLS IN KENYA, FIRST EDITION APRIL 2008

5.0 Organization of the School Safety Programme

The safety of the school depends to a large extent on measures taken to organize and manage such safety. In this respect, School Management Committee/Board of Governors members, the head teacher, teachers, learners, parents and other stakeholders have important roles to play in facilitating and enhancing safety in schools. Nonetheless, the direct responsibility of overseeing school safety should fall within a specific School Safety Committee. The duties and responsibilities of the School Safety Committee should be as outlined below:

Membership. The Sub-Committee shall consist of the following members:

- i) Chair, School Management Committee/Board of Governors Chairperson
- ii) Head teacher ----- Secretary
- iii) The deputy head teacher----- Member
- iv) Teacher in charge of School Safety----- Member
- v) Guidance and counselling teacher ----- Member
- vi) Teacher union representative (in the School)----- Member
- vii) An Ex-officio from AEO's Office-----Member
- viii) A representative of the Crisis Response Team (CRT)
- ix) Two other members of the School Management Committee/Board of Governors

5.2 Functions of the School Safety Sub Committee

The specific functions of this Committee shall be to:

- Identify the safety needs of the school with a view to taking the necessary action.
- mobilize resources required by the school to ensure a safe, secure and caring environment for learners, staff and parents.
- monitor and evaluate the various aspects of School Safety with a view to enhancing school safety.
- form sustainable networks with all stakeholders to foster and sustain School Safety.
- keep learners, parents and other stakeholders informed about School Safety policies and implementation activities.
- seek the support of parents and stakeholders and ensure their participation in activities relating to School Safety.

- constantly review issues of child safety in and around the school. The specific functions of some of the key members of the school safety subcommittee are outlined in the sections below.

5.3 Responsibilities and Functions of a Head Teacher as a Member of the School Safety Sub-Committee

The head teacher will be responsible for:

- ensuring proper implementation of School Safety policies by coordinating all phases of programme implementation.
- coordinating the efforts of the School Safety Sub-Committee, teachers, learners and parents in ensuring that the school is safe, secure and caring.
- ensuring that school resources are efficiently used in fostering a safe, secure and caring environment in the school.
- ensuring that proper and up-to-date records relating, to School Safety are compiled and properly managed.
- coordinating the monitoring and evaluation of the School Safety Programme.
- liaising with the teacher in-charge of School Safety, the zonal QASO and the TAC tutor to ensure the implementation of School Safety measures agreed upon.
- taking necessary corrective measures in accordance with the monitoring and evaluation reports.
- convening the meetings of the School Safety Committee either on his/ her own or on the chairperson's request.

6.0 Safety Standards and Guidelines

The Safety Standards Manual incorporates the following key components:

- Safety on School Grounds
- Safety in Physical Infrastructure
- Health and Hygiene Safety
- Safety in School Environment
- Food Safety
- Safety Against Drug and Substance Abuse
- Safe Teaching and Learning Environment
- Socio-cultural Environment of the School
- Safety of Children with Special Needs/Disabilities

Safety against Child Abuse

- Transportation Safety
- Disaster Risk Reduction
- School Community Relations.

2.0 Analysis and Findings

According to Police Operation Order dated 18th January, 2015 and signed by Mr. Benson Kibui, Nairobi County Police Commander, one hundred and eight (108) Police Officers under the command of Mr. Elijah Maina Mwangi SSP, OCPD, Langata Police Division were deployed to watch over an anticipated demonstration at Langata Road Primary School. The police officers were drawn from various Police Divisions in Nairobi; Kilimani, Dog Section, Buruburu, Ongata Rongai, Embakasi, Makadara, Dagoretti, Langata, Gigiri, Kajiado North, Starehe, Central and Administration Police Officers from Langata Sub-County. **(Annexure A2)**

Investigations established that the officers arrived at the Langata Road Primary School as early as 6.00 am on 19th January, 2015 armed with AK 47s, G3s and teargas canisters. The commanders of the various teams/sectors were briefed by Mr. Mwangi, OCPD Langata. The briefing was that the civil society activists and some politicians were expected to hold an illegal demonstration with an aim of bringing down a wall constructed around the land in dispute. According to the OCPD's briefing, the officers were to safeguard life, property and ensure safety of school children. The OCPD deployed the officers as follows:

- i. Kajiado North Team under the Command of IP Leonard Chea Mayaya- Deployed inside the disputed land with his eight officers.
- ii. Administration Police Team led by CI Gabriel Wanjala- The team was deployed inside the plot in dispute together with other four AP officers.
- iii. Ongata Rongai team led by IP Muli - They were deployed along the outer perimeter wall between Weston hotel and Langata Road Primary School gate.
- iv. Makadara and Langata Teams led by CI Charles Otieno-They were deployed along Langata Highway because they were anticipating aggression from Kibera
- v. Dog section under the command of CPL Daniel Siengo- 5 dogs were deployed along Langata wall and Weston Hotel.
- vi. Embakasi Team led by IP Muguru was deployed to Uchumi Hyper near Carnivore Junction.
- vii. Buruburu team under the command of IP Leariwala - They were deployed along Langata road outside Langata Road Primary School.
- viii. Dagoretti Team led by IP Charles Nyangweso-Deployed at shell Petrol Station opposite Weston Hotel. **(Annexure A3)**

The school children, on the other hand, started arriving at the school as early as 7.00 am and found heavy police presence inside and outside the school compound. Investigations revealed that a parade to welcome students after a long December holiday was held and thereafter students dispersed to their respective classes for commencement of 2015 first term school programme.

According to witnesses interviewed by CAJ investigators, the school programme went on until 10.00 am when school children left their classrooms on a routine short break. They however started exiting the school compound and together with other demonstrators, headed towards the land in dispute while chanting. Upon arrival at the gate to the disputed land, the children and activists commenced pushing the gate trying to gain entry.

Photograph 2: Children pushing the gate



The demonstrators included politicians (Hon. Ken Okoth, MP for Langata, Hon. Joash Olum, MP for Kibra, Hon. Tabitha Ndigirigi, Nominated MCA and Hon. Alex Oguda, MCA Mugumoini), Civil Society Members and the School Children **(Annexure A4 and A5)**.

When pressure by the children and activists on the gate to the land in dispute intensified, CI Gabriel Wanjala (Officer Commanding AP Officers deployed inside disputed land) opened the gate to the land in question. Immediately CI Wanjala stepped out of the gate in company of his colleague, APC Karanja, teargas canisters were thrown from inside the plot and landed at the gate

where school children were. A civilian (wearing grey coat and a cap) caught the teargas canister and threw it into the trench to save the children from effects of teargas. **(See Annexure A4)**

Photograph 3: AP officer exiting land in dispute.



Investigations revealed that five school children were injured in the incident and were rushed to Langata Hospital. Four children were treated and released while Lucy Njeri, a standard seven girl, was admitted for further medical examination. According to the medical report recovered by investigators, the girl was complaining of chest pain and difficulty in breathing. **(Annexure A6 and A7)**

On the other hand, a police officer sustained injury on his forehead after he was hit by a stone. He was rushed to Nairobi West Hospital where he was treated and released. **(Annexure A8 and A9)**

Three suspects (Mr. Boaz Warugu Atanga, Mr. Haughton Irungu Geoffrey and Mr. Vincent Ngangula Abulla) were arrested and taken to Langata Police Station where they were put in custody. According to a letter from the DPP's Office dated 20th January, 2015, the OCS, Langata Police Station was directed to submit all files relating to the demonstration at Langata Primary School to the DPP for perusal and directions. The letter also instructed the OCS not to register the charge sheet pending directions from the DPP and to release the suspects on Police Cash bail. **(See annexure A10, A11 and A12)**

Mr. Benson Kibui, Nairobi County Police Commander, in an interview with the CAJ investigators, indicated that the police had intelligence about the Langata

demonstration but did not advise the School Head teacher on the appropriate measures to be taken in the best interest of the school children. According to Mr. Kibui, the police were supposed to liaise with the Head teacher to restrain the children from participating in the demonstration. **(Annexure A13)**

CAJ noted that Mr. Peter Mugo, the Head teacher Langata Road Primary School failed to direct the teachers to bring the children under control so that they could not leave the school compound. Examination of the statement by the Sub-County Education Officer reveals that the Headmaster did not inform his immediate supervisor about the anticipated demonstration. **(Annexure A6 and A14)**

The findings of CAJ were corroborated by a Report compiled by a panel of assessors from Department of Education, Standards and Quality Assurance Council constituted to establish the cause of the demonstration and reasons for involvement of the school children. The assessors established that the Head teacher and the staff did not take any action to restore calm amongst the pupils or restrain them from leaving the school compound to join demonstrators. **(Annexure A6)**

CAJ noted that the OCPD Langata, Mr. Mwangi learnt of his suspension through the media but he did not receive any official communication.

3.0 Conclusions

Teargas canisters were lobbed by police officers to disperse school children and activists who were trying to gain entrance into the land in dispute. As a result, five school children were injured during the incident.

CI Gabriel Wanjala, in charge AP team and IP Leonard Chea Mayaya, in-charge Kajiado North team were commanding the two teams deployed inside the land in dispute where teargas originated. Both Commanders failed to control their charges with regard to lobbing of the teargas canisters at the school children. The two officers also failed to inform CAJ investigators which officer was responsible for lobbing the teargas canisters. They ought to have known who among the officers used excessive force against vulnerable persons (school children). Therefore, both commanders are collectively culpable of dereliction of duty in terms of section 1(t) of the Eighth Schedule of the National Police Service Act and section 10 (1) and (2) of the Public Officers Ethics Act for failing to fully protect the children and as a result, five children were injured.

It is the responsibility of the County Commander and OCPD to ensure close co-operation with representatives of all Government Departments and Local Authorities in their areas of jurisdiction. In this matter, Mr. Benson Kibui, Nairobi County Police Commander and Mr. Elijah Maina Mwangi SSP, OCPD Langata failed to advise the Headmaster on the impending demonstration that could endanger the lives of school children. According to section 1(t) of the Eighth Schedule of the National Police Service Act, Mr. Kibui and Mr. Mwangi are culpable of dereliction of duty.

The politicians (Hon. Ken Okoth, MP for Langata, Hon. Joash Olum, MP for Kibra, Hon. Tabitha Ndigirigi, Nominated MCA and Hon. Alex Oguda, MCA Mugumoini) breached section 5 (1) and (2) of the Public Order Act for failing to notify the regulating officer at least three days in advance of the intended demonstration at Langata Road Primary School.

The Head teacher as the overall authority of the school had the responsibility of giving direction especially when he realized that the situation was worsening. The Head teacher did not take any action towards restoring calm in the school and restraining the school children from leaving the school. This is corroborated by a Ministry of Education's Report which faulted the School Head teacher for not taking administrative action to restrain school children from leaving their classrooms to join the demonstration. Mr. Peter Mugo, the Head teacher, is culpable of professional misconduct in terms of the Third Schedule, section (b) (i) of the Teachers Service Commission Act of 2012 for failing to ensure that the children did not leave the classrooms during the demonstration and for failing to ensure that the children were safe and did not take part in the demonstration during school hours.

Pursuant to section 36 of the CAJ Act, CAJ wrote to Mr. Benson Kibui the Nairobi County Commander of Police vide a letter Ref: CAJ/M.LAN/022/1106/15, dated 17th April, 2015, seeking his response on the findings, conclusions and recommendations drawn out of the draft report. Mr. Kibui did not respond to CAJ's letter and therefore, he was cited for unresponsiveness **(See annexure A15)**

The Commission wrote to Mr. Elijah Maina Mwangi, OCPD Langata vide a letter Ref: CAJ/M.LAN/022/1106/15 dated 16th April, 2015 seeking his response on the findings, conclusions and recommendations drawn out of the draft report. Mr. Mwangi responded in a letter REF: SEC. Pol. 3/2/1/vol.vi/ (19), the contents of which CAJ has noted. The Commission concluded that there was dereliction of duty on his part **(See annexure A16 and A17)**.

CAJ also wrote to CI Gabriel Wanjala and IP Leonard Chea Mayaya vide letters Ref: CAJ/M.LAN/022/1106/15 and Ref: CAJ/M.LAN/022/1106/15 dated 2nd April, 2015, seeking their response on the findings, conclusions and recommendations drawn out of the draft report on account of collective responsibility. CI. Wanjala responded through his advocates Oduor Henry John Advocates in a letter dated 20th April, 2015, the contents of which CAJ has noted. The Commission went ahead to finalize the report. IP Chea did not respond to CAJ's letter and the Commission cited him as an unresponsive officer **(See annexure A18, A19 and A20)**.

Further, the Commission wrote to the Head teacher Langata Road Primary School, Mr. Peter Mugo vide a letter Ref: CAJ/M.LAN/022/1106/15 dated 2nd April, 2015 regarding the adverse findings, conclusions and recommendations contained in the draft report. The Commission noted contents of Mr. Mugo's response letter. The Commission concluded that Mr. Mugo is culpable of professional misconduct **(See annexure A21 and A22)**.

4.0 Recommendations

- i. The Teachers Service Commission should issue a warning letter to Mr. Peter Mugo, the Head teacher Langata Road Primary School in line with section 34 (3) (a) of the Teachers Commission Act.
- ii. The National Police Service Commission should take disciplinary action against Inspector Leonard Chea Mayaya and CI Gabriel Wanjalla in line with section 89 (b) and (d) of the National Police Service Act and section 11 (1) (j) of the National Police Service Commission Act by suspending the two officers for a period of six months and suspension of salary increments for a period of six months.
- iii. The National Police Service Commission should reprimand Mr. Benson Kibui the Nairobi County Police Commander and Mr. Elijah Maina Mwangi SSP OCPD Langata for dereliction in the performance of their duties.
- iv. CAJ cites the Nairobi County Police Commander, Mr. Benson Kibui and Inspector Leonard Chea Mayaya and has entered them in the CAJ Blacklist for being unresponsive.
- v. The Inspector General of Police should review and revise the Riot Manual according to current international standards contained in the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

- vi. The Inspector General of Police should ensure that there is strict accountability with regard to weapons and chemical weapons usage.
- vii. The Principal Secretary, Education should ensure that a policy for a Safety Standards Manual for Schools in Kenya is implemented.
- viii. The Principal Secretary, Education should organize sensitization and awareness training for school administrators on how to deal with emergencies.
- ix. The Principal Secretary, Education should ensure that there is proper safety practice and maintenance of adequate and appropriate safety equipment in all schools.
- x. The Inspector General should report back to the Ombudsman within a reasonable period of time with regard to progress in the implementation of the recommendations.
- xi. The Principle Secretary, Education should report back to the Ombudsman within a reasonable period of time with regard to progress in the implementation of the recommendations.