

UNIVERSITY OF NAIROBI

INSTITUTE OF DIPLOMACY AND INTERNATIONAL STUDIES (IDIS)

**CIVILIAN OVERSIGHT OF POLICE IN AFRICA. THE KENYAN AND SOUTH
AFRICAN EXPERIENCES**

KAHEKE FAITH NCHAGWA

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SUPERVISOR:

PROFESSOR PETER KAGWANJA

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INTERNATIONAL CONFLICT MANAGEMENT**

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DECLARATION

This research project is my original work and has not been presented for examination or degree award in any other institution or examination body.

Signed.....

Kaheke Faith Nchagwa

R52/74229/2014

Date.....

This project report has been submitted for examination with my approval as the University Supervisor

Signed

Mr. Peter Kagwanja

Lecturer/Supervisor

Institute of Diplomacy and International Studies

University of Nairobi

Date.....

DEDICATION

I dedicate this project report to my family for the reassurance and emotional support provided during the course of this project. You have consistently helped me keep perspective on education. To my late husband Chacha, for always believing in me and believing in my dreams. To my son, Baraka Jnr, for giving me hope every passing day. Lastly, I dedicate this work to all the victims of police injustice seeking justice with each new dawn.

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ABSTRACT

In recent years, the significance of police oversight and discussions about police misconduct have become major socio-political topics. Security and policing impact the lives of citizens on a daily basis. The police oversight bodies have had noteworthy impact on the conduct of the law enforcers; however, this has come with significant challenges. These challenges will demand sound strategies in fighting some of the illegal actions taken by the police officers as they perform their duties. It is therefore imperative to have exposure and a good understanding of the available oversight bodies, how they were formed, their mandate and their present position. It is also of importance to understand the impact they have had in police oversight along with the challenges they have faced in becoming the bodies they are presently. This study was done to establish the impact of civilian oversight agencies in professionalizing police conduct in Africa. This study compares the cases of Kenya and South Africa and seeks to specifically examine the fundamental reasons that led to the formation of IPOA and IPID in Kenya and South Africa; to examine whether the institutions have fully addressed the concerns about professionalism and misconduct of the police; to assess the challenges faced by the oversight bodies; and also to examine the capacity of IPOA and IPID to fully exercise their mandate.

It is a crucial study in that it will bring answers on various questions which relate to the impact of civilian oversight agencies in professionalizing police conduct in Africa; the challenges faced and the opportunities available for streamlining police conduct. The study also contributes to policy development most especially to governments as it suggests ways of enacting and implementing of policies aimed at improving investigations, research, inspections and other activities carried out by oversight bodies in different countries in Africa. The researcher employed desk research in order to get documented secondary data. This was presented in narrative form as discussion. Major findings reveal immeasurable need for governments to strengthen the capacity of their oversight bodies through more budgetary allocations, engagement of more staff, better training of staff, strict measures of adjustment of the length of time taken in investigations and subsequent prosecution of the guilty police officers. This will revolutionize civilian oversight and contribute to better services from the police officers in Africa.

TABLE OF CONTENTS

DECLARATION	i
DEDICATION	ii
ACKNOWLEDGEMENT	iii
ABSTRACT	iv
LIST OF TABLES	viii
LIST OF ABBREVIATIONS	ix
CHAPTER ONE:	1
INTRODUCTION TO THE STUDY	1
1.0 Introduction.....	1
1.1 Background to the Study.....	1
1.1.1 Global Outlook of Police Oversight	2
1.1.2 Regional Outlook of Police Oversight	2
1.2 Statement of the Problem.....	4
1.3 Purpose of Study	5
1.4 Objectives of the Study.....	5
1.5 Research Questions.....	6
1.6 Significance of the Study	6
1.7 Scope of the Study	7
1.8 Limitations of the Study.....	7
1.9 Ethical Consideration.....	8
1.10 Literature Review.....	9
1.11 Theoretical Framework.....	11
1.11.1 Accountability theory	11
1.11.2 Deterrence Theory	14
1.11.3 Neoclassical Organizational Change Theory	15
1.12 Research Gaps.....	17
1.13 Research Methodology	18
1.13.1 Research Design	18
1.13.2 Data Collection Methods	18
1.13.4 Data Analysis and presentation	19

1.14 Chapter Outline.....	19
1.14.1 Chapter One	19
1.14.2 Chapter Two.....	19
1.14.3 Chapter Three.....	20
1.14.4 Chapter Four	20
1.14.5 Chapter Five.....	20
1.15 Conclusion	20
CHAPTER TWO:.....	21
FUNDAMENTAL REASONS BEHIND FORMATION OF IPOA IN KENYA AND IPID IN SOUTH AFRICA AND THEIR IMPACT IN ADDRESSING POLICE MISCONDUCT	21
2.0 Introduction.....	21
2.1 Reasons that Led to the Formation of IPOA in Kenya	21
2.2 Reasons for Formation of IPID in South Africa	25
2.3 Impact of IPOA in addressing concerns about professionalism and misconduct of the police	27
2.4 Impact of IPID in addressing concerns about professionalism and misconduct of the police	29
CHAPTER THREE.....	31
AN ANALYSIS OF THE NATURE OF OVERSIGHT POLICING INSTITUTIONS	31
3.0 Introduction.....	31
3.1 Police reforms in Kenya.....	31
3. 2 The Converging roles of the institutions.....	33
3.1 Challenges Faced by IPOA in Execution of its Mandate.....	34
3.1.1 Delays in Conclusion of Cases.....	34
3.1.2 Low number of recommendations to the Office of the Director of Public Prosecutions (ODPP).....	36
3.1.3 Lack of evidence to convict	36
3.1.4 Slow Police reforms.....	37
3.1.5 Low Level of Public awareness	38
3.1.6 Inadequate Research.....	38
3.2 Encounters faced by IPID in Execution of its Mandate.....	39
3.2.1 High disciplinary hearings with low disciplinary convictions.....	39
3.2.2 Low Case Referrals by IPID to the National Prosecuting Authority	41
3.2.3 Underfunding by the Government	42
3.2.4 Citizens Reporting Police Officers for the Wrong Reasons	43

3.2.5 Lack of Evidence to Incriminate Police Officers	43
3.2.6 Low salary levels of IPID employees and therefore low motivation	45
CHAPTER FOUR	46
CAPACITY TO HOLD THE POLICE ACCOUNTABLE	46
4.0 Introduction.....	46
4.1 Citizens Involvement in Policing.....	46
4.2 Role of the government.....	47
4.3 The Media	49
4.4 The role of civil societies	49
4.5 Capacity of IPOA to Fully Exercise its Mandate.....	50
4.6 Capacity of IPID to fully exercise its mandate	52
CHAPTER FIVE:	55
SUMMARY, RECOMMENDATIONS AND CONCLUSION	55
5.0 Introduction.....	55
5.1 Summary	55
5.2 Recommendations.....	56
5.2.1 Dissemination of information to the General Public.....	56
5.2.2 Civil Society Inclusion.....	57
5.2.3 The Judiciary’s role and Rule of Law	57
5.2.4 Adequate Training of Oversight Authority’s Staff	58
5.2.5 The Role of the Government.....	58
5.2.6 The Independent Role of the Oversight Authority.....	59
5.2.7 Policy review and Dissemination of Information	60
5.3 Conclusion	61
BIBLIOGRAPHY	62

LIST OF TABLES

Table 1: Number of disciplinary cases for a period of three years from 2014/15 to 2016/17	34
Table 2: Results of disciplinary cases for three years from 2014/15 to 2016/17.....	35
Table 3: Criminal Recommendations to the ODPP and their Outcomes.....	36
Table 4: Table showing different cases and their rate of convictions.....	37
Table 5: Disciplinary hearings over a period of three years from 2014/15 to 2016/2017..... Error! Bookmark not defined.	40
Table 6: A table showing the results of disciplinary hearings for the last three years..... Error! Bookmark not defined.	40
Table 7: A table showing criminal recommendations to NPA and their outcomes.....	42
Table 8: Table showing the different cases and their rate of convictions.....	44

LIST OF ABBREVIATIONS

APF – Administration Police Force

CIPEV – Commission of Inquiry on the Post-Election Violence

FBI- Federal Bureau of Investigation

GJLOS – Governance, Justice, Law and Order Sector Reforms

IAU-International Affairs Unit

ICD - Independent Complaints Directorate

IPID – Independent Police Investigative Directorate

IPOA – Independent Policing Oversight Authority

IRM- Institute of Risk Management

KANU - Kenya African National Union

KPF – Kenya Police Force

NARC - National Rainbow Coalition

NPA-National Prosecuting Authority

NPS – National Police Service

ODPP- Office of the Director of Public Prosecutions

SAPS- South African Police Service

CHAPTER ONE:

INTRODUCTION TO THE STUDY

1.0 Introduction

The term ‘civilian police oversight body’ refers to a unit of citizens dedicated to studying and redefining behaviors of police officers. The entity gives the civilian population a way of guaranteeing that the police are answerable for their deeds as well as a way of airing their grievances and provide criticism of law enforcement operations. Peter Vedel Kessing argues that a civilian oversight authority plays a major role in ensuring that police officers perform their duties according to the law. He is however, of the opinion that police officers should always be accountable into account in every phase of an operation. He asserts that an oversight mechanism is critical in ensuring accountability in police services¹.

In his report, Mehta argues that the police has the special role of performing service to the citizens and be obedient to the law. He also observes that when involved in any wrongdoing then they should be answerable and be answerable for their reckless actions hence the need for police oversight responsible for holding police accountable to decisions made during policing as well as examining the legality, proportionate, necessity and accountability of bodies involved in law enforcement.²

1.1 Background to the Study

Historically, countries mainly desired to trust the police fully in maintenance of law and order, while the courts and the government administered some external guardianship.

¹ Peter Kessing, *Police Oversight Mechanisms*. The Danish Institute for Human Rights, 2018.

² Swati Mehta, *Police Complaints Agencies in the Commonwealth. Access to Justice Programmes*(2014) pp 21-23

However, this freedom caused an upsurge of police crime, and acts of injustice propagated by the police. This amplified the need of some measure of oversight among the law enforcers in order to attain justice to the victims, enable free movement of people, keep peace and enable furtherance of commerce. It prompted nations to begin monitoring the conduct of police in different perspectives ranging from primary organs of police oversight to other institutions with an oversight directive on issues relating to the police.

1.1.1 Global Outlook of Police Oversight

In response to crimes propagated by the police; corruption; deficiency in transparency in police dealings; and inefficiency of police in service delivery, police oversight was increasingly becoming important at different levels of governments throughout Australia, America, Central and Eastern Europe.

There was an emergence of oversight organizations in numerous forms from the 1940s; this however took a positive step in the 1970s when these oversight agencies started being felt across the world. In Australia, Canada and the United Kingdom, civilian oversight instruments took cause as early as 1970s. Earlier in 1990s, emerging powers such as India, Brazil and South Africa commenced to integrate civilian oversight as part of police reforms. These bodies were mandated the duty to oversee the conduct of police without interfering with the core duties of the police such as maintaining law and order; responding to emergencies and routine incidents; investigation of different forms of crime; and apprehending the offenders.

1.1.2 Regional Outlook of Police Oversight

In the traditional African set up, selected warriors provided security of a community until colonialism begun in 19th century, different policing structures were put in place and police force was established.³ Political resistance, cultural resistance, and religious resistance

³Richard Rosenthal, *Civilian Oversight of Law Enforcement. Assessing the Evidence*,(2016), pp. 35-47

characterized the Africans resistance to colonial rule. Africans formed alliances and fought back. For example, the war of Independence fought in Zambia between 1965 and 1979, Kenya's Mau Mau rebellion between 1952 and 1960, war in Namibia against the South Africans, battle in Angola, Guinea Bissau, Mozambique, and Cape Verde against the Portuguese between 1961 and 1974. Moreover, there were civil unrests through mass protest in some parts notably Soweto Uprising in South Africa in 1976 where students of the African native embargoed schools and ran to the streets protesting the introduction of the language of the whites as the official language of teaching. These forms of resistance necessitated use of a brutal force to compel the natives to comply with the whims of the colonizing power.⁴

In Kenya, the British colonialists to aid them in the conquest and administration of the colony introduced the police force. At independence in 1963, police force was adopted by the independent government and did not change the structures as well as the methods of operations.⁵ The police force perfected the art of brutality passed on from the colonizing power, which saw the responsible ones not punished, as there were no oversight mechanism. Because of the brutality, majority of the citizens were subjected to abuse of their human rights. Though from independence to early 2000 there was no much focus on how the police force was conducting its affairs, there were many instances where the pro-reforms demonstrations were violently settled resulting to violations of human rights.⁶ These violations were not reported nationally mainly due to a blind eye by the government on matters of human rights at that time and slightly due to media censorship by the government. The period between 2007 and 2009 was characterized by unexplained enforced disappearance

⁴Douglas Kivoi, The Achilles Heel of Police Reforms in Kenya. *Social Sciences*, 2, (2013). pp. 189-194

⁵ Kenya Police Service, *The Kenya Police Strategic Plan*. Nairobi: The Kenya Police Service (2003).

⁶Kenya National Commission on Human Rights, *Audit of the Status of Police Reforms in Kenya*. Nairobi: Kenya National Commission on Human Rights & Centre for Human Rights and Peace(2015).

and extrajudicial killings of young men in the hands of the police⁷. Young men, who had right to life, like other Kenyans were arrested by known police officers only for their lifeless bodies to be found in forests such as Karura, Ngong, Yatta, Suswa among others and even in the morgues.⁸ Others could not be accounted for despite the police being allegedly responsible in their arrest. Huruma Police Station, which serves the residents of Huruma slums was identified as one of the police stations where disappearance of young men suspected to belong to Mungiki sect which was outlawed was happening.⁹ Police misconduct and abuse of power frequently occurred in different forms which include demanding and taking bribes; torture; misuse of fire arms; physical assaults and beatings; failure to record and act on a complainants' statements; interferences in criminal cases to effect the outcome; failure to take action; holding personal grudge and pursuing vendettas with civilians among others. This together with the acts of post-election violence in 2007 necessitated creation of a body of oversight.

In South Africa, the formation of civilian oversight bodies was mainly because of a lengthy history of severe violations of human rights and essential freedom by the South African Police Service (SAPS) with informing point being the heinous acts committed during the post-apartheid reforms in South Africa in 1997.

1.2 Statement of the Problem

The modern-day policing oversight is full of loopholes and inconsistencies that need to be looked into. Many cases that have had investigations have shown vulnerability especially in cases to do with corruption and misconduct. Some officers are usually untouched by exposes

⁷Kenya National Commission on Human Rights, *The Cry of Blood: Report on Extra Judicial Killings and Disappearances*. Nairobi: Kenya National Commission on Human Rights (2008).

⁸ Amnesty International, *Police Reform in Kenya : A Drop in the Ocean*. London: Amnesty International Publication (2013).

⁹Kenya National Commission on Human Rights, *The Cry of Blood: Report on Extra Judicial Killings and Disappearances*. Nairobi: Kenya National Commission on Human Rights (2008).

of corruption. This demand for a change of tact and creation of strong counter measures aimed at mitigating any loopholes in the system. This will prevent misconduct becoming widespread and a common issue in oversight bodies. It is no longer about whether or not the guards need guarding, but of coming up with the best form of guardianship. Diverse range of effective strategies and systems are necessary in emerging with a favorable external body free from peer pressure, and loyalty to police.

Even with the existence of these institutions, there are widespread concerns of gross police misconduct, mishandling of complaints from the public and unprofessionalism among the police to date. This research work also seeks to find out reasons contributing to these concerns given that the oversight agencies creation was to bring about change of the police services into competent and responsible services that are able to provide and ensure security for all citizens and observe morals of professionalism and respect for the constitutionally guaranteed freedoms and rights.

1.3 Purpose of Study

This study pursued to evaluate the impact of civilian oversight agencies in professionalizing police conduct in Africa. This happened through analysis and discussion of the similarities and the differences in police oversight in both Kenya and South Africa and offer possible recommendation on the best causes of action to restructure the operations of the oversight bodies in the two nations.

1.4 Objectives of the Study

The general objective of this research was to evaluate the impact of civilian oversight agencies in professionalizing police conduct in Africa.

The particular objectives include the following:

1. To examine the fundamental reasons that led to the formation of IPOA and IPID in Kenya and South Africa.
2. To examine whether the institutions have fully addressed the concerns about professionalism and misconduct of the police.
3. To assess the capacity of IPOA and IPID to fully exercise their mandate
4. To examine the strategic measures that could ensure that the oversight bodies thrive in execution of their mandate

1.5 Research Questions

This research study targeted to answer the following questions:

1. What are the fundamental reasons that led to the establishment of IPOA and IPID in Kenya and South Africa?
2. Have the concerns about the professionalism and misconduct of the police been fully addressed by IPOA and IPID?
3. What capacity do IPOA and IPID have to fully execute their mandate?
4. What are the strategic measures that need to be put in place to ensure that these institutions thrive in executing their mandate?

1.6 Significance of the Study

A thorough examination of civilian oversight bodies on the work of police is important because it is here that the researcher gets to find out the underlying issues impeding these bodies from achieving their primary goal of restoration of confidence among the members of the public in law enforcement agencies work. The study contributes to the available knowledge about the impact of civilian oversight agencies in professionalizing police conduct in Africa; the challenges faced and the opportunities available for streamlining police conduct.

The study also contributes to policy development most especially to the governments as it suggests ways of enacting and implementing of policies aimed at improving investigations, research, inspections and other activities carried out by oversight bodies in different countries in Africa hence effective oversight of the National Police Service. Measures that are more effective will be put forward to ensure that the oversight bodies in place will oversee the conduct of the police at a greater capacity.

This research is also important, as it will inform the public on the avenues they can use to get justice. This is because only few people know about civilian oversight bodies. It is through this also that they are going to be encouraged to work hand in hand with these bodies in order to help get transparency and accountability in police service

1.7 Scope of the Study

This study evaluated civilian oversight agencies' impact in professionalizing police conduct in Africa. The researcher did this by analyzing the similarities and the differences in police oversight in both Kenya and South Africa. Moreover, reasons for formation of policing oversight bodies in the two countries were explained and their capacity to exercise their mandate. The study has covered opportunities for improvement through a discussion of the best causes of action to restructure the operations of the oversight bodies in the two nations

1.8 Limitations of the Study

The Independent Policing Oversight Act became law in 2011 but it was until 2012 that the Independent Policing Oversight Authority (IPOA) commenced operations and has since been working for only seven years. Based on this, researching on the impact that the oversight agency has made in inculcating professionalism would be challenging due to the limitation of the short life of IPOA. However, the researcher conducted an in depth research in a variety of written reports, books and journals about IPOA to acquire adequate information. Due to the

short span of IPOA's existence, the research acknowledges various police services around the world. The global security sector has changed dynamically since the 21st Century and progress can be visible after a review of global successes and failures. It is with this in mind that the researcher illustrates and compares the diverse functions of the national policing sector in different countries. This study happened during a period where security and police conduct is a subject under deep scrutiny in Kenya on social media, broadcast and print media, the three arms of government and the public. The public through personal experiences has constructed various perceptions of the police and other public institutions. It is upon this notion that the research is significant in order to build upon other studies that may have otherwise employed bias.

The researcher anticipates access to information as a major constraint. This is because police information is termed as classified due to security concerns and therefore not all police officers can comment on issues touching on the police. Due to the foregoing, the research has employed the use of secondary data from reliable sources. Even though access to information may limit the findings in the study, information from IPOA and other public institutions should be adequate

1.9 Ethical Consideration

The researcher avoided plagiarized work, which would equal stealing other people's works, which would erode the researcher's integrity and lead to serious professional repercussions. Public institutions fundamentally derive their creation from ethical principles and practices and it is upon this basis that this research considered the importance of maintaining the legitimacy in collected information and its analysis. The researcher considered the dignity and safety of participants mentioned in various reports to the extent of privacy but still did not hinder the analysis of findings.

1.10 Literature Review

During the Cold War, policing institutions were used to sustain authoritarian and totalitarian regimes. Terms such as security sector reforms gained prominence in societies transiting from Authoritarianism to Democracy.¹⁰ The first civilian oversight agencies were established first in the form of police commissions during in the 19th and 20th centuries. The police commissions had little expertise in policing and they ultimately failed due to infiltration by politicians as well. Later, civilian oversight was transformed, and began to take effect in American cities such as Philadelphia, Washington D.C., and New York City. They began mainly as a result of conflicts between the police and African Americans as early as 1900s. However, they were unsuccessful, as they were not resourced well, and did not achieve much past receiving and reviewing complaints against police misconduct. Eventually, the resistance encountered by the police officers triggered abolition of these review boards. Civilian oversight rose to another level in the 1960s. Included in this was complaints from office of Citizen and the Public Review Commission but these used other agencies in investigation of police conduct. Moreover, they had enriched resources, more authority, and more strength.

In U.S every state has a Police oversight mechanism that is mandated with putting in place measures to enhance accountability and integrity of the police. It is mainly meant to institute, reinstate or improve the trust of the members of public by building legitimacy which is a requirement for operative policing¹¹. For instance, in New York, the state has Civilian Complaint Review Board, California has Office of Citizen Complaints, State of Washington has the Office of Police Complaints while the state of Colorado has the Office of independent Monitor. These police oversight authorities are lawfully mandated with preventing, detecting and investigating misconduct and corruption by police officers; ensuring suitable

¹⁰African Policing Civilian Oversight Forum, *An Audit of Police Oversight In Africa*. Cape town: APCOF (2008).

¹¹Richard Rosenthal, *Civilian Oversight of Law Enforcement. Assessing the Evidence*, 2016, pp. 35-47

investigation and management of grievances against the police officers, and to deliver answerability for the use of powers of the police. The mechanisms to protect the rights of the civilians and ensure ethical conduct of the police force have seen development of varying oversight mechanisms with some being internal to police organizations while others are considerably independent and outside the police organizations.¹²

In their 2011 report, Randall and Ramirez observe that the success of police oversight mechanisms depends on different variables. These range from past traditions to current level of the strength of civil societies, strength of democratic institutions and pressure groups, and the willingness of those in authority to accept higher degrees of civilian oversight with matching reduction in independent powers of the police. Moreover, Miller¹³ identifies police cooperation, political support, activists support, management, leadership, resources and public attitudes as features that could influence the development of police oversight.

In China, Independent Police Complaints Council (IPCC) is the body mandated with monitoring and reviewing the complaints against police by the public¹⁴. According to this report, IPCC monitors and reviews the complaints against the police by the public, detect any culpabilities in police actions that might lead to complaints and make recommendation to police commissioner in order to implement police force reforms. Further still it is argued that community-policing mechanisms form part of police oversight mechanisms aimed at enhancing accountability at the local level.

Police oversight mechanisms in different countries started either through legislations or by requirement of a country's constitution. This therefore gives them different capacities when it

¹²Randall S., & Ramirez J., *Policing the Police: Formal and Informal Police Oversight Mechanisms in the Americas*. Calgary: Canadian Defence and Foreign Affairs Institute, 2011, p. 16

¹³Joel Miller, *Civilian oversight of policing: Lessons from the Literature*. Global meeting on civilian oversight of police. Symposium conducted at the Vera Institute of Justice, Los Angeles 2002.

¹⁴Pyo C., *Examining Existing Police Oversight Mechanisms In Asia*. New Delhi: Asian Association of Police Studies. 2008, p.2.

comes to oversight of the conduct of police force.¹⁵ Some have powers to recommend corrective matters and implement major decisions while others have the power to evaluate appeals made after the first police inquiries of a complaint.

Scholars have taken different sets of arguments on the issue of oversight and its effectiveness. Many have raised the argument that addressing complaints of misconduct better requires the civilian population to be involved than when the police act for themselves. Further, Walker focuses on complaint assessment and places of interest a number of opinions that points towards this end. For instance, many have pointed out that oversight safeguards investigations and thus makes them fair; leads to sustainability of more complaints; successful disciplinary actions, and police misconduct is prevented. Others argue that police develop better strategies and more reactive priorities to the community with involvement of the civilians than on their own.¹⁶

1.11 Theoretical Framework

A theory refers to a fact that attempts to explain the causality relationship between observed phenomena rationally and credibly. A theoretical review therefore forms the connection between the practical components of the area of focus and its theoretical aspects¹⁷The three theories that underpin this study are as discussed.

1.11.1 Accountability theory

Lerner, Tetlock, and colleagues, developed this theory. Later, it has been explained by various scholars with most notable ones being Egget, Lowry, and Vance¹⁸ who explained accountability theory as ways through which the need to justify an individual's actions to

¹⁵Philip Alston, *Study on Police Oversight Mechanism*. New York: United Nations Human Rights Council 2014.

¹⁶Joel Miller, *Civilian Oversight of Policing: Lessons from the literature*. Los Angeles: Vera Institute of Justice(2002).

¹⁷Allan Bryman, *Social Research Methods*. New York: Oxford Publishers(2001).

¹⁸Anthony Vance, Lowry Paul Benjamin, and Eggett Dennis, "A new approach to the problem of access policy violations: Increasing perceptions of accountability through the user interface," *MIS Quarterly (MISQ)*, vol. 39(2), (2015) pp. 345–366.

another individual makes them to consider themselves accountable for the manner in which judgment and decisions have been arrived at. This prompts that individual to think deeply about their behavior.

Accountability as a mechanism refers to the process through which an individual is potentially obliged to explain their behavior to another individual with the ability to exercise verdict on the behavior, and respond by administering negative or positive consequences. However, accountability as a virtue refers to is the desired trait of willingness to accept responsibility especially among the public officials, government agencies/entities and private firms

This theory has four core components: one, Identifiability, which refers to an individual's awareness that their outputs can be associated to them directly to expose their character; two, expectation of evaluation, which refers to the certainty one has that their behavior will be assessed by another based on some rules and with implied consequences will assess a person's performance; three, cognizance of monitoring which refers to an individual's state of active awareness that their work is being monitored and: four, social presence, which refers to cognition of other users in the system.

Police have been witnessed violating human rights for a long time, involving themselves in gross misconduct, serving the elites at the expense of the poor taxpayers, not being accountable in their dealings as they have a super power that defends them. A proper understanding that police actions are being monitored and could have severe consequences linked to their actions would help the police to be accountable for their conduct and therefore keep themselves away from unprofessional actions. This would make them obey the law and therefore treat citizens in a lawful, unbiased and respectful manner.

Accountability theory proponents support democratic policing. Democratic policing refers to policing which is both responsive and accountable to the wants of the community. It is open to independent oversight by civilian authorities and people's contribution to the policing is appreciated. To achieve democratic policing, it is important to enhance integrity and accountability of the police¹⁹. This will create, increase or re-establish public acceptability which is critical for any successful policing. Along with accountable policing, the government should ensure professionalism among the police officers through a series of training on specialized skills, putting in place moral codes and internal principles of work among the police.

Accountability theory demands that the oversight agencies must ensure that officers do not let their individual interests hamper their public position. It is their obligation to avoid conflicts of interests. The oversight agencies must ensure that the police do not take gain of their public positions for their own personal interest or that of their families, friends or groups with which they have a relation. Dishonesty practices constitutes a stern criminal offence as it distorts impartial delivery of police services. In line with accountability theory, officers should not get involved in acts of corruption, but rather oppose such acts. It includes solicitation or acceptance of any favor, gift, money, reward, article of value or promise whether indirectly or directly by a police officer whether for themselves or for any party, for any omission or any act committed, or yet to be committed in future. A functioning mechanism to enforce and oversee high anti-corruption standards is necessary to guarantee just investigations and prosecute/punish without affection, fear or favor, or ill will everybody who engages in corruption notwithstanding their rank.

¹⁹Samwel Walker, *Police Accountability: The role of citizen oversight*. Belmont: Wadsworth Publishers(2001).

Proponents of this theory also require the policing oversight bodies to ensure that the police are able to stand and protect democratic political activities and processes without taking sides. In order to gain public confidence, the police must prove competence and truthfulness by adhering well to the code of professional conduct. The policing oversight bodies should ensure that the police use discretion when enforcing the law and that they establish a high degree of honesty in their work and be willing to battle lures to abuse their powers, and adhere to the values²⁰

Accountable and democratic policing should also go hand in hand with acceptance of the oversight body by the police. Effective accountability is a mandatory requirement if the police are to realize legitimacy and lawfulness. Police officer should be able to account for their behavior and they should accept to be investigated about their actions and decisions. In line with this, they must also agree to the penalties imposed if found guilty of misconduct. Such penalties should include sanctions and partial to total compensation of the individuals who become victims of their misconduct.

1.11.2 Deterrence Theory

Deterrence theory is a theory in criminology which has its roots from the works of Jeremy Bentham and Cesare Beccaria. The theory was developed in the eighteenth century and it explains crime and provides a method for reducing it. It is based on three components namely celerity, certainty and severity. Celerity means that an immediate reprimand is necessary to discourage misconduct. Certainty means that every time a crime is committed, those who committed the crime should get a certain or a sure punishment. Severity reflects to the fact

²⁰Errol Mendes, *Democratic policing and accountability: global perspectives* Aldershot. Ashgate publishers, (1999) pp. 14-18

that a rational human being is likely to abstain from committing a crime if they think that the punishment will be very severe²¹

Deterrence theory provides that if people knew they would be punished from their wrong doings, they will always try in the future to abstain from creating the same offense. Moreover, it provides that if a reprimand is swift and severe, a normal person will evaluate the possible gains and losses and will be discouraged from defying laid down rules if the loss is greater than the gain.

In line with deterrence theory, the existence of IPOA and IPID can deter the police from engaging in misconduct and embrace the legal procedures put in place in their policing operations. Knowledge by the police that any disciplinary behaviour or criminal act will attract an instant severe punishment will deter them from committing crime.

1.11.3 Neoclassical Organizational Change Theory

This theory was developed by Max Weber and it identifies the importance of having a proper and working structure whereby despite the fact that subordinates take instructions from their managers, they have right to contest and appeal the instructions. In other words, everyone in an organization or any work environment has the opportunity and right to disagree or air grievances when they do not agree with some issues²². Notwithstanding knowing that some of their actions are unprofessional and inhuman, some police officers continue to perform these acts in the name of executing orders issued to them by their supervisors. There is a culture in majority of African countries regarding police officers where an individual is expected to execute orders then question the reasons later.

²¹Stephen Quackenbush, *Understanding general deterrence: theory and application*. Basingstoke. Palgrave Macmillan (2015).

²²Özgür Önday, *Neoclassical Organization Theory: From Incentives of Bernard to Organizational Objectives of Cyert and March* European Centre for Research Training and Development, (2016), Vol.4, No.1, pp.83-94

Classical organizational theorists argue that for authority to be effective, there must be accountability. The fear of losing favor or disciplinary action being taken, bribery and intimidation should be eliminated if professionalism within police service is to be achieved. Promotion of officers has mainly been seen as based on the relationship between the subordinates and the commanders but not on performance; and also on how much you can offer for such promotions. This has in turn led to low morale among the police officers who merit these promotions²³. This theory provides that treatment of employees with friendliness and respect leads to positive environments and more productivity. Employees should be directed towards achieving expected results. It is therefore the responsibility of the management to create an environment of value, creativity, purpose, cohesiveness, and enhanced effectiveness and efficiency.

Neo-classical organizational change theory proponents assume that individuals in societies need to collaborate and thus the duty of the administrative body is to build and uphold good morals and purpose. The executive is also meant to nurture formal and informal communication links between the employees and their seniors to safeguard that the preparedness of people to work together prevails²⁴. The neo classical organizational change theorists have provided the motivation to break the monopolistic dominance and have paved way to the open door policy that has seen the enhancement of politics, human relations, power, modern structural systems and organizational culture perspectives of organizations.

The true measure of a reformed police service in regard to this theory should be reflected in the performance of its employees (the police) and in exercising their right to contest and appeal wrong or oppressive instructions from their seniors. This will help them execute orders which are human, just and desirable. This theory also offers an implication to policing

²³Edwin Delattre, *Character and cops*, Washington D.C, AEI press (2006)

²⁴Don Cohen & Lawrence Prusak, *In good company: how social capital makes organizations work* Boston, Harvard Business School Press (2001)

as it encourages formulation of strategies and measures that will ensure incidents of alleged misconduct are reported with no fear; investigated transparently; and ensure disciplinary measures are taken appropriately.

1.12 Research Gaps

The study identifies a gap in Neoclassical organizational change theory which states that subordinates have the right to contest and appeal instructions from their managers and therefore everyone in a work environment has the opportunity and right to disagree or air grievances when they do not agree with some issues. In the context of police service in many countries of African continent, this is far from the actual situation on the ground. As it has been and as it is currently, police officers do not have the freedom to challenge or question any instructions issued to them by their seniors due to fear of being castigated, fear of loss of their freedom within the service, fear of demotion and even loss of their jobs.

Despite extreme studies being conducted on policing oversight bodies, there appears to be insufficient literature explicitly covering the ways in which oversight bodies such as IPOA and IPID can create and sustain public confidence in police service. The specific areas, which these bodies can tap into to enable them encourage good working relationships between the public and the police and which can help build professionalism among the police is also of critical importance. This is particularly in African countries such as Kenya and South Africa. Most of the reviewed literature is foreign and some is biased towards private oversight organizations and not government bodies. Majority of the research conducted locally is mainly state funded or funded by civil society groups and therefore some key findings have the chance of being biased towards addressing the particular needs of those institutions, thus legitimizing the need for this research.

1.13 Research Methodology

1.13.1 Research Design

Research design refers to the overall strategy used by a specific researcher to integrate different components of study in a coherent manner to enable them address the problem under research.²⁵ This study seeks to explore and assess the history of police oversight and its adoption in Kenya and South Africa. The case studies being used in the research are significant because they helped bring out the current situation of police oversight agencies, the challenges that they face in order to help deduce best practices that can be put in place to overcome these challenges.

This research work employs descriptive research design because of its relevance in description of variables without influence of the researcher. The design was deemed the best by the researcher because it was suitable for desk research method of collection of data and analysis. Mugenda asserts that this design is best in scenarios in which some factors are known by the researcher as causing the problem.²⁶

1.13.2 Data Collection Methods

The researcher employed desk research in order to get documented secondary data. The data sources comprised of archival materials, published books, published reports, government papers, academic journals, and contemporary articles. The research used literature written and compiled by different scholars and groups who have done extensive research on civilian oversight and police reforms besides reports from both IPID and IPOA. In the present study, secondary data collected about the number of cases reported to the oversight bodies, number

²⁵Clive Seale, Giampietro Gobo, Jaber Gubrium, & David Silverman, *Qualitative Research Practice*. London: Sage. London: Sage Pub.(2004).

²⁶Olive Mugenda, *Research Methods: Quantitative and Qualitative Approaches*. Nairobi: . Nairobi: Acts Press.(2003).

of cases forwarded for prosecution, and number of police officers convicted in both Kenya and South Africa from 2015 the month of July to June 2018.

1.13.4 Data Analysis and presentation

Data analysis was done through explanatory and descriptive analysis, making careful observations of similarities, differences and the factors behind them. A comprehensive examination of what IPOA and IPID oversight bodies have achieved and the challenges they have faced in execution of their mandate is provided. Text and tables are used to present the findings of the research and a keen comparison and cross referencing of information gathered offers applicable conclusion. From the conclusion, appropriate recommendations were made.

1.14 Chapter Outline

The study is presented in five chapters.

1.14.1 Chapter One

This chapter introduces the background to the study, illustrating how police oversight is viewed both globally and regionally. It outlines the statement of the problem, focusing on the area of study and how the study will attempt to address the problem. It goes ahead to give a detailed literature review, the theoretical framework applied, the research gaps identified and methodologies to be used.

1.14.2 Chapter Two

Chapter two, which is connected to the first objective, lays down the fundamental reasons that led to the formation of the oversight agencies, looking at what triggered policy makers to recommend for oversight bodies. For instance, historical injustices propagated by the then police forces. This chapter also goes ahead to document the impact that both IPOA and IPID have made after their formation.

1.14.3 Chapter Three

This chapter analyses the nature of oversight bodies looking into what each institution entails in order to ensure that police do what they are supposed to do, the converging roles of the institutions and any laws that have been enacted to guide in the performance of their work. It also probes into the challenges that they have been facing.

1.14.4 Chapter Four

Chapter four assesses the capacity that these oversight bodies have to fully exercise their work. The role of the government, the citizenry, the media, civil societies. It also assesses if they are adequately funded, if they have technological equipment, research and investigations and effective manpower.

1.14.5 Chapter Five

This chapter examines the strategic measures that could ensure that the oversight bodies thrive in execution of their mandate.

1.15 Conclusion

From the discussions above, it is clear that despite the presence of civilian oversight bodies, there are key matters that require to be addressed to ensure that they work independently and effectively, with the support from both the government, civil societies, the citizenry among others. The next chapter, delves into establishing the fundamental reasons that led to the formation of these institutions looking closely also on the impact they have made given the few years that they have been in existence.

CHAPTER TWO:

FUNDAMENTAL REASONS BEHIND FORMATION OF IPOA IN KENYA AND IPID IN SOUTH AFRICA AND THEIR IMPACT IN ADDRESSING POLICE MISCONDUCT

2.0 Introduction

In the previous chapter, essential lessons have been learnt about the factors which led to necessity of police oversight at a global perspective and also in a regional perspective. It has been learnt that an effective oversight of police conduct is essential in promoting adherence to the law and justice to the people who suffer in the hands of the police.

This chapter looks at the case of Kenya and South Africa in detail and the main reasons for the formation of oversight bodies in both countries. Moreover, their impact in addressing concerns about professionalism and misconduct of the police is provided with regard to the most notable achievements they have reached.

2.1 Reasons that Led to the Formation of IPOA in Kenya

Colonial Policing

The British, who colonized Kenya used the Imperial East Africa Trading Company to enlarge its welfares without capitalizing on national resources. This company set in place a management with a fortified security force in 1986 with stations being put in place to protect its trading centers. Most of the officers who served were drawn from watchmen and from police from India and were administered by the Indian laws. An additional security force was created before end of 18th century to protect the building and upkeep of the Kenya - Uganda railway. In 1880s, the British had officially taken over leadership in the whole region. There

emerged an opposition to the colonial masters from the indigenous people.²⁷ This matter led to a need for a police force to subdue the opposition. Due to this, in 1906, the Kenya Police was put in place. Sir James Hayes Sadler selected a committee to facilitate the police where one of their recommendations was to have an established training school for the police. This led to the opening of a training depot in 1911.²⁸ The Kenya Police was instituted in 1920 and Africans were employed to fill the lowest positions as opposed to Europeans and Asians. Training was given to the lowest ranks and special units were created, for instance the fingerprint bureau, composing of ex police officers from Britain and South Africa. In 1948, Kenya Police Reserve was established to complement the police force. Their main aim being to ensure that there was backup in emergency times and assimilating the increasingly anxious settler populations into security procedures. Another unit referred to as the Dog section unit was put in place. A General Service Unit was established to dispose in emergency state of affairs. In 1949, the Police Air Wing was shaped to help in communication and quick clearing of sick people to health facilities. All this while, the police was used as an instrument of the foreign administration. There was a huge detachment between the police and the local communities which was crudely polarized during the emergency period between October 1952 and January 1960.

The Emergency Era

The unrest created by rebellious groups in Kenya triggered distress among the colonizers. The most disreputable group was the Mau Mau Rebellion that was active towards the end of the 1940s and beginning of the 1950s. An Emergency state was declared in 1952 and ended in 1960 and the military succeeded the police as the chief law enforcers. Suppression of the Mau Mau uprising was characterized by brutality against civilians with detention camps

²⁷Anthony Clayton & David Killingray, *Military and Police in British Colonial Africa*. Ohio University Press, (1989).

²⁸ Kenya Police, *Kenya Police Reports Framework*. Pg 7 (2004)

being put in place to torture people alleged to having sworn the Mau Mau oaths in order to get their confessions. The CID and the Kenya Police Reserve led in propagating this viciousness and misconduct.²⁹ They developed torture as an instrument to compel people into confessions and they entirely affiliated themselves to the administration in power at that time and as the country moved to self-rule with the unchanged police units, structures and officers, it became predictable that the same culture would spill over to the new post-independence era.

The Independence period

The emergency era ended in 1960 and in 1961, Kenya held its first general election forming the first government headed by Jomo Kenyatta. A meeting was held in Lancaster house to finalize the legal and political systems that would rule the country. Numerous draft constitutions were recommended, deliberated upon and overruled until one was adopted that led to self-rule in Kenya under Kanu government and later complete independence attained on 12th December 1963. The 1963 constitution provided requirements that were aimed at establishing a skilled and impartial police force. It bestowed power to the police and envisioned that police would be established by legislation and supervised by a Police Service Commission and National Security Council. However, the police became an extension of the public service through a constitutional amendment in 1964.

During the mid-1980s, opposition grew inside the civil societies. There were a number of underground movements like the Mwakenya. Alleged affiliates of the Mwakenya were arrested and taken to the infamous Nyayo House police head quarters and more than 70 people were punished of charges of mutiny amongst claims of bogus trials and torture, with the police being perpetrators of this cruelty. With lack of sovereign prosecutors, law

²⁹Caroline Elkins, Britain's Gulag: The Brutal End of Empire in Kenya. Jonathan Cape, London (2005)

enforcement agencies were not answerable to anybody outside the ruling government. There were also political assassinations during this phase and police officers were implicated in deaths and concealing of deaths of people who diverged from the government views.

Current Policing

Kenya as a country, witnessed a major setback in the 2007 post-election violence that led to an urgent call for reforms. This was aimed at ensuring that the police were professional and accountable to the public. The Police Reforms Taskforce Report which was also termed as the Ransley Report, reviewed the police organizations and systems and suggested comprehensive reforms to the police service³⁰. These included the formation of a National Police Service to put together the Kenya National Police and the Administration Police under the leadership of one Inspector General. Another one was the creation of a National Police Service Commission (NPSC) to manage the employment and conduct of police officers. Thirdly was the formation of an Independent Policing Oversight Body to independently investigate serious grievances of police wrongdoing and recommend appropriate action. The Constitution of Kenya, that was passed into law in 2010, brought with it a new structure, and new regulations were put in place to fully inaugurate the three institutions.

Commission of Inquiry into the Kenyan post- election violence of 2008 reported that police were the greatest hindrances of police restructurings observing that they have been sluggish in accepting that police reforms are essential and further are hesitant to consent that civilians, have a role to play in influencing policy and police reforms. The foreign policing practice had shaped the police into an instrument of harassment and dictatorship of civilian opposition. Eventually, unaccountability and impunity became an absolute feature of the Kenya police. The problem of impunity and lack of accountability in policing became manifest in the course

³⁰KNCHR, (2009) *Simplified version of the report of the National Task Force on Police reforms* Nairobi, Kenya National Commission on Human Rights.

of the post-election violence of 2008. Waki report revealed that the police were involved in fueling the political misgiving through their biased actions before the elections and in extensive murders as soon as the violence commenced. As the report accounts, deaths resulting from police action accounted for 405 of the reported 1,133, constituting 36% of the total deaths and making police shootings the major cause of the deaths during the period³¹. The need for police reforms for better culpability was made clear after the elections leading to the establishment of the Ransley Task Force which made imperative and wide-ranging recommendations on the conversion of the police into a contemporary, autonomous service.³²

The Independent Policing Oversight Authority (IPOA) was formed in 2011 with an objective of providing civilian oversight of the functions of the National Police Service as provided in section 6(c) of their Act No 35, of August 2011. The main aims of the Independent Policing Oversight Authority as provided in the constitution was holding police officers accountable, handling complaints against them and enforcing the constitutional requirement that all the police officers should strive for discipline, professionalism, accountability and transparency.

2.2 Reasons for Formation of IPID in South Africa

Between 1948 and 1990 in South Africa, the then reigning party applied a strategy of apartheid which separated indigenous sets and restricted the rights of the non-Caucasians. A notable incidence happened in 1976 where the security forces viciously attacked students who were demonstrating because they wanted to have a right be educated in their native language, many of the protesters died on this day.³³

³¹Njau R., O'maera, M., & Chiliswa Z., *Lest we forget: Insights into the Kenya's post-election violence* Nairobi, Jesuit Hakimani Centre (2009).

³²Phillip Waki, *Report of the commission of Inquiry into Post Election Violence (CIPEV)*, Nairobi, Government printer, (2008).

³³United Nations, *A Crime against Humanity: Questions and answers on apartheid in South Africa*, Paris, United Nations publication (1976).

In 1990, apartheid came to an end and a negotiated political alliance came into being. This development led to an interim constitution and independent elections being held in 1994. The transition gave birth to a two-house parliament that implemented a long-lasting constitution in 1996 which enshrined the rule of law and constitutional rights. In addition, the new constitution advocated for culpability of the government and its agencies.

An outright statistical indicator which is easily obtainable pertaining illegal forceful activities by the SAPS relate to the period between April 1997 to March 2000 where 2174 individuals in South Africa died as a consequence of police actions or while in the hands of the police. The number that died due to police operations reached 1548 while 626 died in police custody. Approximately 70% of the deaths were caused by police force and brutality. Nevertheless, there is no substantive indication as to what percentage of these deaths may be the as a outcome of unlawful actions by the police and thus what percentage may be thought to be resulting from police brutality³⁴.

During the apartheid years, the police in South Africa were seen as brutal both in their response to political protest and resistance and in their dealings with the civilians in broad terms. Therefore, during the transition to democracy, one of the key concerns was to make sure that the police in the self-governing South Africa would serve the general public and operate in adherence to human rights principles. One of the steps taken to address these concerns was the creation of an Independent Civilian Oversight Body (ICOB) with the first being the Independent Complaints Directorate (ICD). The establishment of this directorate was laid down in Section 222 of the Provisional Constitution. This stated “*There shall be established and regulated by an Act of Parliament, an independent mechanism under civilian control, with the object of ensuring that complaints in respect of offences and misconduct allegedly committed by members of the South African Police Service are investigated in an*

³⁴Annete Seegers, *The military in the making of modern South Africa* London, Tauris Academic Studies (2006).

effective and efficient manner.” In 1996, after the SAPS Act was made into law, South Africa adopted the ‘new’ Constitution, which provided for an independent police complaints organization in relation to section 206(6). However, it became apparent in 2005 that there was some level of dissatisfaction about the functioning of the ICD. After a series of hearings on the issue, the Portfolio Committee on Police compiled a report that recommended that there was a need for the ICD, as well as the Civilian Secretariat for Police, to be restructured and the ICD’s mandate to be reconsidered.³⁵ A 2009 review by the Portfolio Committee also made various recommendations relating to the ICD, including a recommendation which suggested for the ICD to be removed from the SAPS Act. A Bill providing for the creation of the IPID was initially tabled by the Minister of Police in 2010. After public hearings, including amendments to the Bill, the IPID Act was passed as Act 1 of 2011. On 1 April 2012, the Act came into operation and the ICD became the IPID.

2.3 Impact of IPOA in addressing concerns about professionalism and misconduct of the police

Despite IPOA serving for only seven years to date, it has managed to ensure that majority of police officers comply with human rights standards. The authority has been able to receive and process 13,000 complaints against police officers from various sources ranging from citizens and non-citizens to human rights activists and other non-governmental organizations thorough calls; e-mails; and its strong network of social media platforms. Out of these complaints, it has forwarded around 5,200 complaints for investigation cases and has completed about 850 investigation cases on deaths and serious injuries occasioned by the police. The body has also given around 200 actionable recommendations to the NPS, NPSC,

³⁵Monique Marks, *Transforming the Robocops: Changing the police in South Africa* Scottsville, University of KwaZulu-Natal Press (2005).

and Ministry of interior and the National Assembly. The authority has also managed to monitor around 160 police operations to identify cases of violations of human rights³⁶.

IPOA has also taken part in the process leading to prosecution of a number of police officers as it has managed to forward 120 cases to DPP recommending prosecution. 60 cases have thus far been filed in court for prosecution and 6 convictions have been obtained.

The authority has been able to perform different activities in efforts to restore public confidence and trust in the police. To date, IPOA has carried out outreach programmes in 32 out of the 47 Counties in Kenya; have been able to monitor the 2014 police recruitment and make recommendations for successful annulment of the exercise through High Court Petition No.390 of 214 and Civil Appeal No. 324 of 214 on the grounds of inappropriate recruitment decisions; the authority has also have opened 8 regional offices and has contributed heavily to the establishment and strengthening of IAU through holding monthly meetings between NPS and IAU; successful lobbying for establishment of an independent office; lobbying for implementation of Integrated Information Management System; lobbying for increased number of officers serving IAU; and lobbying for IAU budget provision through the IGs budget line. Moreover, IPOA has prepared informative reports about policing and police service. Notable reports include a report on gender perspective within the Police Service and a report on child protection unit and access of the police stations by people with disabilities. In line with restoration of public trust, IPOA has contributed to implementation of the recommendations of the Baseline survey conducted on the perception of Kenyans, including Police Officers on policing. A notable recommendation include emphasis on instituting community policing framework by NPS grassroots commands³⁷.

³⁶ Independent Policing Oversight Authority, *Annual performance plan 2018/2019* Nairobi IPOA

³⁷Independent Policing Oversight Authority, *Annual performance plan 2018/2019* Nairobi IPOA

IPOA has managed to conduct 950 inspections of detention facilities and police premises through holding dialogues with station commanders on IPOA's recommendations towards improvement of these areas and this has contributed to improvement of around 800 stations and 50 prisons to international standards.

The authority has embraced global practices and standards such as development of policies, guidelines and tools for Investigations, Inspections and Monitoring with the guidance of consultants from New Zealand, UK and US. Moreover, IPOA staff have had trainings about policing from different countries with most notable ones being international training of management and technical staffs at the international law enforcement academy in Roswell, New Mexico, and in Gaborone, Botswana; training by UK based consultants for IRM staff and Investigators; and FBI in-house training of investigators

2.4 Impact of IPID in addressing concerns about professionalism and misconduct of the police

The most significant achievement of IPID has been its contributions to reduction of corruption. IPID has been on the lead in the fight against corruption in South Africa. In a single instance, IPID's investigation resulted in preventing losses accruing to R45 million and another corruption scandal which had not been detected for years involving amounts more than R5 billion.³⁸

IPID has made big steps leading to improved investigation of cases from their special training of its investigators. Cases of police misconduct are currently handled by specialized investigation experts who analyze and secure evidence leading to potentially highly effective litigation processes.

³⁸Independent Police Investigative Directorate, *Annual performance report 2018/1019* Johannesburg IPID

IPID has significantly achieved in its outreach efforts. Many of its top most cases, for instance, the court case with regards to the independence of IPID received huge media coverage and consequently it profiled IPID widely in all corners of the country. Widespread media reporting has caused an increase in public trust and public awareness of the aforementioned role. The civilian body has also conducted more than 500 outreach programs nationwide to inform the public about IPID's mandate.

CHAPTER THREE

AN ANALYSIS OF THE NATURE OF OVERSIGHT POLICING INSTITUTIONS

3.0 Introduction

The main reasons for the formation of IPOA in Kenya and IPID in South Africa have been discussed. The paper has also examined the key indicators of the impact that these bodies have had in police oversight. This has been through a discussion of the most significant achievements reached by the two oversight bodies.

In this chapter, an analysis is made on the nature of police oversight institutions, looking closely at what each institution is constituted of, their mandates and goals and further the institutions that they work closely with. Further, it highlights the challenges that these institutions have encountered since the journey of IPOA and IPID in police oversight has been rough.

3.1 Police reforms in Kenya

The Kenya's 2010 constitution passed into law through a nationwide referendum unlike in past constitutions and it intensely represents the values and principles that the citizenry aspires to. An actual unconventional constitution upholds transparency and human rights, and puts checks and balances on the executive organ including the office of the presidency. This constitution calls for participation of the public to ensure that the opinion of the public is heard. It also puts in place numerous reporting structures to ensure government institutions become accountable. The constitution adjusts the country's government structure from a centralized national organization to a decentralized one with 47 counties.

In this constitution, the police is defined as a security organ for the nation and falls under the bodies of national government; however, its organizational structure is aligned with the counties structure and regulated by police commandants.

The Kenyan 2010 constitution provided for three major institutions to be put in place towards realization of police reforms and accountability. This includes the National Police Service, comprising of the Administration Police Service separately being headed by a Deputy Inspector General; and Kenya Police Service. Both are headed by the overall Inspector General of Police. The second institution is the National Police Service Commission and lastly the Independent Policing Oversight Authority. The Inspector General of police is accountable for accustoming his staff with new regulations and assuring that they conform to them, implementation of the new arrangements and ensuring that all police Standing Orders and other internal police procedures and guidelines are in harmony with new regulations and are made public. The National Police Service Commission, as stated in article 246 of the constitution, has a duty of;

1. Recruiting and appointing persons to act or hold office in the Service
2. Confirming the appointments
3. Regulating transfers within the Service and observing that due process is followed
4. Exercising disciplinary control and dismissing persons holding or acting in offices within the service,
5. Executing any other roles given by the national legislation.³⁹

The Independent Policing Oversight Authority (IPOA) on the other hand has a key task of;

1. Investigating deaths and serious injuries instigated by police actions
2. Conducting inspections of police premises and police installations
3. Monitoring police operations

³⁹ npsc.go.ke

4. Generally investigating complaints of police misconduct as provided for in the IPOA Act, 2011.⁴⁰

3. 2 The Converging roles of the institutions

There has been a continuous debate on the functions of the National Police Service Commission and that of the Office of the Inspector General. There have been allegations that the Commission, when performing its functions as per law, is interfering with the IG's independent mandate. It has also been noted that generally, the various accountability mechanisms put in place creates a difficult environment for the police to execute their functions. The Inspector General of Police continues to hire, transfer and discipline officers, in spite of this being a role undertaken by the National Police Service Commission in which he is a member.

There has also been debates proposing that IPOA and the Internal Affairs Unit of the National Police Service, which is a unit below the IG perform the same duties. The IAU, recognized under section 87 of the National Police Service Act, has a fundamental mandate of getting and investigating public complaints against officers. With this, IPOA's independency becomes questionable as their work can be arguably managed without their existence.⁴¹ Another disputable role of the Authority is that of delegating its work to the IAU. The Authority's act under section 6 (d) clearly states that the authority has a mandate of monitoring, reviewing, and auditing inquiries undertaken by the IAU in response to grievances lodged against the police and also keeping a record of such irrespective of where those complaints have been lodged first or what action has been undertaken on them.⁴²

For the Authority to monitor, review or audit investigations of the IAU, it means that it has referred some of this cases to the IAU. With this, it becomes a challenge, as it is near

⁴⁰ Independent Policing Oversight Authority, Act No. 35 of 2011

⁴¹ <http://www.nationalpolice.go.ke/2015-09-21-17-23-32/internaaffairs.html> retrieved on 13th November 2019

⁴² Independent Policing Oversight Authority Act No. 35 of 2011, pp 8

impossible for a police officer to investigate a fellow police officer. The IAU takes time to investigate matters and report back to the Authority and this ends up in justice being denied to the Kenyan citizen.

3.1 Challenges Faced by IPOA in Execution of its Mandate

3.1.1 Delays in Conclusion of Cases

Many cases have taken extremely long to be concluded. It is disappointing to learn that among the 13,000 cases of police misconduct reported to IPOA for the last seven years, only 6 police officers have been sentenced in a court of law. The country’s slow judicial system has been termed to be the main cause of these delays. Other delays result from complex cases, which require forensic analysis. Forensic results involve DNA testing and ballistics reports which sometimes take a long period to be concluded. Moreover, the oversight authority’s investigation officers have faced odd circumstances of having to rely on the same non-cooperative police to submit results that could convict their colleagues. Some cases have therefore dragged on until some police officers have gone to their retirement⁴³.

Year	2014/15	2015/16	2016/17
Total number of disciplinary cases	1792	2529	2267

Table 1: Number of disciplinary cases for a period of three years from 2014/15 to 2016/17

The above illustration shows a rise in the number of disciplinary cases beginning 2014/15 financial year to 2015/16 but this declined from 2015/16.

⁴³Independent Policing Oversight Authority, (2013), *Baseline survey on policing standards and gaps in Kenya* Nairobi, IPOA.

Table 2: A table showing the results of disciplinary cases for three years from 2014/15 to 2016/17

OUTCOME	2014/15	2015/16	2016/17
Correctional counseling	80	55	43
Demotion	0	0	0
Dismissal	2	1	0
Final written warning	70	57	39
Fine	150	138	102
Suspended action	8	3	0
Suspended dismissal	23	11	7
Case withdrawn	703	822	539
Not guilty	756	1342	1537

Table 2: Results of disciplinary cases, 2014/2015 – 2016/2017

Table 2 shows a declining trend of in correctional counseling, dismissals, warnings, fines and cases withdrawn. On the other hand, cases withdrawn are seen to be progressively increasing alongside cases of police officers acquitted as not guilty from 2014/15 financial year to the end of 2016/17 financial year. This reflects lack of action considering an increase in the number of cases reported from 2014/15 financial year. This also implies lack of commitment in upholding justice and the rule of the law from the prosecuting body as well as the investigative directory.

3.1.2 Low number of recommendations to the Office of the Director of Public

Prosecutions (ODPP)

This study used the 2016/17 financial year as the reference year for a discussion of the recommendations made to the ODPP. As much as the institution's response rate to IPOA is very low, the recommendations to the prosecuting body are also wanting in terms of figures as shown in table 3 below.

Table 3: A table showing criminal recommendations to ODPP and their outcomes

Response	Number	Percentage
Awaiting response	93	97.9
Declined to prosecute	1	1.05
Prosecuted	1	1.05
ODPP requested more information	0	0
Total	95	

Table 3: Criminal Recommendations to the ODPP and their Outcomes

Table 3 reflects that for the year 2016/17 for example, only 95 cases were submitted to ODPP for decision to prosecute or not. Out of this, 93 cases are still awaiting response while in one case, ODPP declined to prosecute. Only one police officer was prosecuted in the whole financial year.

3.1.3 Lack of evidence to convict

The police have repeatedly been witnessed committing injustices and going unpunished due to insufficient evidence or due to complications in investigations since they relied on the same police officers to submit results which could incriminate their colleagues. Many Kenyans have been harassed, assaulted, tortured, murdered and have gone missing in the hands of police. The police have been known to replace democracy and accountability with

injustices and brutality in the past and have for a long time been criticized for using excessive force and disregarding democracy. Majority of the cases brought forth against police officers lack adequate evidence to incriminate them.⁴⁴

Table 4: Table showing different cases and their rate of convictions

Category	Convictions
Deaths in custody	0
Deaths caused by police action	3
Complaint of discharge of firearms	0
Rape	0
Total	3

Table 4: Rates of convictions

Table 4 outlines zero convictions in all platforms except murder cases. This suggests that the Kenyan prosecuting body has only managed to convict police officers who have caused death by their actions mainly by shooting or inappropriate use of fire arms. This implies neglect on other important cases such as sexual harassment, torture, assault, corruption and other key cases of concern.

3.1.4 Slow Police reforms

The Ransley report explained that shallow previous reforms in the police sector was a contributing factor. It further highlighted impunity, arrogance, corruption, unaccountability and opposition as the most noteworthy challenges that affect provision of police services to Kenyan citizens. In another report, Ruteere and Pommerolle observed that the process of

⁴⁴ Independent Policing Oversight Authority, (2013) *Baseline survey on policing standards and gaps in Kenya* Nairobi, IPOA.

police reforms in Kenya has been slow. However, article 41 of National Police Service (Act of August 2011) reduced police usage of force allowing it only when necessary to do so.⁴⁵

3.1.5 Low Level of Public awareness

Public awareness about the authority mandate and its role has also been a major challenge due to inadequate understanding of how the civilian body works. According the IPOA 2012/2013 report, the general population seemed not to be sufficiently aware of the Authority's mandate. This has limited its responsibility of ensuring police accountability. It has also been a challenge for the authority to gain public trust among some parts of the population especially those living in informal settlements⁴⁶. Persons from these parts are mainly underprivileged and therefore more susceptible to abuse and violence by the police. Active oversight therefore, is of massive significance in these regions. According to the report of a study was that conducted in Nairobi in 2016 by Transparency International, a sample population of 1,714 respondents was interviewed. However, 13% of the respondents were able to name the Independent Policing Oversight Authority as the institution mandated with inspecting and monitoring the police force conduct while 24% of the respondents confirmed to have heard of the Independent Policing Oversight Authority but could not tell its mandate and roles. The remaining 64% were not cognizant of the oversight body's presence and so did not know where to report police misconduct.

3.1.6 Inadequate Research

Very little studies have been conducted to try and find out which ingredients would make IPOA successful in its operations. This is mainly due to inadequate human capital and

⁴⁵Mutuma Ruteere & Marie-Emmanuelle Pommerolle, *Democratizing Security or Decentralizing Repression? The Ambiguities of Community Policing in Kenya*, pp. 587-604(2003).

⁴⁶Twaweza, *Guarding the Guardians: Public Views on the Independent Police Oversight Authority*. Nairobi: Twaweza East Africa, (2017). p.8

therefore inadequate training and research. Moreover, inadequate tools and equipment resulting from low budget allocations have hampered the authority and high staff turn-over.

3.2 Encounters faced by IPID in Execution of its Mandate

3.2.1 High disciplinary hearings with low disciplinary convictions

Table 5 presents the number of disciplinary actions over the last three years and Table 6 the results of these hearings. Table 5 reflects a notable increase in disciplinary hearings over the preceding three years, which is encouraging.

Given the size of SAPS staff establishment (some 194 000), the number of officials subjected to disciplinary action is miniscule; less than 2.5%. By way of comparison, in 2016/17 the Department of Correctional Services (DCS) conducted 3379 disciplinary hearings with a total staff of 39 634, or nearly one out of every ten DCS officials, resulting in 117 dismissals. DCS has maintained this level of disciplinary action since 2010 once it had established internal capacity to deal more effectively and efficiently with disciplinary matters. It is also noteworthy that in 2016/17, roughly 50% of SAPS disciplinary cases were withdrawn or the finding was not guilty. In the case of DCS this figure is 5.4%. The implication is that even if disciplinary proceedings are brought against a SAPS official, the chances are still 50% that he or she will walk away scot-free. It is therefore evident that disciplinary cases are not effectively investigated and pursued. This situation severely undermines fostering a culture of individual accountability. The situation at DCS appears to present an opportunity for SAPS to learn from them⁴⁷.

⁴⁷Christopher Gumbi, *Policing in South Africa: Past and Present* Durban, LexisNexis. (2018).

Table 5: Disciplinary hearings over a period of three years from 2014/15 to 2016/17

YEAR	2014/15	2015/16	2016/17
Total number of disciplinary hearings	2482	4443	4265

Table 5: Disciplinary Hearings for the period 2014/2015 – 2016/2017**Table 6: A table showing the results of disciplinary hearings for the last three years**

YEAR	2014/15		2015/16		2016/17	
Outcome	Number	%	Number	%	Number	%
Correctional counseling	151	2.9	96	2.2	113	2.5
Demotion	0	0	0	0	0	0
Dismissal	409	7.9	361	8.1	323	7.2
Final written warning	419	8.1	313	7.1	339	7.5
Fine	807	15.5	629	14.2	512	11.4
Suspended action	38	0.7	0	0	0	0
Suspended dismissal	638	12.3	539	12.2	478	10.6
Case withdrawn	756	14.5	622	14	539	12
Not guilty	1266	24.4	1378	31.1	1741	38.7

Table 6: Results of Disciplinary Hearings

Table 6 shows a worrying trend of progressive reduction in correctional counseling, dismissals, warnings, fines and cases withdrawn and increasing cases of police officers

acquitted as not guilty from 2014/15 financial year to the end of 2016/17 financial year. This is contrary to expectations considering the huge number of cases forwarded by IPID to NPA with conviction recommendation.

3.2.2 Low Case Referrals by IPID to the National Prosecuting Authority

Thousands of police brutality cases are reported to the Independent Police Investigative Directorate every year. On average, IPID has received more than 30,000 cases against the police for the seven years it has been operational. However, just a small fraction of these result in being charged. From April 2016 to September 2016, an entire 3,313 complaints were filed to IPID; 98% of them directly touched on the South African Police Services (SAPS) while 2% touched on Metro Police. Out of these, merely 508 cases were referred to the NPA over this period with only 27 criminal sentences of police officers being made. This was publicized in the IPID's half-year report on complaints reported against the police in 2016. Cases against assault have been the most common brought against the police. During this period, IPID received 1857 reports of assault of citizens by the police. However, only 387 of these cases were referred to the National Prosecuting Authority (NPA), which resulted to only eight convictions.⁴⁸

⁴⁸Christopher Gumbi, *Policing in South Africa: Past and Present* Durban, LexisNexis. (2018)

Table 7: Table showing criminal recommendations to NPA and their outcomes

Response	Number	Percentage
Awaiting response	1105	96.9
Declined to prosecute	26	2.3
Prosecuted	9	0.8
NPA requested more information	0	0.0
Total	1140	

Table 7: Criminal Recommendations to NPA and their Outcomes

The table above reflects that for the year 2016/17 for example, IPID referred 1140 cases to the NPA with a recommendation to criminally prosecute. However, IPID continued expecting response from the NPA in nearly 97% of all these cases. Even though one would expect that there might be some time lapse with the cases received late in the financial year, it is inexplicable that nearly all cases referred by IPID had not received a decision by 2019. It is also noteworthy that no cases were pending because the NPA requested further information that was given. Of the 1140 cases, less than 1% were prosecuted. This implies a very high level of reluctance on the part of the NPA to prosecute police officials. However, the reasons which motivates this inaction is not clear.

3.2.3 Underfunding by the Government

Inadequate access to resources has affected IPID's role largely as the government in all financial years has underfunded it and therefore performing its mandate at the required level and pace becomes impossible. In the preamble of the performance report of 2016, IPID's Director Robert McBride noted that IPID had to rely on SAPS to help with investigations because of budget cuts. Having to depend on police themselves undermines its independence

and also the integrity of the investigations. Moreover, the chances of failure are raised by having to investigate the police through their own colleagues.

A significant impediment to IPID's success is limitation in terms of the number of IPID district offices. Low budgetary allocations have confined the number of IPID offices to specific areas such that some inspectors have to cover long distances to reach alleged scenes of crime. This implies that preservation of the integrity of crime scenes also becomes a challenge.

3.2.4 Citizens Reporting Police Officers for the Wrong Reasons

Conducting investigations against the police could also be complicated because some cases are not genuinely assault as reported. There are cases whereby people reported police officers of assault for only touching them while others held high levels of grudge on some police officers and falsely reported them for assaulting them. This adds to piling of unnecessary assault allegations against the police and low level of charges in a court of law.

3.2.5 Lack of Evidence to Incriminate Police Officers

Some police officers are conversant with the law while others being highly trained have led to obstruction of investigations, which ultimately leads to gathering of insufficient evidence that cannot convict in a court of law. Investigations on such police officers end without any conclusive evidence that would assist in prosecution and therefore some police officers go unpunished for their unlawful actions. Other police officers have intimidated witnesses through threats and others have bribed the witnesses in a bid to get them to withdraw witnesses in court for cases affecting their friends or themselves⁴⁹. This has rendered many cases unfruitful without the knowledge of officers in IPID. All court systems have a threshold

⁴⁹ David Bruce, *The police we want: A handbook for oversight of Police in South Africa* Johannesburg, Centre for the study of Violence and reconciliation (2005).

of acceptable evidence that supports the final judgment the court will render. Evidence that is tampered with or altered is usually dismissed rendering it ineffectual.

Table 8: Table showing the different cases and their rate of convictions

Category	Convictions
Deaths in custody	0
Deaths caused by police action	17
Complaint of discharge of firearms	4
Rape by police officer	2
Rape in police custody	0
Torture	0
Assault	13
Corruption	3
Systemic corruption	0
Non-compliance with IPID Act	0
Other criminal offence	6
Total	45

Table 8: Cases and their rate of convictions

A list of different cases and their slow rate of convictions displayed in Table 8 are a result of more than half of these cases reportedly lacking evidence. Cases that were filed against the police and completely lacked evidence include rape, torture, systemic corruption and non-compliance with IPID Act. In 2016/17, there were 45 convictions, 31.5% of which were for deaths due to police action. The 45 convictions in comparison to the total sum of complaints referred to the NPA for prosecution (1140) as reported in Table 5 by all accounts a dismal result.

3.2.6 Low salary levels of IPID employees and therefore low motivation

IPID has had to deal with low levels of motivation of its work force due to low pay as compared to their colleagues in other governmental departments. This has also further led to a huge turnover at entry levels, junior and middle management. Main factors that contributed to this high staff turnover was absence of succession arrangement; non-implementation of staff retention strategy and IPID Section 23.

IPID has had to face a series of problems outside their control yet these issues could have affected lawful proceedings. These include situations where they had to rely on victims or witnesses who would only recount their ordeals in their submissions. When employees are lowly paid, they become dissatisfied and as a result the working environment becomes toxic. Instead of directing their anger on senior staff members, juniors always direct their anger on members of the public.⁵⁰

⁵⁰Mayhew R., (2019). *How Can Low Wages Affect Employees in an Organization?* Retrieved October 26, 2019, from <https://bizfluent.com/info-8203577-can-wages-affect-employees-organization.html>.

CHAPTER FOUR

CAPACITY TO HOLD THE POLICE ACCOUNTABLE

4.0 Introduction

The main challenges facing IPOA in Kenya and IPID in South Africa as discussed depict important lessons. Negligence and lack accountability in the prosecution authorities in both countries as revealed by low conviction rates. Inadequate support from the government is reflected in low budget allocations to these bodies and the low pay to the staff of these oversight bodies.

Despite the challenges discussed, these oversight bodies have the capacity to perform their operations. However, this capacity needs to be well managed or it to present opportunities or success in fulfilling their mission and more importantly in achieving their goals. In this chapter, the capacity of the two oversight bodies to fully exercise their mandate are discussed at a greater length.

4.1 Citizens Involvement in Policing

For an effective and operational oversight body, citizen participation is key. Their participation ranges from being largely involved in community policing, where they work hand in hand with the police to make sure that law and order is well maintained to being able to register a complaint with the policing bodies against the police when they feel that the officers are not abiding to the law. Traditionally, forms of policing relied majorly on the police as the main body responsible with fighting crime and bringing law and order. However, with community policing, much emphasis is laid on the collaboration between the

people and the police. Focusing more on solving problems, and identifying effective responses to teething troubles.⁵¹

Citizens should be able to register grievances against the police when they feel that the police have treated them wrongly. This is significant since it is with these complaints that an investigation can be initiated and with the investigation, a learning opportunity be presented, that could lead to service improvement rendered by the police. Absence of a complaint can lead to a culture of impunity in the end.

However, a major challenge faced by the oversight bodies is that the public fears coming forth to report a grievance as they feel they will be victimized. They would rather report as anonymous complainants for fear of being tracked, harassed and intimidated by the police. This mostly happens with complaints touching on policing standards, operational guidelines or policies, complaints that may not necessarily necessitate an investigation but permit an actual and timely response. For instance, complaints regarding how police conduct their roadblock checks.⁵²

4.2 Role of the government

Government participation in civilian oversight is crucial in enhancing effective civilian oversight bodies. The national government should be actively involved in effective funding to make sure that the oversight body carries out its mandate effectively. There should also be determination to support the oversight bodies from the police themselves, the judicial and executive bodies. However, these bodies face rejection and challenges from the same government that should be supporting them. There is non-cooperation from the police,

⁵¹ Charlotte Gill, David Weisburd, Et All, Community- oriented policing to reduce crime, disorder and fear and increase satisfaction and legitimacy among citizens: A systematic review. *Journal of Experimental Criminology*, **10**(4), pp 399– 428, (2014).

⁵² Council of Europe, Commissioner for Human Rights, “Opinion of the Commissioner for Human Rights concerning independent and effective determination of complaints against the police”, document CommDH (2009)4 (Strasbourg, 12 March 2009).

whereby they feel that civilians, who in essence have not undertaken paramilitary training, should not at any time be involved in investigating them. Similarly, these bodies receive inadequate funds to help run their mandate, matters forwarded for prosecution do not receive due attention and in the long run are thrown out for lack of evidence.

Resentment by the police divisions and police to oversight by civilian is most likely the most highest noteworthy reason that describe the letdowns and low performances which have troubled them. For instance, police unions in North America, have often attacked police oversight institutions.⁵³ In some occurrences, movements by police unions against the oversight bodies have openly led to the demise of existing oversight organizations. In 1960, in Philadelphia, dual consecutive court cases by the police significantly majorly destabilized the recognized influences of the Police Advisory Board and deferred its undertakings, and subsequently not revived. In other circumstances, the leadership of the law enforcement agencies plays an important role in dwindling the power of the agencies. In Ontario, in 1997, regulations to eliminate the Office of Public Complaints Commissioner and substitute it with weaker instruments of officers accountability, was due to close by discussions between the administration and police leadership.⁵⁴ In other instances, lack of collaboration by the police can destabilize the agencies efficiency and test its legitimacy. Equally, in other settings the attitude of the police towards the oversight course has been a significant foundation for their accomplishment. For instance, in the South African context, opposition of police union to oversight has not been a feature.⁵⁵ In due course, effective oversight unavoidably necessitates a sensible working relationship with the police sections, given that carrying out their mandate cannot be done without cooperation by the police.

⁵³ Samwel Walker, *Police Accountability: The Role of Citizen Oversight; Complaints Against the Police: The Politics of Reform*, (2001).

⁵⁴ Andrew Goldsmith, Colleen Lewis, *Complaints Against the Police: The Politics of Reform*. Tammy Landau, "Back to the Future: The Death of Civilian Review of Public Complaints Against the Police in Ontario, Canada," in *Civilian Oversight of Policing: Governance, Democracy and Human Rights*, (Portland: Hart, 2000).

⁵⁵ The South African Independent Complaints Directorate

4.3 The Media

The media has been actively involved in creating awareness of the policing oversight bodies. They have been in the fore front in making sure that any matter that touches on these bodies is actively broadcasted. This has helped as it has created awareness far and beyond. For instance, when IPOA was launching its 2014-2018 strategic plan, local media houses aired it live for the general public to view. Radio stations have also been actively involved whereby they invite members of the oversight agencies to give a talk on the mandate and functions of the bodies. This has made their presence be felt widely. However, the media can portray the oversight bodies negatively making them to be seen as not being sovereign. For instance, in South Africa, the media frequently denotes the Independent Complaints Directorate in South Africa as being part and parcel of the police.⁵⁶ The above is draw from the fact that the oversight body cannot operate without relying on the help received from the police themselves.

4.4 The role of civil societies

Civil societies especially those working for civil and human rights, play a significant part in growth and effective running of civilian oversight. For example, the American Civil Liberties Union, in the United States has time and again been in the fore front in movements aimed at establishing civilian oversight bodies. Campaigns of Human rights groups were also significant to reforms and civilian police oversight in Brazil's Sao Paulo. On the contrary, inadequate support by civil societies has been connected with their failure. Further, human rights groups in Argentina, have continuously focused on demanding liability for past armed misconducts and have failed to advocate for recognized police reforms.⁵⁷

⁵⁶ Ibid

⁵⁷ Andrew Goldsmith, Colleen Lewis, *Confronting a Culture of Impunity: The Promise and Pitfalls of Civilian Review of Police in Latin America*, (2000) pp 223-257.

4.5 Capacity of IPOA to Fully Exercise its Mandate

Through its formation act (IPOA Act No. 35 2011), the authority has the capacity of being independent and having its own clear mandate to investigate, recommend prosecution, and monitor police force operations, review enquiries into complaints that have been carried out by the Internal Affairs Unit, as well as review police misconduct pattern with a view of making policy and institutional changes.⁵⁸

IPOA has a department in place for strengthening the capacity of the authority through human resource recruitment, staff performance management, planning, training and developing a pool of qualified, competent and committed employees. However, the authority currently has 218 members of staff against a proposed establishment of 326 which means that the authority operates in a deficit of 108 employees. The greatest variance and of greatest concern lies in the investigations department followed by inspection and monitoring directorate. Both of the two departments have a deficit of 34 employees and therefore contributing to delays in cases as the investigations go pending. Such lead to unfortunate withdrawal of some cases due to lack of staff to investigate the cases with close follow up that they deserve.⁵⁹

The funding from the government and development partners has been insufficient over time for the running of IPOA. The budget for 2017/18 was revised upwards from 484.9 Million Kenya Shillings in 2016/17 to Kes 695.8M to cater or the rising demand of IPOA services. However, this increment is not sufficient when factors such as inflation, internal needs and external outreach needs are considered. IPOA has managed to perform well in its financial obligations and this attracted a commendation letter from the public sector accounting

⁵⁸Amnesty International, *The Process of Establishing an External Oversight Mechanism*. Police and Human Rights Programme, (2015) pp. 31-36.

⁵⁹Amnesty International, *The Process of Establishing an External Oversight Mechanism*. Police and Human Rights Programme, (2015) pp. 31-36.

standards board (IPSAS) for decent cash-flows in accordance with IPSAS and proper adoption of programme-based budgeting as required by the public financial management act 2012. However, despite the commendable financial reports, the cases pending in court and the number of cases whose investigations have stalled remain high and therefore brings queries among the public and donors concerning the use of public finances by IPOA. Good financial performance implies a good management of public finances with clearly visible outcomes such as an increased number of cases being referred to Directorate of Criminal Investigations, reduced number of cases being closed without need for further action and an increased number of convictions of police for different offences.⁶⁰

The Kenyan media has been less supportive with exposing police officers with cases of wrongdoing. This is because the few police officers captured by the media are mainly the lower rank corrupt ones engaged in petty corruption y in everyday dealings with citizens such as the road traffic officers. However, the media has more capacity to contribute to making a enormous difference in anti-corruption reform efforts. This can be done through reporting of senior police officers involved in bureaucratic or administrative corruption. These are senior police officers who misuse internal administrative procedures, processes and resources for their own individual advancement. One of the main reasons for a quiet media relates to lack of adequate support from the national government for free press and better remuneration of journalists. This has negatively affected IPOA as it limits the number of cases reported through the media due to lack of motivation among the media personnel.

A less active media has also negatively impacted the outreach of IPOA as many people in the country are not fully aware of IPOA's mandate. Lack of awareness about this body renders it unrecognized which means that people continue suffering injustices from police misconduct without knowledge of where to report the cases.

⁶⁰Ibid

The authority makes use of modern enterprise content management (ECM) system. This enables it to be effective and timely in delivery of its mandate. It also contributes to an improved and quick decision making as a result of obtainability of reports, real time information, and dashboards.

IPOA utilizes one complaints management structure, which assimilates the requirements of all the units and directorates within IPOA. This system helps in the removal of duplication of processes, cases, tasks and records and therefore saves the authority time and resources. Of equal importance is the existence of an elaborate policy and procedure framework which stipulates clear work procedures and expected outputs. Decentralization of authority's services should ultimately translate to more outreach, more awareness and improved access to IPOA services.

4.6 Capacity of IPID to fully exercise its mandate

The Constitutional judgment of 6th September 2016 provided for the IPID to amend its Act to strengthen its sovereignty and safeguarding of undue influence. It gave IPID independence status and therefore the body can carry out all its functions independently even without the consultations and assistance of police service or any other government agencies

During the founding of the Independent Complaints Directorate, which was the first oversight agency followed by the Independent Police Investigative Directorate in South Africa, the Department of Public Service and Administration carried out some human capacity assessment, which had suggested engagement of a total of 535 workforce on permanent and pensionable terms. However, this has not been achieved until today. In the 2016/17 the IPID's staff formation was cut down from 414 to 388 because of a ceiling that was put on Compensation of Employees which led to freezing of posts. This greatly affected the outreach of the body as well as its operations. However, the staff establishment was to be increased

from 388 to 415, by 27 posts for the financial year 2017/2018 which was realized. These posts were aimed at restoring IPID's efficiency⁶¹. Even with 415 employees as at 2018, IPID still struggled in its outreach and this necessitated more recruitment of staff and more training.

600 investigators have to date acquired training on specialized services as per investigations training plan. This translates to effective and reliable team of investigators and inspectors of police conduct in various activities of the police service and in the cases reported. However, for more outreach and effectiveness in service delivery, the government should put extra efforts in raising the number of staff in every financial year in order to meet the demands of IPID's services in remote areas of the nation

The government of South Africa has been allocating lowly funds to IPID and this has greatly impacted its operations. Since the implementation of IPID act with extra responsibilities, the allocation of budget from the national government has never met the needs in place. Nevertheless, budget has grown over the Medium Term Expenditure Framework (MTEF) from R255.5 million in 2017/18 financial year to R315.1 million in 2018/2019 financial year to R336.7 million in 2019/20 financial year. Despite these adjustments, the IPID baseline budget has never fully gone up to be able to accommodate the workload, the annual inflation growth, contractual obligations and internal costs. The perpetual underfunding has contributed to extra risk factors. These include increased unfunded mandates; compensation of employees crowding out of spending on essential goods and services for service delivery; closing of high impact cases such as cases of rape and murder by the police due to inadequate investigations in search of more funding; and an increase in accruals in the past three financial years. For example, in 2014/15 financial year, IPID reported accruals amounting to

⁶¹Etannibi Alemika, Policing oversight in Africa. *Policing Oversight: Advances, Challenges and Prospects*, Johannesburg(2011), (pp. 7-10).

R5 342000. In 2015/16, it posted accruals amounting to R6 858000 while in 2016/17, it reported R24 307000.

South African extensive media has been able to expose many police officers participating in criminal activities and corruption. Media coverage in South Africa has exposed different misconduct cases ranging from police taking traffic fines to other police officers demanding for bribes to guard businesses owned by foreigners against xenophobic ferocity, to judicial system employees such as magistrates taking bribes not to convict some police officers. Such exposures have led to improvement in terms of accountability and efficiency in delivery of service by the police department and officers in the justice system in general.

IPID's high profile news broadcast such as the court case concerning the independence of IPID received wide spread media reporting. This profiled IPID widely across the country leading to more outreach and an increased public trust. This is one of the key factors which contribute to high number of cases reported to IPID relating to police misconduct.

An integrated communication and stakeholder engagement strategy is in place to enable easy communication from the stakeholders to the members of the staff. The stakeholders of IPID have been supportive of the staff and this has led to teamwork and effective working relations, which will continue empowering IPID in its mandate. Moreover, decentralization of IPID services has meant that there is availability of established satellite offices in different provinces of South Africa, which are meant to improve access to IPID services.

CHAPTER FIVE:

SUMMARY, RECOMMENDATIONS AND CONCLUSION

5.0 Introduction

This being the last chapter of the study discusses conclusions and aspects drawn based on the study's objective.

5.1 Summary

Important insights have been shared about the factors which prompted the formation of oversight bodies in Kenya and South Africa. An important similarity has been revealed in that police oversight became necessary owing to the misconduct of police in enforcing the law with the most highlights of misconduct being use of excessive force, brutality, extra-judicial killings caused by officers with reference points being the Post-election violence and apartheid regime in South Africa.

These oversight bodies have managed to have a positive impact of ensuring that majority of police officers comply with human rights standards and therefore reducing the possible misconduct of the majority of police officers in general. The main variance in their impacts is that IPID has handled more cases in terms of investigations, forwarding to prosecuting body and convictions as compared to IPOA. Moreover, South Africa's IPID's outreach has been more extensive than Kenya's IPOA as the latter had no policies of outreach until 2014.

The challenges facing police oversight have also been discussed. The common ones facing both bodies include low level of disciplinary convictions due to inaction by the prosecuting bodies, lack of evidence to convict police officers, complications of having to deal with same police in investigating their colleagues and lack of adequate resources due to low funding.

However, IPOA presents a different challenge of facing internal power struggles and low levels of public awareness about IPOA and its mandate

Finally, the capacity of the two oversight bodies has been discussed. Both bodies have had to do with under staffing and underfunding from their respective governments which has derailed their progress in outreach and investigations among other operations

5.2 Recommendations

Prior to the implementation of the following recommendations, it is paramount that all processes are inclusive in particular of the public, the police service, the judiciary, the executive, the legislative and the civil society. Transparency and accountability are also key principles for the longevity of the oversight authorities.

5.2.1 Dissemination of information to the General Public

It is vital for the public to be aware of the existence of these bodies and be able to report cases of police misconduct and cooperate with the authority during investigation process. Alongside setting up regional offices, these bodies should increase visits to remote areas like slums and key areas most affected by police actions. This will highly improve the association between the public and the civilian bodies. Policing mechanisms representation by more regional offices countrywide will also expand public consciousness and thus resulting in public confidence. For example, the Peruvian Ombudsman's presence is felt in the entire republic as it has 10 sub-offices and 29 offices. Use of media access as a strong tool for publicity is necessary and can be attained through appearing in television channels, radio, social networks among other channels. This will make the locals conversant with the organizations and their role and will yield more reported cases of police injustice. Information should also include the rights and obligations of the citizenry when confronted or involve in cases poignant to police service

5.2.2 Civil Society Inclusion

A well working civilian oversight body should include the civil society organizations in its role. Various nations offer the likelihood of Non-Governmental (NGOs) making an objection on police behavior without limitations. These countries include Peru, Brazil and Mexico. Therefore, it is crucial that non-governmental organizations are frequently consulted by the oversight bodies because of their right to be heard in policymaking processes. NGOs sometimes can have a big monitoring capacity based on their strong contact with the public and therefore they can easily get the attention of the oversight institutions to vital issues, and offer valued skill and contribution in strategies of reforms. The authorities should create a rampant network of international partners from whom they can learn a lot on matters regarding policing and also acquire funding from them in form of grants. These funds would enable them to cover more regions in inspection activities among other activities.

5.2.3 The Judiciary's role and Rule of Law

More emphasis on speed in tracking of cases and convictions through quick and accurate investigations is of great significance in oversight practice. The governments in place should implement strict measures to ensure that the length of time taken by the investigators is shortened to specific deadlines as well as the prosecuting bodies in convicting the guilty police officers. Appeals should be made by the government to the judiciary system in place for the courts to conduct the all cases brought forth by these bodies with special urgency. In line with this, a decent categorization of cases beginning with serious ones like deaths caused by actions of police; deaths in custody; rape; rape while in custody; corruption among others also speeds up the commencement of investigations.

5.2.4 Adequate Training of Oversight Authority's Staff

Training of these bodies' work force need to be revolutionized through efforts by national governments in order to up-skill and equip the staff of these oversight bodies for them to be able to tackle performance and proficiency gaps recognized via performance reviews and/or proficiency assessments. The human resource departments could, for example coordinate compulsory training programs, short courses and skills programs to address identified performance and competency gaps. In line with this, the oversight institutions should discover and implement important approaches to draw and recruit accomplished and skilled personnel. Once hiring is done, the training duration could, be stretched to allow learners to advance in knowledge that is vital in meeting the requirements for internal permanent entry-level positions. More strategic training interventions should also be identified in order to prepare officers to be beneficially employed in present positions and the levels to come. The oversight bodies ought to sensitize their staff about multi sectarian policing to ensure enhanced support and coverage. Along with this, they can enhance feedback mechanisms in order to relate well with the existing Police Service and for them to be more collaborative in future investigations

5.2.5 The Role of the Government

The Oversight agencies require political will as without it, they will stumble and fight an endless difficult fight to put in place the changes needed to bring about police accountability and professionalism. Most often, oversight is fashioned when there is a crisis. This ranges from outrage by the public as a result of a disputed killing by police, to a reaction to the continuous engagements of a particular group of people who feel oppressed by means of incongruent action. Regularly, it always takes political backing to make the government create sovereign oversight.

Oversight organizations and their commendations may occasionally be depicted as against the police services in determinations to weaken their power. That is why, the support of bold politicians that value impartiality, culpability, and clearness is essential for the existence of oversight.

5.2.6 The Independent Role of the Oversight Authority.

The Oversight agencies also require power. They require sufficient authority to deliver dependable service to the people they serve. The oversight agencies should be able to conduct interviews of complainants, witnesses and the accused and access requisite documents to complete an investigation independently.

Civilian oversight bodies must have the capacity to correct wanting inquiries by either recommending more investigations or conducting independent investigations by themselves. They must also have the capability to initiate changes in the institutions they oversee.

For civilian policing oversight agencies to be operative and have the backing of the people they serve, they must have sufficient power to make changes when they are needed, in the police institutions that they are overseeing. Oversight agencies should have sufficient finance and expenditure ability to carry out their functions as defined in their legislative mandates.

Civilian oversight bodies should have adequate funding and ability to recruit staff at all levels in order to allow timely and in-depth investigations.

The agency bodies should also have sufficient funding to acquisition and use records to monitor and follow all complaints lodged. This is due to the fact that ‘complaints’ are key quality-control pointers, and the data that they provide, if well collected and examined, offers instrumental apparatuses for superiors of the police and the government representatives to detect possible areas for remedy.

The information can recognize precise misconducts by officers, for instance unlawful detentions, search warrants, and unlawful arrests, which are the major grievances, alongside police commands that warrant keen inspection and monitoring. Complaints against police should be perceived as key factors that gauge the working relationships between the police and the public. They should be taken seriously as they provide an indicator of how the police work.

Civilian oversight bodies should also have authority and aid to hire consultants, as well as sovereign advice. Policy recommendations at times must be reinforced by external consultants to be competently presented.

5.2.7 Policy review and Dissemination of Information

Policy review and recommendations is perceived as a significant aspect of oversight as it can effect structural change in the law implementation institution. It is important that changes made are accepted and implemented and constant follow up made to guarantee tracking of the new measures. Outreach is also of importance. Citizens, who are also, potential complainants, and stakeholders ought to be made cognizant of oversight agencies including their advantages. As a result of outreach, the public can be made aware of the agencies authorities and limits. Outreach activities should be inclusive, catering for the needs of both the police and the public.

Further, oversight agencies require effective and timely reporting. Having an oversight body is basically giving light and hope to an otherwise almost falling apart institution. Investigations of police delinquency were customarily in the hands of the police themselves and were handled by the police superiors. The development in oversight through intermittent reporting, has enhanced the information obtainable in regards to the organization under analysis. Yearly reporting provides a form of transparency and responsibility to the public,

for it creates awareness about the law enforcement institutions that serve them. Through reporting, public confidence in the oversight bodies is heightened.

Lastly, civilian police oversight agencies require mediation as a key component in resolving police and public conflicts. In as much as strategies of mediation vary, the old-fashioned examinations into misconduct can have restricted effectiveness in handling grievances that are interpersonal in nature and relate to disrespect or meagre attitudes. The bulk of such matters end in a judgement of not enough evidence, a conclusion which is not satisfactory to either party and has no worth in changing behavior. In grievances that have been positively mediated, both parties involved can gain an understanding of why they acted as they did. This can transform behavior in a more significant and operational way than in probable disciplinary process.⁶²

5.3 Conclusion

This study has provided an important lesson that a successful oversight body should be well functioning and must therefore have proper strategic measures put in place to warrant that it thrives in execution of its mandate. The study reveals the need to restructure the prosecuting bodies and their judicial systems in such a way that they become more responsive to cases which require urgent actions especially the cases recommended by oversight bodies for convictions. The study reveals immeasurable need for governments to strengthen the capacity of their oversight bodies through allocation of more resources to police oversight if they are to fully protect their citizens from police misconduct. Moreover, better trained human capital is required in for these oversight bodies to have a meaningful outreach and impact.

⁶²<http://digitalcommons.pace.edu/cgi/viewcontent.cgi?article=1755&context=plr> retrieved on 29th October 2019

BIBLIOGRAPHY

Achuka, V. (2019, 9 5). *Ipoa chief executive sacked in power struggle*. Retrieved from Daily nation: <https://mobile.nation.co.ke/news/Ipoa-chief-executive-sacked-in-power-struggle/1950946-5261032-as78w1z/index.html>

Goldsmith A, Lewis C, *Confronting a Culture of Impunity: The Promise and Pitfalls of Civilian Review of Police in Latin America*, (2000).

APCOF. (2008). *An Audit of Police Oversight In Africa*. Cape town: APCOF.

Bryman, A. (2001). *Social Research Methods*. New York: Oxford Publishers.

Call, Charles T., 2003. *Challenges in police reform: promoting effectiveness and accountability*. International Peace Academy Policy Report. New York: International Peace Academy.

CIPEV. (2008). *Report of the Commission of Inquiry into the Post-Election Violence*. Nairobi: Government Printers.

Council of Europe, Commissioner for Human Rights, “Opinion of the Commissioner for Human Rights concerning independent and effective determination of complaints against the police”, document CommDH(2009)4 (Strasbourg, 12 March 2009).

Etannibi, & Alemika. (2011). Policing oversight in Africa. *Policing Oversight: Advances, Challenges and Prospects* , (pp. 7-10). Johannesburg.

Gill, C., Weisburd, D., Telep, C., Vitter, Z., & Bennett, T. Community- oriented policing to reduce crime, disorder and fear and increase satisfaction and legitimacy among

- citizens: A systematic review. *Journal of Experimental Criminology*, 10(4), 399– 428.
- (2014)
- GOK. (2011). IPOA Act. Nairobi: Government Printing Press.
- GOK. (2011). National Police Service Act. Nairobi: Government Printing Press.
- Hills, A. (2009). *Policing in Kenya and developing democracies: A Selective Service*.
Abingdon: Routledge.
- Huth, P.K. (1999). *Deterrence And International Conflict: Empirical Findings and
Theoretical Debates*. *Annual Review of Political Science* 1999 2:1, 25-48
- International, A. (2013). *Police Reform in Kenya : A Drop in the Ocean*. London: Amnesty
International Publication.
- Jervis, Robert. "Rational Deterrence: Theory and Evidence." *World Politics* 41, no. 2 (1989):
183-207. doi:10.2307/2010407.
- Joel, M. (2002). *Civilian Oversight of Policing: Lessons from the literature*. Los Angeles:
Vera Institute of Justice.
- Kagut, W. N. (2016). *Kenya at Fifty: State Policing Reforms, Politics, and Law, 1963–2013*.
.Palgrave Macmillan .: US.
- Kivoi, D. (2013). The Achilles Heel of Police Reforms in Kenya. *Social Sciences*, 2, 189-
194.
- KNCHR. (2015). *Audit of the Status of Police Reforms in Kenya*. Nairobi: Kenya National
Commission on Human Rights & Centre for Human Rights and Peace.
- KNHCR. (2008). *The Cry of Blood: Report on Extra Judicial Killings and Disappearances*.
Nairobi: Kenya National Commission on Human Rights.

Kothari. (2004). *Research Methodology* (2nd ed.). New Delhi:: New Age International Publishers.

Lebow R.N. (2016) Deterrence: A Political and Psychological Critique. In: Lebow R. (eds) Richard Ned Lebow: Key Texts in Political Psychology and International Relations Theory. Pioneers in Arts, Humanities, Science, Engineering, Practice, vol 4. Springer, Cham

Mehta, S. (2014). *Police Complaints Agencies in the Commonwealth. Access to Justice Programme.*

Mugenda, O. (2003). *Research Methods: Quantitative and Qualitative Approaches.* Nairobi: . Nairobi: Acts Press.

Neels C. & Gumbi C. (2018) *Policing in South Africa: Past and Present* Durban, LexisNexis

Quackenbush, Stephen L. "Deterrence Theory: Where Do We Stand?" *Review of International Studies* 37, no. 2 (2011): 741-62. www.jstor.org/stable/23024618.

Quackenbush, S., & Zagare, F. (2016, May 02). Modern Deterrence Theory: Research Trends, Policy Debates, and Methodological Controversies. *Oxford Handbooks Online*. Retrieved 13 Nov. 2019, from <https://www.oxfordhandbooks.co./view/10.1093/oxfordhb/9780199935307.001.0001/oxfordhb-9780199935307-e-39>.

Richard, R. (2016). Civilian Oversight of Law Enforcement. *Assessing the Evidence*, 35-47.

Ruteere, M., & Pommerolle, M. (2003). Democratizing Security or Decentralizing Repression? *The Ambiguities of Community Policing in Kenya*, 587-604.

S., W. (2001). *Police Accountability: the role of citizen oversight*. Belmont: Wadsworth Publishers.

Walker S, *Police Accountability: The Role of Citizen Oversight; Complaints Against the Police: The Politics of Reform*, (2001).

Seale, C., Gobo, G., Gubrium, J., & Silverman, D. (2004). *Qualitative Research Practice*. London: Sage. London: Sage Pub.

Service, K. P. (2003). *The Kenya Police Strategic Plan*. Nairobi: The Kenya Police Service.

Walker. (2001). *Police Accountability: the role of citizen oversight*. Belmont: Wadsworth Publishers.

Usalama Reforms Forum, May 2014. *A progress monitoring project, status of the police reforms*. Nairobi: Usalama Reforms Forum.

UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), available at: <https://www.refworld.org/docid/3ae6b3712c.html> [accessed 13 November 2019]

UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85, available at: <https://www.refworld.org/docid/3ae6b3a94.html> [accessed 13 November 2019]