

**REFORM OF THE KENYA POLICE FORCE: AN ASSESMENT OF THE EFFICACY  
OF THE LEGAL FRAMEWORK IN DELIVERING THE MUCH NEEDED POLICE  
REFORM**

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**Declaration**

This is my own original work and has not been presented for a degree in any other university.

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## **Abbreviations and Acronyms**

AG	Attorney General
AP	Administration Police
AU	African Union
CA	Court of Appeal
CIPEV	Commission of Inquiry into Post Election Violence
COK	Constitution of Kenya
DIGP	Deputy Inspector General of Police
EIDHR	European Instrument for Democracy and Human Rights
EU	European Union
FHRI	Foundation for Human Rights Initiative
GSU	General Service Unit
ICCPR	International Covenant on Civil and Political Rights
ICJ-K	International Commission of Jurists-Kenya
IGP	Inspector General of Police
JSC	Judicial Service Commission
KNCHR	Kenya National Commission for Human Rights
KNDR	Kenya National Dialogue and Reconciliation Process
KPF	Kenya Police Force
KPS	Kenya Prison Service

KWS	Kenya Wildlife Service
MoJCA	Ministry of Justice and Constitutional Affairs (Kenya)
MP	Member of Parliament
NARA	National Accord and Reconciliation Agreement
NGO	Non Governmental Organization
NPS	National Police Service
NPSC	National Police Service Commission
OCS	Officer in Charge of Station
OP	Office of the President
PC	Provincial Commissioner
PEAP	Panel of Eminent African Personalities
PEV	Post Election Violence
PM	Prime Minister
PRIC	Police Reform Implementation Committee
SA	South Africa
SC	Supreme Court
TI	Transparency International
UK	United Kingdom
UN	United Nations
UNDHR	Universal Declaration of Human Rights

UNGA

United Nations General Assembly

US

United States

## **Legal instruments**

### **Kenya.**

#### **Constitutions**

Constitution of Kenya, 1963

Constitution of Kenya, 1969

Constitution of Kenya, 2010

Bomas Draft Constitution of Kenya 2002

Proposed Constitution of Kenya 2005

Wako Draft Constitution of Kenya

#### **Statutes**

Administration Police Act (cap 85)

Independent Police Oversight Authority Act No 35 of 2011

National Police Service Act, 2011

National Police Service Commission Act No 30 of 2011

Police Act, Cap 84 (repealed)

### **South Africa**

National Peace Accord, 1995

South African Police Act, 1995

South African Constitution 1996

### **Sweden**

Administrative Procedure Act (1986:223),

Police Act (1984:387),

The Police Ordinance (1998:1558),

Police Data Protection Act (1998:622),

Ordinance (1989:773)

Police Training Ordinance (1999:740),

Government Agencies Ordinance (2007:515),

Ordinance on Internal Management and Control (2007:603).

### **International legal instruments**

International Convention on Civil and Political Rights (ICCPR)

United Nations Declaration on Human Rights (UNDHR)

## **Abstract**

This work is divided into five chapters. Chapter One outlines the background to the study, statement of the problem, objectives of the study, research questions, and justifications for the study, hypothesis, theoretical framework, and methodology of the study and literature review.

Chapter two delineates the mandate of the police service in Kenya as per the various legal provisions with a view to further outlining the challenges that undermine the realization of that mandate.

Chapter three gives a critical and in-depth analysis of how the Kenya police legal framework deals with the perennial challenges undermining the mandate of Police Service in Kenya. These include, National Police Service Commission Act No. 30 of 2011, National Police Service Act of 2011, and the Independent Policing Oversight Authority Act No 35 of 2011; and assess the extent that they are capable of realizing the police reform objectives.

Chapter Four deals with instances of best practice in police reforms. It will examine legislations that govern police reforms in Sweden and South Africa with a view to benchmarking and assessing the adequacy of the Kenyan model alongside the identified cases.

Finally, Chapter Five contains the conclusion deduced from the study and the recommendations proposed by the researcher on the implementation of the new police reform legislations. It will also analyze the hypothesis in line with findings of the study.

## CHAPTER ONE

### 1.0. Chapter One: Introduction and background to the study

#### 1.1. Introduction

The clamor for police reform in Kenya dates back to independence period, following the attainment of independence and self rule spear headed mainly by the civil society, clergy, opposition political leaders as well as the citizenry.<sup>1</sup> The provisions of the constitution of Kenya 1963<sup>2</sup> set to “establish a professional, neutral police.”<sup>3</sup> The constitution of Kenya 1963<sup>4</sup> gave autonomy to the police force; enabled the police to be set up by legislation overseen by a Police Service Commission and a National Security Council; provided for the appointment of the Inspector General of police by the president on the advice of a Police Service Commission and removal from office only upon recommendation of a tribunal (due to inability to exercise the functions of his or her office or for misbehavior).<sup>5</sup>

However, these provisions were never implemented. Instead, the Independence Constitution<sup>6</sup> underwent numerous amendments increasing and consolidating presidential powers. These included the Constitution of Kenya (Amendment) Act No 16 of 1966<sup>7</sup> and the Constitution of

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<sup>1</sup> Report of Kenya Police in collaboration with Kenya Human Rights Commission and the Common Wealth Human Rights Initiative, National Stakeholders Workshop: Validation of Police strategic Plan (Kenya School of Monitory studies , Nairobi – March 25 and 26, 2004)1, at [http://www.humanrightsinitiative.org/programs/aj/police/ea/articles/wshopreport\\_feedback\\_strplan2003-07.pdf](http://www.humanrightsinitiative.org/programs/aj/police/ea/articles/wshopreport_feedback_strplan2003-07.pdf) (accessed 30/10/13).

<sup>2</sup>1963, Government Printers and Press, Kenya.

<sup>3</sup> Yoshiaki Furuzawa, “Two police reforms in Kenya: Their implications for police reform policy,” (2011) *Journal of international Development and Cooperation*, vol.17, No. 1, 2011, pp.51-69. See also Government of Kenya, Report of the National Taskforce on Police Reforms, 2009, Government Printers and Press, Nairobi Kenya.

<sup>4</sup> Supra note 2

<sup>5</sup> Supra note 3

<sup>6</sup> Supra note 2

<sup>7</sup> Increased presidential powers to rule by decree; Required MPs who had not attended NA for over 8 sittings or imprisoned for over 6 months to lose their seats (Many KANU rebels were not going to NA) and some had joined KPU; Minister in charge of citizenship given discretion to grant Citizenship to Commonwealth citizens residing in Kenya for over 6 months.

Kenya (Amendment) Act No 5 of 1969 which consolidated all amendments into a new constitution resulting into the 1969 Constitution of Kenya.<sup>8</sup> These amendments mainly boarded on increasing presidential control, influence and power over government institutions and agencies.<sup>9</sup> As a result, the exercise of the new found executorial powers extended to all government agencies including the Kenya Police Force.<sup>10</sup> As a result the Kenya Police Force its autonomy and institutional independence as was envisaged in the 1963 Independence Constitution of Kenya.

Yoshiaki states that as a consequence of inadequate policy, legal and institutional frameworks as well as immense presidential powers following the constitutional amendments, the police faced innumerable evils which include and not limited to impunity, lack of accountability, rising levels of insecurity, inter-ethnic violence, dishonesty in crime detection and prevention, terrorism, criminal gangs, vigilantism, inadequate funding and equipment, rampant government corruption, poor housing, lack of life or health insurance, eroded public confidence, political interference, under-staffing.<sup>11</sup>

Besides, the police have been faced with accusations of impunity,<sup>12</sup> excessive use of force and brutality, disregard for human rights, abuse of due process and malignant corruption,<sup>13</sup> extrajudicial killings, torture, arbitrary detention, suppression of dissent, and fomenting ethnic violence among others.<sup>14</sup>

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<sup>8</sup> Robert Maxon, *Constitution-Making in Contemporary Kenya: Lessons from the Twentieth Century*, 2009, KSR Volume 1, Number 1, at [http://kessa.org/yahoo\\_site\\_admin/assets/docs/1\\_R-MAXON.140155941.pdf](http://kessa.org/yahoo_site_admin/assets/docs/1_R-MAXON.140155941.pdf) (accessed 30/20/12)

<sup>9</sup> J.B. Ojwang' (1990) *Constitutional development in Kenya: institutional adaptation and social change*, Acts Press, African Centre for Technology Studies.

<sup>10</sup> Ngogho K. "Former Police Chief Speaks Out On The 'Mwakenya' Crackdown," (2003) *Sunday Nation*, March 2

<sup>11</sup> Supra note 3

<sup>12</sup> Angira Zadock "Kimaiyo listed top in search for Police chief," (2012) *Daily Nation*, November 21 at <http://www.nation.co.ke/News/-/1056/1056/-/f06mdq/-/index.html> (accessed 24/8/2013).

<sup>13</sup> Government of Kenya, *Report of the National Task Force on Police Reforms*, (2009), Nairobi, Government Printers

<sup>14</sup> Amnesty International, *Amnesty International Report 2003: (2003) Kenya*, UNHCR, at [www.omct.org/files/2003/11/2651/2003\\_eng\\_vaw\\_kenya.pdf](http://www.omct.org/files/2003/11/2651/2003_eng_vaw_kenya.pdf) (accessed 1/7/2013).

These challenges undermine the established tenets of democratic policing which include, stability, protection of the human and fundamental rights, legality, proportionality, public interest, good faith (bona fide) conformity with international law.<sup>15 16</sup>

In a society with one of the highest crime rates in the world, the average Kenyan citizen believes that half of the members of the police force are corrupt and that over one-third of all crime committed in the country is attributable to police criminality.<sup>17</sup>

## **1.2. Background of the study**

The Kenya Police Service has a long and interesting history dating back to the colonial period and more specifically the establishment of the Imperial British East Africa (I.B.E.A.) Company<sup>18</sup> at the coast which in the interest of its business found it necessary to provide some form of protection (security) for its stores along the coastline of Kenya.<sup>19</sup>

It is from this origin that the concept of constituting a real police service was formed in Mombasa. Generally, police activities centered on protection of the business of the I.B.E.A. Company where the strength was mainly of Indian origin with a skeleton staff of some Africans otherwise referred to as ‘Askaris’. The duties of the small police force at those early stages were very negligible.<sup>20</sup>

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<sup>15</sup>Dr. Markus H.F. Mohler, Principles of Democratic Policing, 2009, DCAF, Geneva, 15 July. Public lecture on safety/security and police law at the University of Basel.

<sup>16</sup> “We can no longer procrastinate on Security,” The Standard, Sunday, November 25 2012 at [http://www.standardmedia.co.ke/index.php/business/videos/radio=1&story\\_title=Kenya-We-can-no-longer-afford-to-procrastinate-on-security](http://www.standardmedia.co.ke/index.php/business/videos/radio=1&story_title=Kenya-We-can-no-longer-afford-to-procrastinate-on-security)

<sup>17</sup>*Ibid.*

<sup>18</sup>The IBEACo was a Royal chartered company backed by the British capitalists which was responsible for administering East Africa (Kenya included) between 1888-1895.

<sup>19</sup> The Kenya Police Strategic Plan 2003 - 2007, Chapter 1 at [http://www.humanrightsinitiative.org/programs/aj/police/ea/articles/draft\\_strategic\\_plan\\_2003-07.pdf](http://www.humanrightsinitiative.org/programs/aj/police/ea/articles/draft_strategic_plan_2003-07.pdf) (accessed 5/1/13)

<sup>20</sup> *Ibid.*

The construction of the Kenya - Uganda Railway provided for the growth of this infant force inland from Kenyan coastline. By 1902 there existed police service units at Mombasa, Nairobi and Kisumu for the purpose of maintaining law and order, safeguarding the railways property and materials as well as the manpower engaged in constructing the railway.

It is at this point that the concept of Administration Police trickled in. This came through the enactment of the Village Headman Ordinance. The ordinance, which was enacted to enable the penetration of the 'native areas', was ostensibly to bring the native into the money economy, enforce tax, control livestock movement, regulate agriculture, and labour movement of people, and various other social and economic regulations.<sup>21</sup> The village headmen, as the chiefs were then known, were the prime instrument of the Regional Agent, as the District Commissioner was then known. The East Africa Protectorate that became the Kenya Colony in 1920 had the complex task of trying to integrate two parallel economies. Aspects of British common law and the Indian Penal Code were already in place and the contradictions between the formal economy and the 'native economies' illustrated the existence of different values, norms, cultures and laws amongst Kenyans. The Kenya Police focused its attention mainly on urban areas, the railway routes and areas of the propertied class. The village headman had in the meantime to rely on capable young men in the village to affect the often unpopular policies of the Colonial Government and to put into place arbitration and other enforcing mechanisms.<sup>22</sup>

They took on the role of the Native Police. In 1929 The Tribal Police Ordinance was enacted to give legal backing to the Native Police. The Representative Regional Agents, most of who had a military background, trained them. The training, uniform, and kit, differed from one district to the next. Uniforms often borrowed designs from the colonial military regalia with a combination of locally respected symbols of the authority. Elements of the Kenya Police and of the King's African Rifles (KAR) assisted in the training.<sup>23</sup> Except in frontier areas, the police

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<sup>21</sup> Government of Kenya, *Report of the National Task Force on Police Reforms*, (2009), Nairobi, Government Printers

<sup>22</sup> Ibid.

<sup>23</sup> Government of Kenya, *Report of the National Task Force on Police Reforms*, (2009), Nairobi, Government Printers

force remained generally unarmed and small in numbers. A major expansion of the Tribal Police began in about 1948, with increased 'native agitation' and the fear of a widespread rebellion countrywide. Their numbers were increased in the Central Province and they were increasingly

In 1958 the Tribal Police Ordinance was changed to Administration Police Act and training of officers was centralized at Ruringu, Nyeri. The training focused on basic instruction for recruits, and prosecution courses for the Native Courts. When Kenya gained full independence in 1963, the Provincial Administration and Administration Police were moved from the responsibility of the Ministry of Native Affairs to the Office of the Prime Minister, and then to the Office of the President where they have remained since then. The Administration Police Act places force under the command of the Minister responsible for provincial administration. All District Officers and Commissioners held an officer rank. The Administration Police were generally deployed in one district and if transferred, had to be re-issued with new identity cards, or re-endorsed for duty, in the new district.

The Kenya Police on the other hand until 1907, it was organized along military lines and the training was military in nature. In 1906, the Kenya Police was legally constituted by a Police Ordinance. In order to improve police performance, the then Governor, Sir Hayes Saddler appointed a committee to look into the affairs of the Kenya Police Force.

One of the committee's recommendations was the establishment of the Police Training School in Nairobi. In 1909, captain W.F.S. Edwards noted that the military element had been promoted at the expense of police training, as a result of which a training depot was established in Nairobi in 1911 together with a small fingerprint section.

Later, the office of the Inspector General was established to unite various units of the police service and to administer the operations of the Police Force. These developments continued during the turbulent years of the First World War (1914 – 1918).

The First World War interrupted this development of the Force in 1914 where the Kenya Police were deployed in military service to fight alongside Kenyan soldiers. Following the World War I

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the police service began to be reorganized. This entailed increasing personnel and creating better administrative and residential housing. During the same period, schools were established for African Education, thereby improving literacy in the Force so that by 1940, there were many literate African officers.

In 1946, the Police service was placed under the office of the Attorney General. The police officers' powers were increased, and to cope with the new development, a new Police Training Depot was opened in Maseno.

In 1948, several important developments were made in the Force. The Kenya Police Reserve was formed as an auxiliary of the Force. This Unit used armored cars and was deployed in trouble spots. To improve the effectiveness of crime control, a dog section was also introduced in 1948 and the General Service Unit established and deployed in troubled areas in emergency situations. In 1949, the Police Air wing was formed to carry out duties as communication and evacuation of sick persons to hospitals and was made part of the permanent Police service in January 1953.

After the declaration of the state of emergency in 1952, there was an immediate increase in personnel to cope with the situation and in response to the Mau Mau insurgency. In 1953, a commission was formed to review the organization, administration and expansion of the Force.

In 1957, the Police Headquarters building was opened and in 1958 the Force was integrated within the Ministry of Defense. In the period prior to independence, the Kenya Police was greatly involved in the maintenance of law and order during political meetings and at the height of the independence election period.

After Kenya gained her independence from Britain on 12th December 1963, there was a need to make some drastic changes in the administration of the Force in order to address the numerous challenges that the young nation and the police force faced. The changes that were effected included the replacement of the expatriate officers in the senior ranks by Africans. This was in a bid to Africanize the force so as attain acceptability within the independence Kenya.

The Independence Constitution<sup>24</sup> had provisions designed to establish a professional, neutral police force.<sup>25</sup> The Constitution envisaged that the police would be set up by legislation and overseen by a Police Service Commission and a National Security Council. The Inspector General of Police was to be appointed by the President on the advice of the Police Service Commission. It also gave autonomy to the police.<sup>26</sup> Most of these provisions were not implemented instead in 1966 amendments were made to consolidate power on the President, who became the head of the Executive as well as the head of state under Section 23, 24 and 25 of former Constitution of Kenya.<sup>27, 28</sup>

Furthermore, there was the enactment Police Act, Cap 84 Laws of Kenya (now repealed), which provided the substantive legislative framework on the Kenya Police Force<sup>29</sup>It provided for the functions, organization and discipline of the Kenya Police Force and the Kenya Police Reserve. Under the Act the Commissioner of Police enjoyed and exercised immense powers over the police. He was empowered to make administrative orders, called Force Standing Orders under section 5 of Act.,<sup>30</sup> for the general control and direction on the Force under section 4 of Act..<sup>31</sup>

These Orders were not required to be published and in practice had over time been treated as a confidential document available only to the police. Although the Act contemplated that the control of the Force in the Provinces, Districts or other places or areas may be under specified

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<sup>24</sup> Constitution of Kenya 1963 (also known as the Lancaster Houses Constitution)

<sup>25</sup> Ibid

<sup>26</sup> Ibid

<sup>27</sup> Former Constitution of Kenya, Section 23, 24 and 25

<sup>28</sup> Former Constitution of Kenya, Section 23, 24 and 25

<sup>29</sup>The Preamble to the Police Act.Cap 84 (repealed). An Act of Parliament to provide for the functions, organization and discipline of the Kenya Police Force and the Kenya Police Reserve, and for matters incidental to thereto.

<sup>30</sup> Police Act, Section 5

<sup>31</sup> Police Act, Section 4

police officers appointed by the Commissioner, the overall control of the entire Police Force vested in the Commissioner.<sup>32</sup>

The Police Act embodied the policing philosophy of the colonial period.<sup>33</sup> However, this changed following few amendments introduced in the last decade; the Act constitutes the police in Kenya into a 'Force' rather than a police 'Service'. That Force is highly centralized and militaristic with little or no decision making power to the Provinces and Districts.

However, owing to failure by the independence government to implement certain crucial propositions of both the Constitution and the Police Act, there were numerous challenges and rot in the force that ensued. These included, the police continued the brutal colonial relationship with the natives. There continued abuse and violation of human rights. Video cameras have captured police officers in the act of brutally beating people. As a result the police force thereby became defacto judge, jury and executioner.<sup>34</sup>

Although the need to reform the Police force has been with us from independence, the most sinister steps have been taken in the last decade. In 2004 former President Kibaki launched community policing program which was the product of detailed work by the National Task Force on Police Reform appointed in April 2004.<sup>35</sup>

Following the post election violence (PEV) in 2007/2008, triggered by the disputed presidential election Kenya faced a crisis that nearly turned into a civil war. A Panel of Eminent African Personalities was named by the African Union led by former United Nations Secretary General, Kofi Annan who initiated the Kenya National Dialogue and Reconciliation Process (KNDR) which led to the signing of the National Accord and Reconciliation Agreement. The Panel also created the Commission of Inquiry into Post-Election Violence (CIPEV)<sup>36</sup> to investigate

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<sup>32</sup> The Philip Ransely Report on Police reforms

<sup>33</sup> The Act was adopted from the Police Ordinance that was used by the colonial administration.

<sup>34</sup> Chief Penny E. Harrington "Challenges Facing Police Administrators," National Center for Women & Policing at <http://www.pennyharrington.com/challenges.htm>

<sup>35</sup> Supra note 3

<sup>36</sup> The Commission is commonly referred to as Waki Commission.

circumstances of the post election violence, and to recommend measures that could bring to justice the perpetrators.<sup>37</sup>

The Commission concluded among others that the Police force was ill-equipped and unprepared during the violence; the police force lacked professionalism and impartiality; the police were brutal and inhuman during the period; that the police forces were responsible for 405 out of the cases of death due to gunshots, validating the view that police action accounted for a good part of the post-election violence as opposed to the belief that it was wholly a citizen-to-citizen violence. The Commission recommended the establishment of a specialized and independent police reform group. With local and international pressure piling on government for the more determined implementation under agenda item IV former President Mwai Kibaki in May 2009 appointed a National Task Force on Police Reform led by Honorable (Retired) Phillip Ransley to examine, among other issues, existing policies and institutional structures of the police, and to recommend comprehensive reforms that would enhance effectiveness, professionalism and accountability in the police services.<sup>38</sup>

The task force in addressing the many structural and management problems, organizational shortcomings and challenges developed more than 200 recommendations. These included, establishments of National police service Commission, Police Reforms Implementation Committee to spearhead police reforms, robust police legal framework, restructuring the police service, community policing mechanisms, among others. Others aimed at modernizing policing

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<sup>37</sup> Government of Kenya, *Report of the Commission of Inquiry into Post-Election Violence*, (2008), Government Printers and Press, Nairobi. Discussions under Agenda Item IV of the National Dialogue and Reconciliation signed on 1<sup>st</sup> February 2008, were to be conducted to examine and propose solutions for long-standing issues like poverty, the inequitable distribution of resources and perceptions of historical injustices and exclusion on the part of segments of Kenyan society constituting the underlying causes of the prevailing social tensions, instability and cycle of violence.

<sup>38</sup> Government of Kenya, *Report of the National Taskforce on Police Reforms*, 2009, Government Printers and Press, Nairobi Kenya. Also referred to the Honorable Justice (Rtd) Phillip Ransely report. The task force was formed pursuant to the Gazette Notice No. 4790, Kenya Gazette, 8<sup>th</sup> May 2009, Government of Kenya, Government Printers Kenya.

and making it more effective, community friendly, and improving the conditions of service, salaries and allowances of the police among others.<sup>39</sup>

A Police Reform Implementation Committee (PRIC)<sup>40</sup> was thereafter established to fast-track, oversee and coordinate the implementation of the recommendations of the Ransley report. It came up with concrete drafting recommendations that were taken up by the drafters. The PRIC prepared five Bills three of which were enacted in to law that provide a framework for the implementation of the reforms.<sup>41</sup> These included the National Police Service Act 2011,<sup>42</sup> National Police Service Commission Act No. 30 of 2011, and Independent Policing Oversight Authority (IPOA) Act No. 35 of 2011. The other 2 bills<sup>43</sup> have not been enacted in law..

### **1.3. Statement of the Problem**

Police reform in Kenya had remained elusive matter for the past decades as reports of task forces and commission of inquiries relating to the conduct of police have been shelved and remain unimplemented including the Task Force on Police reforms in 2004 as well as the 1998 Akiwumi Commission of Inquiry into Tribal Clashes in Kenya.

The problem lied with the inadequacy of laws,<sup>44</sup> lack of political goodwill and attitude change amongst the police officers themselves.<sup>45</sup> The Constitution of Kenya 2010 and relevant legal<sup>46</sup> and institutional frameworks spur the hope of reforming the police force. However, the challenge

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<sup>39</sup> *ibid.*

<sup>40</sup> The Committee mandated to spearhead reforms in the police service. It was chaired by Mr Titus Naikuni, Managing CEO, Kenya Airways, 2011.

<sup>41</sup> Police Reform Implementation, at <http://www.klrc.go.ke/index.php/projects/completed-projects/146-police-reforms-legislation> (accessed 1/8/13)

<sup>42</sup> Government Printer and Press, Kenya

<sup>43</sup> National Coroners Bill 2011, and Private Security Industry Regulation Bill, 2011.

<sup>44</sup> Police Act cap 84 (repealed), Administrative Police Act Cap 85(repealed).

<sup>45</sup> *Supra* note 40

<sup>46</sup> National Police Service Act 2011, Independent Policing Oversight Act No. 35 of 2011, National Police Service Commission Act , No. 30 of 2011, Government Printer and Press, Kenya

is how efficaciously the implementation of the proposed reform will be undertaken. It is a major concern in the spirit of reforming the police force that the desired changes be made in order to achieve a more accountable, responsible, professional and public minded and friendly police service.

However, there are numerous challenges or bottlenecks that are hindering the full realization of police reforms in Kenya despite the existence of police legal framework.<sup>47</sup> These challenges include:

First, corruption remains a key challenge to implementation of police reforms. According to the 2013 Transparency International Global Corruption Barometer Report Kenya is ranked 5<sup>th</sup> in the world with 70% of the respondents to the study admitting to giving a bribe to the police. As a result the police service remains the most affected and corrupt institution in Kenya.<sup>48</sup> The rampant corruption can also be attributed to poor enforcement of the existing police and anti-corruption legal framework<sup>49</sup> as well as the failure of the government in addressing the perennial challenges undermining the mandate of the Kenya Police Service.<sup>50</sup> Police in Kenya has over the years consistently been cited in various surveys as one of the most corrupt institutions in the country.

Second, inadequate training remains a challenge to reforms. It is true that many junior officers in the police force are under-skilled despite the increasing sophistication of crime.<sup>51</sup> Moreover, continuous police training is very vital to meet the changing global trends in security. The failure

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<sup>47</sup> Ibid.

<sup>48</sup> Transparency International Global Corruption Barometer Report at <http://www.amnesty.org/> (accessed 1/8/13)

<sup>49</sup> Public Officer Ethics Act, No. 3 of 2003, Ethics and Anti-Corruption Act, 2011, Independent Policing Oversight Act No. 35 of 2011; Government Printer and Press.

<sup>50</sup> See Chapter 2.

<sup>51</sup> Government of Kenya, Report of the National Taskforce on Police Reforms, 2009, Government Printers and Press, Nairobi Kenya. Also referred to the Honorable Justice (Rtd) Phillip Ransely report. The task force was formed pursuant to the Gazette Notice No. 4790, Kenya Gazette, 8<sup>th</sup> May 2009, Government of Kenya, Government Printers Kenya.

to address continuous and proper training in addition to proper equipment of police will most likely impede reforms. The police reform legal framework emphasis the need for proper training and retraining of police officers however as a result of poor enforcement most police officers still remain undertrained and under-skilled in operation of the duties.

Third, the police need proper housing and accommodation; medical and welfare schemes, and recreational facilities. The challenges facing the police are attributed to lack political good will and poor enforcement of the laws on police reforms. The funding of the police is irregular and unpredictable thus preventing effective planning and development. Existing procurement procedures are cumbersome, bureaucratic and slow.<sup>52</sup>

Fourth, impunity presents itself as a key challenge in the reform process. Despite the existence of the police legal framework, call for reforms by sections of civil society, public and political establishment and steps towards implementing police reforms there have been undercover forces resisting the change and reforms within the police force.<sup>53</sup> This challenge is likely to create an indelible dent on the pace of reforms required to be undertaken. Examples include the stalemate between Office of the President (OP), National Police Service Commission (NPSC) and the office of Inspector General of Police (IGP) over appointments, transfers and promotions of police officers;<sup>54</sup>In addition, the appointment senior members of the police service by the Inspector General of Police in total disregard to the law and recommendations of the selection committee.<sup>55</sup> This is contrary to provisions of the National Police Service Act 2011 on qualifications and eligibility for appointment of Inspector General of Police and Deputy Inspectors –General of Police under Section 11.

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<sup>52</sup> Supra note 29

<sup>53</sup> Most police respondents during the research highlighted impunity as real and likely challenge to the reform of the Police Service in Kenya. See also Chapter 2.

<sup>54</sup> “New flashpoints in police turf wars” *Standard Sunday*, February 10 2013

<sup>55</sup> The unilateral presidential appointment of Ndegwa Muhoro and Grace Kaindi was improperly done as there was no proper consultation between the President and the Prime minister as required by law.

Furthermore, inadequate budgetary allocation will as long as no improvement is made be a problem to the police reforms. The dominant opinion of police officers interviewed<sup>56</sup> suggests that the annual budgetary allocation of the Kenyan police is hardly enough to ensure that they discharge their duties effectively.<sup>57</sup> These have mainly been attributed to lack of political good will in reforming the police service and police funding.

Notwithstanding the police reform, challenges identified above are still prevalent which begs the question whether the legal framework is efficacious to address to address the challenges. This is the basis of the study. However, the police legal framework is hardly three years in force hence the likelihood of real challenge to the study.

#### **1.4. Justification of the Study**

The Constitution of Kenya 2010 and the police laws have been enacted with the intent of bringing reform in the Kenya police force. As already stated above, in a society with one of the highest crime rates in the world, the average Kenyan citizen believes that half of the members of the police force are corrupt and that over one-third of all crime committed in the country is attributable to police criminality.<sup>58</sup>

The problems dogging the Kenya police has been due to: Firstly, the power to control the police by the executive was derived in part from key legislative enactments.<sup>59</sup> Second, due to restrictive laws and to a well-entrenched culture of secrecy, it has been exceptionally difficult for a citizen of Kenya to obtain almost any information about the most basic aspects of police functioning or the occurrence of crime in Kenya.<sup>60</sup> Third, internal and external mechanisms for holding the

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<sup>56</sup> Views of the police officers interviewed and cited in supra note 113-115

<sup>57</sup> Remarks by Peter Kenneth amongst during the first presidential debate held on February 11, 2013 at Brook house International School.

<sup>58</sup> Un-Habitat, Crime in Nairobi: Results Of A Citywide Victim Survey 35 (2002). <http://www.unhabitat.org/pmss/listItemDetails.aspx?publicationID=1693> (accessed 2/3/2013)

<sup>59</sup> Section 23, 24, and 25 1969 Constitution of Kenya, Police Act Cap 84 (repealed) Government Printer and Press, Kenya

<sup>60</sup> Supra note 10

police accountable are few in number and weak in functioning and lastly, powerful outside actors like politicians have exerted a substantial illegitimate influence over police operations.<sup>61</sup>

The Waki Commission further recommended that owing to the nature of the legal and institutional framework that provides police services has been at the centre of the Kenya police decadence, a comprehensive democratic police reforms is necessary to insulate the police from interference in regard to operational matters which will require that a conceptual distinction be made between operations, on the one hand, and policy, on the other.<sup>62</sup> Elected officials must be responsible for policy while the police leadership be responsible, in the first instance, for operations.<sup>63</sup> Police and policymakers should be encouraged to internalize and institutionalize the distinction between the making of policy and the conduct of operations; otherwise the rule of law becomes a casualty of politics.<sup>64</sup>

Nonetheless, as we advocate for speedy police reforms, we must keep in mind that, in the absence of internal discipline, the basic values of democratic policing; popular accountability, legal accountability, and transparency, effective reforms cannot take hold.<sup>65</sup> There is little use in creating mechanisms to hold the police leadership accountable to the people's elected representatives when the police leadership, in turn, cannot transmit the policy directions and values of the people's representatives to the lower ranks of the police force. Moreover, where junior police officers do not in practice answer to senior police officers, powerful individuals from outside the police force will in turn fill the power vacuum.<sup>66</sup>

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<sup>61</sup> Ibid.

<sup>62</sup>Supra note 35

<sup>63</sup> David H. Bayley, Who are We Kidding? or Developing Democracy Through Police Reform, 1997National Institute of Justice, <https://www.ncjrs.gov/App/Publications/abstract.aspx?ID=169428> (accessed 5/4/2013)

<sup>64</sup> Ibid.

<sup>65</sup> Ibid.

<sup>66</sup> Ibid.

The Kenya police reforms being undertaken should be aimed at putting an end to the era of absolute and arrogant discretion and violation of human rights by ushering in a new era of accountability.<sup>67</sup>

### **1.5. Objectives of the Research**

The objectives of the research are:

1. To identify the perennial challenges undermining the police service ability in Kenya to effectively execute its mandate.
2. To critically analyze the legal framework on police reforms in Kenya with a view to determining its efficacy in addressing the challenges identified above.
3. To identify cases of international best practice with a view to benchmarking and assessing the adequacy of the Kenyan model.

### **1.6. Research Questions**

The research questions are:

- a) Whether there are perennial challenges that undermine the police service ability in Kenya to effectively execute its mandate.
- b) Whether the legal framework on police reforms is efficacious in addressing the challenges.
- c) Whether there are cases of international best practice that fits the Kenyan model from which Kenya can draw lessons.

### **1.7. Hypothesis**

There are perennial challenges that are likely to undermine the realization of the police reform objective.

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<sup>67</sup> Irene Ndungu, Police Reforms in Kenya Crucial to Restore Public Confidence, 2010, at <http://www.issafrica.org/iss-today/police-reforms-in-kenya-crucial-to-restore-public-confidence> (accessed 12/8/2013)

## 1.8. Theoretical Framework

The researcher relies on legal and institutional theory in the analysis of the police reforms in Kenya. The legal and institutional theories though distinct are interconnected and interwoven.<sup>68</sup>

The legal theory focuses on law as a system of rules and guidelines which are enforced through social institutions to govern behavior.<sup>69</sup> Laws are made by governments through decrees from the supreme ruler, judicial interpretations and parliaments. The formation of laws may be influenced by a constitution (written or unwritten) and the rights encoded therein. The law shapes politics, economics and society in countless ways and serves as a social mediator of relations between people.<sup>70</sup>

Institutional theory focuses on the deeper and more resilient aspects of social structure. It considers the processes by which structures, including schemes; rules, norms, and routines, become established as authoritative guidelines for social behavior. Scott indicates that, in order to survive, organizations must conform to the rules and belief systems prevailing in the environment. Because of structural and procedural institutional isomorphism, the organization then earns legitimacy.<sup>71</sup> In the spirit of implementation of reforms, the National Police Service Commission, the Independent Policing Oversight Authority, and institutions established must therefore act within public interest.<sup>72</sup>

Powell and DiMaggio<sup>73</sup> define an emerging perspective in organization theory and sociology, which they term the ‘new institutionalism’ as rejecting the rational-actor models of classical

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<sup>68</sup> Richard Scott Institutional Theory: Contributing to a Theoretical Research Program, 2004, Stanford University, at <http://icos.groups.si.umich.edu/Institutional%20Theory%20Oxford04.pdf> (accessed 3/5/2013)

<sup>69</sup> Ibid.

<sup>70</sup> Ibid.

<sup>71</sup> Scott, R. “The adolescence of institutional theory” (1987), *Administrative Science Quarterly*, Vol. 32, pp. 493-511.

<sup>72</sup> **Kipchumba Some** “New flashpoints in police turf wars” (2013) *Standard Sunday*, February 10, at <http://www.standardmedia.co.ke/> (accessed 2/3/13)

<sup>73</sup> Meyer, J. and Rowan, B. “Institutionalized organizations: formal structure as myth and ceremony” (1977), *American Journal of Sociology*, Vol. 83 No. 2, pp. 340-63.

economics. Instead, it seeks cognitive and cultural explanations of social and organizational phenomena by considering the properties of supra-individual units of analysis that cannot be reduced to aggregations or direct consequences of individuals' attributes or motives. As such the reforms within the police service should be designed in a manner that will allow little for individual discretion that has been the Kenya in the management and operations of the police service in Kenya.<sup>74</sup>

Although the institutional theory is used mostly in the business and economic sense, it can also apply to the police service in Kenya. Public confidence in Kenya's police force has been eroded due to accusations of impunity, excessive use of force and brutality, disregard for human rights, abuse of due process and malignant corruption.<sup>75</sup> Based on this school of thought the Kenya Police should service oriented with the main goal being ensuring that there is maintenance of law and order. The promulgation of the Constitution<sup>76</sup> in August 2010 was designed to change all that. It provided the bedrock for instituting extensive sector reforms in Kenya, most importantly, in the police.

The Constitution of Kenya 2010 ensures that the Police operate within a clear legal and institutional framework governing their roles, mandates, and the hierarchy of authority between them, the legislature and the executive, by establishing the Police Service Commission and giving it powers over the appointment and discipline of police officers.

### **1.9. Literature Review**

The literature in police reforms is rich globally. However, since the research seeks to study the reform of the Kenya police force, with specific focus on the legislative and institutional framework, there is not much that has been published so the study is limited to relevant text books, policy documents, reports, journals, research papers and articles.

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<sup>74</sup>Mastrofski, S. &Ritti, R.R. ``Police training and the effects of organization on drunk driving enforcement' (1996), *Justice Quarterly*, Vol. 13 No. 2, pp. 291-320.

<sup>75</sup> Supra note 26

<sup>76</sup> Supra note 36

Otwin Marenin<sup>77</sup> explains that the domain of policing has expanded in recent years as private, community based and corporate security services and transnational policing and security structures have taken over many of the jobs and roles formerly performed by state-based policing systems. The legitimate monopoly of coercion by the state has been eroded.

He therefore suggests that such changes must inform police reforms in Kenya as it strives to achieve universally accepted tenets of democratic policing which includes stability, protection of the human and fundamental rights, legality, proportionality, public interest, good faith (bona fide) conformity with international law. Further, Otwin's model informs this study on global security sector realignment that is important in appreciating the role of private security agencies, community based and corporate security services and transnational policing and security structures in maintenance of law and order.

However, this study departs from his on the basis that the study focuses on assessment of the Kenyan legal framework with a view to determining its efficacy to tackle the perennial challenges that are prevalent in the police service.

Chitra and Christopher<sup>78</sup> argue that an effective police reform is reliant basically on political stability and good will. It therefore depends on external (political good will and stability) as well as internal support (institutional initiatives). But without external support for reform, even the most committed police leadership will lose the political backing and resources necessary to sustain a successful reform process.

Their study therefore informs and reiterates the need for political good will as well as the institutional support in realization of police reforms.

However, their study is Indian based and does not specifically address the Kenyan scenario. Moreover, while the study focuses on the role of the public as well as the police institutions in bringing a desired change in the police service, this study is specific to assessing the efficacy of the Kenyan police reform legal framework in realizing the much touted police reforms.

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<sup>77</sup>Otwin Marenin *Implementing Police Reforms: The Role of the Transnational Policy Community*, Washington State University, USA at <http://libarts.wsu.edu/isic/research/pdf/implementing-police.pdf> (accessed 12/2/2013).

<sup>78</sup>Chitra Bhanu & Christopher Stone "Public-Private Partnerships for Police Reform" *Vera Institute of Justice*, India.

David Bruce,<sup>79</sup> making a case for Kenya and South African police reform, observes that the key to the process of democratic reform is to focus the police on understanding the needs of the general public in terms of the provision of policing services, motivating and supporting police in meeting these needs.

According to him, this kind of focus is different from that under an authoritarian system where police are compromised by political interference and by the expectation that they will serve certain sectional interests as is the Kenyan scenario where the police force is heavily manipulated and controlled by the executive.<sup>80</sup> It therefore involves freeing the police from politics, and supports them in becoming responsive to the broad needs of the public. His study therefore correlates to the Kenyan scenario in that the main drive and cause of agitation for police reforms in Kenya is basically the need to free the police service from the whims of the executive and help them achieve their independence. As a result, it reiterates and strengthens the support for an independent and accountable police service.

However, while it does look into democratic reform of the police force, this study focuses on assessing the efficacy of the Kenyan police reform legal framework in realizing the much touted police reforms.

Robert<sup>81</sup> opines that in an emerging democracy, police reform cannot be accomplished by making slow inroads from the margins of police operations. Rather, institutional arrangements and management systems designed to ensure police accountability and adherence to the rule of law, and to engender an institutional culture of respect for these values, must be put in place before other, more targeted reforms can take hold.

Notwithstanding the fact that the study is based on the United States jurisdiction, its findings on the role of democracy and the conduct of wholesome police overhaul is relevant to the Kenyan

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<sup>79</sup> David Bruce., *Democratic reform of police – any lessons for Kenya from South Africa?* (2003). Centre for the Study of Violence and Reconciliation: Johannesburg, South Africa.

<sup>80</sup> *Ibid.*

<sup>81</sup> Robert O. Varenik, *Exploring Roads to Police Reform: Six Recommendations* Lawyers Committee for Human Rights *USMEX 2003-04 Working Paper Series*, USA

case in that piecemeal reform of the police service may not be of help to ensuring the efficacy of the police service.

However, the study is based on the US jurisdiction and therefore does not envision the Kenyan case. Moreover, it does not assess the Kenyan legal framework on police reforms but rather discusses general recommendations on realization of police reforms.

Etannibi EO Alemika,<sup>82</sup> examines need and level of police reforms in post colonial and post-conflict African countries.

He argues that most post-colonial rulers developed social-cultural and economic ideological affinities with the colonizers. He continues to state that they benefited from the lifestyle of colonizers only to neglect the very important issues like reforming the police forces. He argues that the failure of the post-colonial rulers to professionalize the police forces in Africa has mainly contributed to brutal, inhuman, corrupt, inefficient and unresponsive to the generality of population by the police force. Conversely, the unreformed police force in Kenya is mainly attributed to neglect by post colonial leaders.

However, despite addressing issues so relevant to the Kenyan situation it does not evaluate the established Kenyan legal framework that has been laid down in Kenya to address police reforms and this is what this study intends to do.

Dylan Hendrickson *et al.*<sup>83</sup> outline guidelines that need to be observed while undertaking reforms within various security sectors. In addition it also outlines the role of the civil society, international community and organizations like the Department for International Development in the reform of the security sectors.

Most importantly Guidelines provide for the need to have an effective legal and institutional framework. It states that the various security and intelligence actors should operate within a clear legal and institutional framework governing their roles, mandates, and the hierarchy of authority

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<sup>82</sup>Etannibi EO Alemika, *Police reforms in Africa: Issues and Challenges*, CLEEN Foundation, Lagos. EtannibiAlamikaisProfessor of Criminology and Sociology of Law, University of Jos, Nigeria

<sup>83</sup> Dylan Hendrickson *et al.*, DFID, *Understanding and Supporting Security Sectors*, at <http://projects.dfid.gov.uk/project.aspx?Project=103672> (accessed 2/3/2013)

between them, the legislature and the executive. It is therefore valid to argue that players in reform process should heed to these guidelines so as to establish police service that meets international standards. This therefore is important to this study as it provides basis for comparative analysis of both the legal framework already in place in Kenya.

However, despite recommending the existence of legal and institutional framework, it does not envisage the existence of such in Kenya. He therefore does not address the subject of this study which is the assessment of the suitability of the Kenya legal framework on police reforms.

Johannes Loh<sup>84</sup> from Germany examines success factors in police reform in post-conflict situations. He reviews the state of police reforms in post-conflict societies such as Sierra Leone and Democratic Republic of Congo.

He argues that in post-conflict countries the deficiencies of the national police forces are often overwhelming, which makes effective reforms without financial and material assistance from donors very difficult. However, even in post-conflict countries with robust UN Missions and extensive donor activities, security sector reform has produced mixed results. In the short run, security sector reform is aimed at enabling a country's institutions to provide basic security, while, in the long run, it pursues the ambitious goal of reconstructing a state's governance to ensure the army and the police serve the interests of society. However, in the Kenyan scenario, it cannot be completely argued that the reforms that are currently being spearheaded are as a result of the post election violence following the 2007 General Elections. It has been argued even before that the reforms in the police force were long overdue based on the reports on corrupt nature of the force besides the various human and political rights violations by the police force. It is therefore valid to argue that his findings cannot be completely be relied on in reforming and evaluating the status of police reforms in Kenya.

Dr. Charles T. Call<sup>85</sup> is an Assistant Research Professor at the Watson Institute for International Studies of Brown University. He gives considerations and identifies five differentiated

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<sup>84</sup> Johannes Loh (2010) "Success factors for police reforms in post-conflict situations," Thesis submitted to the Hertie School of Governance, Berlin for fulfillment for award of masters degree.

<sup>85</sup> Dr. Charles T. Call, "Challenges in Police Reform: Promoting Effectiveness and Accountability, International Peace Academy, USA.

alternative approaches and perspectives that are vital in analyzing police reform efforts. He identifies as law enforcement perspective, human rights perspective, economic-development perspective, peacekeeping or military perspective and lastly democratization perspectives.

The approaches are distinguishable by their principal concerns, the language they employ and the types of organizations that tend to hold them. They are broad characterizations, and individuals often adhere to more than one of them. The approaches are vital in assessing the success and extent to which reform has been realized in the already undertaken process for instance the Kenyan scenario.

However, his study is a drift of the aspect of police reform that this study is focused on. This study is keen on evaluating the efficacy of the Kenya police legal framework while the former is a general analytically based.

Bayley David<sup>86</sup> from United States of America cautions against using overseas models as template for reform, as this will fail to take account of the current economic and social realities of the country and police agency in question. That, reform measures need to be based on an assessment of the current status, performance and capacity of the police service and of other bodies which perform a policing role; the potential of personnel within the agency to change and improve their practice; the available capacity in the police and, more broadly and to support the process of change.

This, he says, will lead to developing a reform programme with an understanding of the possibilities and constraints imposed by the above factors and should incorporate both short term measures which will build confidence amongst the police and public; and more systemic longer term measures aimed at overall reform of the policing system. His work therefore informs the Kenyan stakeholders in the reform process to focus on the reform path that is society based and sustainable.

However, his study is not directly linked to the Kenya scenario and particularly do not address the study as far as the suitability of the Kenyan legal framework on police reforms is concerned.

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<sup>86</sup>Bayley, D., "Democratising the Police Abroad: What to Do and How to Do it." (2001) National Institute of Justice, Office of Justice programmes. U.S. Department of Justice: Washington D. C.

Kenneth Omeje and John Mwangi Githigaro<sup>87</sup> observe and examine with the challenges and dynamics of state policing in contemporary Kenya. They state that popular transition to multi-party democracy in Kenya in 1992 came with a great hope and expectation of reforms in the political, economic, and security spaces. In particular, it was envisaged that reform in the security sector would, among other things, end the dismal paradigm of policing for regime security and replace it with a new dispensation of popular policing oriented to the general protection and security of the citizens. For about eight years into the new multi-party republic, the Kenyan police force was hardly reformed. The outbreak of the infamous post-election violence of early 2008 with its horrifying incidents of ethnic massacre and police incapacity and brutality graphically reported by the international media served as a reminder to security specialists and observers alike that the Kenyan security sector crisis, which reached a crescendo during the dictatorship of Daniel Arap Moi, is far from over.

**While their study analyzes the transition from state policing to multi-choice policing in Kenya, including its underlying structural and empirical impediments, externalities, challenges, and opportunities; this study, their study simply lays down the need for reforms as it mainly outlines various challenges to policing in Kenya.**

## **1.10. Research Method**

This research is informed by;

### **1.10.1. Primary data**

Interviewees were randomly selected from various police stations and service ranks in Kenya including Senior Superintendent of police, Superintendent of police, Chief Inspector of police, Inspector of police, senior police sergeants

Police Sergeant, police corporal and police constables. The interviewees were drawn from various parts of the country namely; Meru, ,Siaya, Kisii, Kiambu, Nairobi, Mtito Andei,

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<sup>87</sup>Kenneth Omeje& John MwangiGithigaro “The Challenges of State Policing in Kenya,” 2012 Peace and Conflict Review at <http://www.review.upeace.org/index.cfm?opcion=0&ejemplar=24&entrada=129> (accessed 21/11/13)

Mombasa, Kakamega, Eldoret, Kiambu, Homabay, Machakos, Isiolo, Kericho, Kisumu, and Kitui.

This data is important to capture the realities on the ground and the feelings of the members of police service regarding the ongoing situation. It would be futile to make recommendations that are not based on the real findings.

The study is also informed by analysis of various legal instruments both nationally and internationally including, the Kenya and South Africa Constitutions, <sup>88</sup>various Acts of Kenyan Parliament which include <sup>1</sup> Police Act cap 84(repealed), Administrative Police Act Cap 85(repealed), National Police Service Act 2011, Independent Policing Oversight Act No. 35 of 2011, National Police Service Commission Act No. 30 of 2011, Leadership and Integrity Act 2012, Ethics and Anti-Corruption Act, 2011, Public Officer Ethics Act No.3 of 2003. and from other jurisdictions such as Sweden which comprise of Administrative Procedure Act (1986:223), Police Act (1984:387), the Police Ordinance (1998:1558), Police Data Protection Act (1998:622), Ordinance (1989:773) Police Training Ordinance (1999:740), Government Agencies Ordinance (2007:515), Ordinance on Internal Management and Control (2007:603), and South Africa comprising National Peace Accord, 1991, South African Police Act,1995, as well as pertinent Bills<sup>89</sup> and other international legal instruments.<sup>90</sup>

### **1.10.2. Secondary data**

This study is also informed by various secondary sources including books by prolific authors, articles from peer-reviewed journals, reports by credible commissions, newspapers, articles, publications, and other internet sources.

### **1.11. Limitation of the Study**

The intended objectives of this research study are to identify the perennial challenges undermining the police service ability in Kenya to effectively execute its mandate; to critically

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<sup>88</sup>Constitution of Kenya 2010, 1969, 1963.Government Printers and Press, Nairobi; *Constitution of the Republic of South Africa* [[No. 108 of 1996](#)].

<sup>89</sup>National Police Service Amendment Bill 2013, Government Printers and Press, Kenya.

<sup>90</sup> International Convention on Civil and Political Rights (ICCPR), United Nations Declaration on Human Rights (UNDHR) at [un.org/database-downloadable/35hi63](http://un.org/database-downloadable/35hi63)(accessed 3/4/13)

analyze the legal framework on police reforms in Kenya with a view to determining its efficacy in addressing the challenges identified above and finally to identify cases of international best practice with a view to benchmarking and assessing the adequacy of the Kenyan model alongside the identified cases. However, there are factors that cognizable that may influence or limit the achievement of the objectives of the study.

First, the study is done at a time when the legislations on police reforms are undergoing implementation. Second, there may also arise the misapplication of some aspects of reform due to socio cultural as well as jurisdiction divergence.

In addition, there is also caution that the projected interviewees and respondents may withhold very essential information that may be of great importance to the study. Due to various perceived inadequacies certain current police legislations are undergoing review but this notwithstanding all the pertinent revisions have been addressed within the scope of the study.

In addition this study is also undertaken at a time during which the clamor for police reforms is alive and such issues on police reforms are however addressed within the scope of the study.

### **1.12. Conclusion**

This chapter having outlined the background of the study, statement of the problem, justifications of the study, objectives of the study, research questions, hypothesis, theoretical framework, literature review, research methodology and limitation of the study. The following chapter will delineates the mandate of the police service in Kenya as per the various legal provisions with a view to further outlining the challenges that undermine the realization of that mandate.

### **1.13. Chapters Breakdown**

#### **1.13.1. Chapter One- Introduction and background of the study**

This chapter outlines the background of the study, statement of the problem, justifications of the study, objectives of the study, research questions, hypothesis, theoretical framework, literature review, research methodology and limitation of the study.

#### **1.13.2. Chapter Two- Perennial challenges undermining the mandate of Police Service in Kenya**

This chapter delineates the mandate of the police service in Kenya as per the various legal provisions with a view to further outlining the challenges that undermine the realization of that mandate.

#### **1.13.3. Chapter Three – An assessment of the efficacy of the police legal framework in Kenya.**

This chapter gives a critical and in-depth analysis of how the Kenya Police Service legal framework deals with the perennial challenges undermining the mandate of the Kenya Police Service. These include, Constitution of Kenya 2010, Ethics and Anti-Corruption Act, National Police Service Commission Act, National Police Service Act 2011, the Independent Policing Oversight Authority Act.

#### **1.13.4. Chapter Four – Benchmarking of police reforms against cases international best practice.**

The chapter deals with instances of best practice in police reforms. It will examine legislations that govern police reforms in Sweden and South Africa with a view to benchmarking and assessing the adequacy of the Kenyan model alongside the identified cases.

#### **1.13.5. Chapter Five - Conclusion and Recommendations**

This chapter contains the conclusion deduced from the study and the recommendations proposed by the researcher on the implementation of the police reform legislations. It will also analyze the hypothesis in line with findings of the study.

## CHAPTER TWO

### 2.0. Perennial challenges undermining the mandate of Kenya Police Service

#### 2.1. Introduction

This chapter clearly delineates the mandate of the police service in Kenya as per the various legal provisions with a view to further outlining the challenges that undermine the realization of that mandate.

#### 2.2. The mandate of the police service in Kenya

The mandate of the police service is enumerated in various legal instruments<sup>91</sup> discussed as follows;

##### 2.2.1. The Constitution of Kenya 2010

The Article 243 of the Constitution of Kenya 2010 lays the foundation for the establishment of the Kenya Police Service through the National Police Service. It establishes that National Police Service and defines it to comprise the Kenya Police Service and the Administration Police Service.<sup>92</sup>

Article 244 of the Constitution of Kenya 2010 provides for the functions and mandate of the National Police Service to strive for the highest standards of professionalism and discipline among its members.

Moreover, the Constitution further provides that the National Police Service shall prevent corruption and promote and practice transparency, and accountability. The Constitution of Kenya also provides that the National Police Service shall foster and promote relationships with the broader society. Further, the Constitution also provides that it shall train staff to the highest possible standards of competence and integrity and to respect human rights and fundamental freedoms and dignity.

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<sup>91</sup>The Constitution of Kenya 2010, National Police Service Act 2011, Government Press and Printers.

<sup>92</sup> Ibid.

Article 245 of the Constitution of Kenya 2010 also establishes the command structures of the National Police Service and Kenya Police Service.<sup>93</sup> Moreover, Article 246 of the Constitution of Kenya 2010 establishes and spells out duties, functions of the National Police Service Commission save for the Independent Policing Oversight Authority.

### **2.2.2. National Police Service Act 2011**

Section 24 of the National Police Service Act, 2011 enumerates the mandate of the Kenya Police Service. This include; provision of assistance to the public when in need; maintenance of law and order; preservation of peace; protection of life and property; investigation of crimes; collection of criminal intelligence; prevention and detection of crime; apprehension of offenders and enforcement of all laws and regulations with which it is charged, among others. The Kenya Police Service may also perform any other duties that may be prescribed by the Inspector-General under the Act or any other written law from time to time.

### **2.3. Challenges undermining the mandate of Police Service in Kenya**

There are numerous perennial challenges that face the Kenya Police Service. I have developed a two pronged typology to classify the challenges based on the evident cause as institutional and extra-institutional as follows. It is also important to note that there are challenges that overlap.

#### **2.3.1. Institutional challenges**

##### **(a) Disregard to the rule of law**

Kenya has had a long history of failure by government officials and institutions to observe and respect as well as safeguard the law paving the way for vices such as rampant corruption and impunity to step in. Some of the institutions that are reportedly affected include the police, immigration, judiciary among others.

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<sup>93</sup>Kenya Police Service shall be headed by the Deputy Inspector General of Police.

There is reported the culture of impunity and rampant corruption in the police service.<sup>94</sup> Most of the interviewees stated that impunity has spiraled due to the immense powers and lack of accountability by senior members of the force. Besides, previously there have been no robust legal framework<sup>95</sup> and institutional arrangement designed to tame abuse of office as well as impunity.<sup>96</sup> As a result there are several reported cases of police involvement in gross violation of the law and abuse of their offices.<sup>97</sup> For instance, the Kenya Police has been associated with drug trafficking<sup>98</sup> in which some of the senior police heads have been adversely mentioned. They also have engaged in summary public execution of suspected criminals without being accorded the opportunity to be heard in a fair trial process.<sup>99</sup> Human rights groups, including the state-funded Kenya National Commission on Human Rights<sup>100</sup> have documented numerous cases of disappearances, many related to a police campaign against the Mungiki<sup>101</sup>, a gang that carried out a wave of violent attacks in 2007, and which was also involved in post-election clashes in 2007/2008. The commission says many of those who have disappeared were last reported seen in police custody.<sup>102</sup> Police have admitted to killing gangsters in shootouts, saying that such actions

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<sup>94</sup> Most officers interviewed from all the police stations cited in supra note 104-111 reported that there is entrenched impunity across the police service hierarchy.

<sup>95</sup> Supra note 54

<sup>96</sup> Supra note 40

<sup>97</sup> Supra note 35

<sup>98</sup> Daily Nation, "Probe fails to link Kenyan MPs to Drugs," *Daily Nation*, 30/01/2011 at <http://www.nation.co.ke/News/-/1056/1056/-/f06mdq/-/index.html> (accessed 24/8/2013).

<sup>99</sup> The Cry of Blood Report on Extra Judicial Killings and Disappearances September 2008 at [http://marsgroupkenya.org/pdfs/2009/03/KNCHR\\_crimes-against-humanity-extra-judicial-killings-by-kenya-police-exposed.pdf](http://marsgroupkenya.org/pdfs/2009/03/KNCHR_crimes-against-humanity-extra-judicial-killings-by-kenya-police-exposed.pdf), (accessed 13/4/2013). See also Philip Alston Report on Extra Judicial killings in Kenya 2009

<sup>100</sup> KNHCR (2008) Brink of the Precipice at [http://www.marsgroupkenya.org/Reports/OtherReports/KNCHR\\_REPORT\\_REPORT\\_ON\\_THE\\_BRINK\\_OF\\_THE\\_PRECIPE.pdf](http://www.marsgroupkenya.org/Reports/OtherReports/KNCHR_REPORT_REPORT_ON_THE_BRINK_OF_THE_PRECIPE.pdf) (accessed 11/7/2013)

<sup>101</sup> Mungiki is an illegal gang that is perceived to comprise mainly of the Kikuyu youth in Kenya. See <http://en.wikipedia.org/wiki/Mungiki> (24/8/2013).

<sup>102</sup> Supra note 21

have broad public support in a country long plagued by violent crime.<sup>103</sup> Many cases of people's disappearance have also been reported.<sup>104</sup> Impunity has infiltrated the reform process as there are members of the service opposed to the police laws. As a result they are in support of the proposed amendments seeking to consolidate power of the Inspector General of Police.

Besides, corruption comprises one of the biggest challenges that the police service faces.<sup>105</sup> Police has over the years consistently been cited in various surveys as one of the most corrupt institutions in the country.<sup>106</sup> Apart from extortion by the police, the public have always complained of police torture, harassment, incivility and unlawful arrests. Corruption in the issuance of driving licenses to poorly trained drivers, and corrupt traffic officers, have been singled out as the major causes of the high rate of road accidents in Kenya.<sup>107</sup> It is also valid to argue that corruption will upset the reform process due to its entrenched nature within the police force, the public and the Kenyan society. Corruption is a vice that is so much intertwined with other aspects in the society such as poverty, poor housing as well as poor living standards among others.

In 2008, the United Nations Committee against Torture observed that corruption in the police force in Kenya was hindering efforts to deal with violations of human rights and arbitrary arrest by the police.<sup>108</sup> The Committee urged the State Party to address the problem of arbitrary police actions including unlawful and arbitrary arrests and widespread police corruption particularly in slums and poor urban neighborhoods, through clear messages of zero tolerance to corruption

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<sup>103</sup>Neild, Rachel. "Confronting a Culture of Impunity: The Promise and Pitfalls of Civilian Review of Police in Latin America," in *Civilian Oversight of Policing: Governance, Democracy and Human Rights*, edited by Andrew J. Goldsmith and Colleen Lewis. Portland, Oregon: Hart Publishing, 2000.

<sup>104</sup> Philip Alston, Extra Judicial killings in Kenya 2009 at [http://marsgroupkenya.org/pdfs/2009/03/KNCHR\\_crimes-against-humanity-extra-judicial-killings-by-kenya-police-exposed.pdf](http://marsgroupkenya.org/pdfs/2009/03/KNCHR_crimes-against-humanity-extra-judicial-killings-by-kenya-police-exposed.pdf) (accessed 26/8/2013).

<sup>105</sup> Supra note 35

<sup>106</sup>*Police top list of most corrupt public institutions in Kenya- The Star* Jul 10, 2013, at [www.the-star.co.ke/.../police-top-list-most-corrupt-public-institutions-ke...](http://www.the-star.co.ke/.../police-top-list-most-corrupt-public-institutions-ke...) (accessed 10/8/2013)

<sup>107</sup> Ibid

<sup>108</sup> Transparency International report, "Police reform in Kenya: "A drop in the ocean" Amnesty International Publications 2013, united kingdom.

from superior officers, the imposition of appropriate penalties and adequate training.<sup>109</sup> Arbitrary police action must be promptly and impartially investigated and those found responsible punished.<sup>110</sup>

Consequently, there is great need for reforms to focus on restoration of integrity within the police force. This perception is compounded by the belief that the ruling class controls the police and this control contributes to their failure to address corruption. The main propellers of culture of corruption in the police service has been attributed to impunity in the service, poor remuneration and budgetary allocation, lack of a robust legal framework, and poor enforcement of the existing police and anti-corruption legal framework<sup>111</sup> as well as the failure of the government in addressing the perennial challenges undermining the mandate of the Kenya Police Service.<sup>112</sup> Police in Kenya has over the years consistently been cited in various surveys as one of the most corrupt institutions in the country.<sup>113</sup>

#### **(b) Inadequate training**

Inadequate training is substantially a challenge to Kenyan police force. Most interviewees argued that most police officers are under-skilled, poorly trained to tackle insecurity problems that they are exposed to during their service.<sup>114</sup> This is particularly critical given the increasing sophistication of crime, and has led to inappropriate approaches to prevention of crime; poor management of scenes of crime, and incompetent prosecution of criminal cases. Moreover, they

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<sup>109</sup>Campaign Update- Kenya: Police, Courts Rank as Most Corrupt Institutions in Kenya - See more at: <http://www.culturalsurvival.org/news/campaign-update-kenya-police-courts-rank-most-corrupt-institutions-kenya#sthash.JaZ9dLdR.dpuf> (accessed 15/8/13)

<sup>110</sup>UN Committee against Torture, Concluding Observations on Kenya, November 2008, para 12. This was part of the Committee's concluding observations on the state report on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

<sup>111</sup> Public Officer Ethics Act, No. 3 of 2003, Ethics and Anti-Corruption Act, 2011, Independent Policing Oversight Act No. 35 of 2011; Police Act (repealed), Government Printer and Press.

<sup>112</sup> See Chapter 2.

<sup>113</sup> Ibid.

<sup>114</sup> Interviewees in supra note 119-121

also opine that there is need to continuously train the existing members of the police service as part of the reform process.

This challenge believed to be caused by inadequate budgetary allocation to the police service, inadequate training guidelines and curriculum among others issues as well as lack of legal framework.<sup>115</sup>

The world has advanced technologically and so has crime been sophisticated. The police need continuous and proper training to help them cope with and deal contemporary criminal activities effectively. There is also need to advance the police with technologically advanced means of fighting crime, for instance, use of satellite surveillance to track criminals among others. The failure to address continuous and proper training in addition to proper equipment of police remains a challenge to policing in Kenya.

In addition, increase in criminal activities and criminality is a challenge that complicates police resolve to effectively deal with security threats and to bring down crime to minimal levels.<sup>116</sup> This is despite the various specialized units that have been formed which the Anti-Stock Theft Unit, Anti-Motor Vehicle Theft Unit, Tourism Police Unit, The Anti-Corruption Police Unit, Presidential Escort Unit, and the Anti-Terrorism Police Unit, Anti-urinating unit among others.

**(c) Entrenched tribalism and favoritism**

Besides, most of the respondents also expressed worries over the level tribalism and nepotism. They argued that most the promotion, appointments, deployments, and job descriptions are done or carried out along ethnic lines.<sup>117</sup> Moreover, they say that recruitment of new members of the service is skewed to favor relatives, friends and tribesmen and women of senior members of the

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<sup>115</sup> Ibid.

<sup>116</sup> Stephen Makabila, Sophistication of crime worries Tobiko, at [http://www.standardmedia.co.ke/m/story.php?articleID=2000090674&story\\_title=Sophistication-of-crime-worries-Tobikos-office](http://www.standardmedia.co.ke/m/story.php?articleID=2000090674&story_title=Sophistication-of-crime-worries-Tobikos-office).

<sup>117</sup> Interviewees in supra note 113-115. See also Lauren Ploch Blanchard, Kenya: Current Issues and U.S. Policy, 2013, at <http://www.fas.org/sgp/crs/row/R42967.pdf> (accessed 25/8/2013)

police service.<sup>118</sup> Entrenched tribalism and favoritism in the police is a problem because of lack proper legal and institutional mechanism to check the management and operation of the service.<sup>119</sup>

**(d) *Poor attitude and self service***

*Most officers interviewed<sup>120</sup> stated that bad attitude is also a challenge to policing in Kenya. Most members of the force have been sighted to despise the public in service delivery. They view the public as their servants rather as masters.<sup>121</sup> It is important to acknowledge the difficulty and the necessity of changing the culture of policing in Kenya. Ultimately, the long-term success of any programme of police reform depends to a great extent on the institutional culture that prevails within the Service.<sup>122</sup> Where the prevailing culture is one of corruption and impunity, changing that culture must be one of the central goals of police reform. A transition from a “force” to a “service” is a fundamental transformation in the way the individual police officer applies himself/ herself to his work and conceives his relationship to the public, day in and day out. This kind of attitude and culture has resulted to apathy and lack of work ethics; lack of commitment; defensive approach to issues; blind loyalty to powers outside the service, and indifference approach in service delivery.*

**2.3.2. *Extra-institutional challenges***

**(a) *Ethnic conflicts, vigilantism and organized crimes***

Most police officers interviewed also lamented over tribal and ethicized illegal uprisings in the country as a challenge to their smooth carrying out of their duties. The Kenyan police are

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<sup>118</sup> Ibid.

<sup>119</sup> **Johan Burger**, The Dangers of Nepotism and Favouritism for the Police at <http://www.issafrika.org/iss-today/the-dangers-of-nepotism-and-favouritism-for-the-police> (accessed 28/8/2013)

<sup>120</sup> Supra note 113-115

<sup>121</sup> Remarks of Mrs Grace Kaindi, Deputy Inspector General of Police (Kenya Police Service) during Citizen TV interview at [www.youtube.com/watch?v=mondayspecial/](http://www.youtube.com/watch?v=mondayspecial/) (accessed 12/7/2013).

<sup>122</sup> Ibid.

significantly challenged when managing ethnic relations and violence.<sup>123</sup> This is attributed to the nature of divisive politics. Ethnic-related violence is prevalent during election periods.<sup>124</sup> Election-related violence is not a new phenomenon in Kenya, as it has been recurrent in the modern history of the nation.<sup>125</sup> The high level of organization of the clashes, which the state security agencies appeared incapable of surmounting, heightened the speculation about the involvement of the state and some top politicians in the clashes.<sup>126</sup> The 2007/2008 election violence was particularly overwhelming to the police who appeared unable to contain it.<sup>127</sup>

Ethnic conflict in Kenya tends to be exacerbated by the lack of enforcement of the police legal framework and proliferation of militia gangs and vigilantes in the country such as the *Taliban*, *Baghdad Boys*, *Jeshi la Mzee*, *Mungiki*, and *Jeshi la Embakasi* which some analysts see as a response to youth marginalization by the state.<sup>128</sup> They emerge to help fill the security vacuum created by the state's abdication of its responsibility in security.<sup>129</sup> As part of their strategies for survival, these militias extort a protection levy from residents of informal settlements in addition to charging for use of illegal water and electricity connections.

## **(b) Political interference**

Most interviewees<sup>130</sup> expressed political interference as a challenge to the operations of the service. Dominant opinions of the interviewed police officials indicate that in carrying out their

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<sup>123</sup> Supra note 21; see also generally Chapter 1

<sup>124</sup> *Ibid.*

<sup>125</sup> Kennedy, Mkutu., and S. Kizito, "Private Security Companies and Dilemmas for Security," *Journal of Contemporary African Studies* 25, no. 3 (2007): 391-496.

<sup>126</sup> *Ibid.*

<sup>127</sup> NjokiNdung'u, "Kenya: The December 2007 Election Crisis," at [muse.jhu.edu/journals/mediterranean\\_quarterly/v019/19.4.ndungu.pdf](http://muse.jhu.edu/journals/mediterranean_quarterly/v019/19.4.ndungu.pdf) (accessed 12/6/2013)

<sup>128</sup> KatumangaMusambayi "A City under Siege: Banditry and Modes of Accumulations in Nairobi, 1991-2004," *Review of African Political Economy* 32, no. 106 (2005):505-520.

<sup>129</sup> Suzanne Mueller, "The Political Economy of Kenya's Crisis," *Journal of Eastern African Studies* 188, at <http://www.tandfonline.com/doi/abs/10.1080/17531050802058302#.UhoNn2dojXQ> (accessed 7/8/2013).

<sup>130</sup> Interviewees from Kericho, Eldoret, Kitale among other police stations

duties, the Kenyan police have been subject to interference by the top political leadership in their work.<sup>131</sup> This is in part explained by the wide ranging powers the executive arm of government, especially the President wielded under the former constitution<sup>132</sup>.

Previously, the President had the sole authority to appoint and to dismiss the Police Commissioner who served at his pleasure under Constitution of Kenya 1969, Section 23, 24 and 25. This meant in practice that previous office holders had to toe the regime's line or risk being dismissed. Among other things, political interference, which has not been significantly changed by the promulgation of constitution of Kenya 2010, impairs the rule of law and law enforcement. This is particularly so with cases involving drug trafficking and other high profile crimes. The interviewed police officers<sup>133</sup> argued that they had to toe the line of their superiors or risk far-reaching consequences, including dismissal from work.

During the 2007/2008 election violence the police were used to suppress mass protests by members and supporters of the opposition.<sup>134</sup>

**(c) Inadequate budgetary allocation**

*Another challenge to the force is inadequate budgetary allocations.* Dominant opinions suggest that the annual budgetary allocation of the Kenyan police is hardly enough to ensure that they discharge their duties effectively. They argue that the small amounts allocated to police are misappropriated by top commanding officers, thereby further impeding their service delivery.<sup>135</sup>

Considerably, budgeting, priorities are often misplaced and available resources are not utilized in a prudent manner partly because most policy makers and implementers are civilians who may not have the experience of where financial resource allocation are most needed.<sup>136</sup>

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<sup>131</sup> Ibid.

<sup>132</sup> Constitution of Kenya 1969, Government Printer and Press, Kenya

<sup>133</sup> Supra note 189

<sup>134</sup> Supra note 21

<sup>135</sup> Interviewees cited in supra note 119-121

<sup>136</sup> Ibid.

The tension here is that the bureaucratic civilian component of policing seems to be more primarily concerned with regime security (and by extension serve the top echelon of the state apparatuses) with the result that citizen policing and security are substantially compromised. The over-concentration on regime policing is a common phenomenon in most developing countries, not least in Kenya.<sup>137</sup> The disproportionate preoccupation with regime policing in Kenya is reinforced by the fact that the state policing agencies in Kenya are not independent agencies, but are subject to political control and direction under the office of the President. The Kenyan police force does not have an independent vote in the national budget and receives its allocations from the pool allocated to the Office of the President.<sup>138</sup>

The poor budgetary allocation has been attributed to lack of political good will, corruption, impunity and to some extent national budgetary constraints.<sup>139</sup>

**(d) Inadequate human resources**

Most of the interviewees lamented the human resource capacity in the police service arguing that they are very few to effectively address the security challenges. The Kenyan police are understaffed and therefore the country is under policed.<sup>140</sup> There are estimates that the Kenyan police have a total population of about 40,000 personnel (figures as at end of 2010).<sup>141</sup>

The inadequate human resource capacity is mainly attributable to lack of legal framework, inadequate budgetary allocation, corruption and lack of political good will by the government.<sup>142</sup>

The public - policing ratio can be deduced therefore to be roughly in the ratio of 1:1000 going by the 2009 national population census figures of roughly 40 million citizens. This is far below the UN recommended police – public ratio of 1:450.<sup>143</sup>

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<sup>137</sup>**Interviewees cited in supra note 119-121**

<sup>138</sup> *Ibid*

<sup>139</sup> *Ibid.*

<sup>140</sup>**Supra note 35**

<sup>141</sup> *Ibid.*

<sup>142</sup> Kenya Demographic and Health Survey 2010 Preliminary Report

In addition, the Police in Kenya also operate with very limited resources.<sup>144</sup> This has led to weak operational preparedness, and a lack of equipment and logistical capacity. For example, the police do not have a forensic laboratory. Vehicle patrols are constrained by a lack of availability of vehicles and funds for fuel.<sup>145</sup> Moreover, the police service is poorly equipped to contain the work load that it is facing. According to the Transparency International Report the police lack basic equipments such as proper clothing, weapons, skills, transport facilities among others. They outline that most of them have at most a single pair of uniform.

Most interviewees argue that police is used as an object of suppression of political dissent. For instance, the KANU regime is on record through numerous court cases, as a regime that perfected the use police to fight divergent views.<sup>146</sup> This dates backs to the time the police had the powers to license political meeting as well as act as intelligent agents to key powerful politicians.<sup>147</sup>

#### **(e) Harsh working conditions**

In addition, they also highlighted the harsh working condition as a challenge. They are at times deployed to very harsh conditions to provide an important first response to insecurity in remote communities where there is heavy reliance on the unsupportive locals' knowledge and language translation.<sup>148</sup> They are required to operate in harsh climates and over difficult terrain, and to

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<sup>143</sup> Mary Kimani, "Security for the Highest Bidder: Shoddy Policing for the Many, Costly Private Protection for the Few." Accessed on July 20, 2013 at <http://www.un.org/en/africarenewal/vol23no3/233-security.html>

<sup>144</sup> Usalama, Reforms Forum, Communities and their police stations. A study report of 21 police stations in Kenya, 2012.

<sup>145</sup> Transparency International report, "Police reform in Kenya: "A drop in the ocean" *op. cit.*

<sup>146</sup> Usalama, Reforms Forum, Communities and their police stations. A study report of 21 police stations in Kenya, 2012.

<sup>147</sup> Public Order Act (repealed)

<sup>148</sup> Kennedy Mkutu & Gerald Wandera, "Policing the Periphery: Opportunities and Challenges for Kenya Police Reserves" at <http://www.smallarmssurvey.org/fileadmin/docs/F-Working-papers/SAS-WP15-Kenya-Policing-the-Periphery.pdf>

provide security against resource-based conflicts and cattle raiding. This is contrary to *urban areas where most of them are based*.<sup>149</sup>

Further, as a result poor funding of the police service the police inadequately housed. They argue that most police officers at very least spend nights in makeshift tents or poorly build and unhealthy structures. Some of the members of the force stay in slums.<sup>150</sup> This is a major contributor to lack of morale among many officers thereby impacting negatively to service delivery. The police are also reported to have started agitating for change and better housing through go slows and clamour for registration of a trade unions to advocate their grievances.<sup>151</sup>

The majority of police officers interviewed<sup>152</sup> noted that due to their inadequate pay, they are prone to engage in corruption to meet their subsistence shortfalls. The lowest ranked police officer, a constable, earned about Kshs 4,645 per month prior to 2004. This was increased in January 2004 to Ksh 10,000.<sup>153</sup> In 2009 the Kenyan Internal security minister announced a pay increase for police officers, a process that would be implemented in phases. In the first phase the police would get a 28% pay increase in which a constable would earn Ksh 21,205 an additional increase of Ksh 2,400 on their present monthly wage of Ksh 18,805.<sup>154</sup>

#### **2.4. Analysis of the perennial challenges undermining the mandate of the Police Service**

The findings of the study are derived from the filled questionnaires by the respondents. The study sought to find out the challenges that undermine the mandate of the Kenya Police Service.

It is evident from this study that the Kenya Police Service faces challenges that fundamentally affect the execution of the mandate of the service. The problems and challenges analyzed in the

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<sup>149</sup> Ibid.

<sup>150</sup> Why Nairobi Police are on Go slows, the Standard Newspaper, September 18, 2012 at <http://standardmedia.co.ke/> (accessed 20/8/2013).

<sup>151</sup> Ibid.

<sup>152</sup> Supra note 119-121

<sup>153</sup> Commonwealth Human Rights Initiative (CHRI) and Kenya Human Rights Commission (KHRC), “The Police, the People, the Politics: Police Accountability in Kenya” (Nairobi: CHRI and KHRC, 2006).

<sup>154</sup> Interview with male Police Constable in Nairobi on 1/8/2013.

study are, for the most part, institutional and operational capacity deficits and they altogether encumber the police force in their responsibility of law enforcement and crime control.

These arise mainly due to lack of proper legal framework and poor implementation of the legal framework as well as improper political motives.

Prominent among the observed problematic issues are the unacceptably poor conditions of service, corruption, impunity, inadequate budgetary allocations and funding, political interference and operational facilities within the force. These together with highly unfavorable terms and conditions of service of the police, as we have observed in the study, should be addressed as soon as possible if the country is to have a modern and efficient police service.

There is also the need for the police force to adopt democratic credentials and shift their emphasis from policing for the regime in power to policing for the citizens. This will require a gradual social engineering of the current policing strategy to a more responsive, citizen-centered philosophy. To realize a reliable, responsive and accountable police service the relevant institutions need to incorporate and inculcate the very significance principles of democratic policing.

In view of these challenges, the next chapter (Chapter Three) examines, analyses and discusses how the Kenya Police Service legal framework deals with these perennial challenges undermining the mandate of the Kenya Police Service.

## CHAPTER THREE

### 3.0. An assessment of the efficacy of the police legal framework Kenya.

#### 3.1. Introduction

The previous chapter enumerates and discusses the mandate and perennial challenges undermining the mandate of the Kenya Police Service. This chapter however, gives a critical and in-depth analysis of how the Kenya Police Service legal framework deals with the perennial challenges undermining the mandate of the Kenya Police Service. These include, Constitution of Kenya 2010, Ethics and Anti-Corruption Act<sup>155</sup> National Police Service Commission Act, 2011 National Police Service Act 2011, the Independent Policing Oversight Authority Act.

The assessment of the efficacy of the Kenyan police legal framework examined against the tenets and principles of democratic policing. These are universally accepted principles of policing that should be adhered to in policing countries.

#### 3.2. Principles of democratic policing

These principles include but not limited to police accountability to the law and democratic government structures, transparency in its operations, protection of fundamental human rights and freedoms, impartiality and non partisanship in political and conflict situations, observance to high standards of professional conduct, representative to the communities and government control among others.<sup>156</sup>

##### 3.2.1. Accountability to the law

It must be accountable to the law, and not a law unto itself. Democratic police institutions demonstrate a strong respect for the law, including constitutional and human rights law. The police, like all government agencies and employees, must act within the law of the country and within international laws and standards, include the human rights obligations laid down in

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<sup>155</sup> 2011, Government Press, Kenya

<sup>156</sup> Peter Manning 2008 Democratic Policing in a Changing World, Paradigm Publishers, at <http://www.paradigmpublishers.com/books/BookDetail.aspx?productID=180328> (accessed 3/11/13).

international law.<sup>157</sup> Police abide by the law, they do not make it. Their actions and decisions must be subject to approval by the courts. Police officials who break the law must face the consequences, both internally through the discipline systems of police organizations, and externally, in the criminal justice system.

### **3.2.2. Accountability to democratic government structures**

It must be accountable to democratic government structures. The police are an agency of government, and must account to the government for their adherence to government policy and for their use of government resources. In a democratic system, the police account to elected representatives of the people. For example, parliaments, legislatures or local councils for their performance and use of resources. However, the police are expected to remain politically neutral and to enforce the law without bias. They remain primarily accountable to the law of the country, and not merely to the political party, which holds power. Democratic police institutions also account .horizontally. to other agencies of government, such as to Treasury or Finance Departments, for their financial performance, and sometimes to Public Service Commissions or Departments of Administration, for their adherence to civil service codes and administrative policy.

### **3.2.3. Transparency**

The Police service must be transparent in its activities. Accountability is facilitated by greater transparency. In a democratic system, most police activity should be open to scrutiny and regularly reported to outside bodies. This transparency applies to information about the behavior of individual police officers as well as the operation of the police organization as a whole. This will enable interested parties to understand the basis on which police decisions are made and resources are allocated.

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<sup>157</sup> Silver, A. "The Demand for Order in Civil Society: A Review of Some Themes in the History of Urban Crime, police, and Riots." In *The Police*, edited by D. Bordua. New York: Wiley, 1969.

### **3.2.4. Respect for human rights and freedoms**

The police service must give top operational priority to protecting the safety and rights of individuals and private groups. The police must primarily serve the people. The police should be responsive to the needs of individual members of the community especially to people who are vulnerable; instead of merely to orders issued by the government. In contexts marked by diversity and fragmentation, police organizations must be accountable to all people, across social divides, including accountability to the powerless and the marginal. The police must account to the people, and not just to governments, for their decisions, actions and performance.<sup>158</sup>

The police service must protect human rights, especially those that are required for the sort of unfettered political activity characteristic of a democracy. Democratic policing implies policing in a manner which is supportive and respectful of human rights, and which prioritizes the protection of life and dignity of the individual. This requires that the police abide by democratically made laws, as well as by the international standards.<sup>159</sup> It also requires the police to make a special effort to protect the freedoms that are characteristic of a democracy freedom of speech, freedom of association, assembly and movement, freedom from arbitrary arrest, detention and exile, and impartiality in the administration of law.<sup>160</sup> A democratic approach can place the police in a difficult position, if, for example, they are required to enforce repressive laws, and simultaneously also to protect human rights. These situations call for the skilful exercise of professional police discretion, which should always lean towards the prioritization of human rights.

### **3.2.5. Adherence to high standards of professional conduct**

The police service must adhere to high standards of professional conduct, while delivering a high-quality service. Police are professionals, with huge powers, in whom the public place enormous trust. Hence police behavior must be governed by a strong professional code of ethics

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<sup>158</sup> Ian Loader, *Plural Policing and Democratic Governance* Department of Criminology, Keele University, UK

<sup>159</sup> Bayley, D.H. *Patterns of Policing: A Comparative International Analysis*. New Brunswick, N.j.:Rutgers Univ. Press, 1985.

<sup>160</sup> Ibid

and conduct, against which they can be held accountable for the way that they conduct themselves. At the same time, the police are a service organization, and they must deliver their services to the community at the highest possible level of quality, and be accountable for the results they deliver.

### **3.2.6. Representative of the communities**

The police service must be representative of the communities it serves. Police organizations, which reflect the populations they serve, are able to better meet the needs of those populations. They are also more likely to enjoy the confidence of the community; and to earn the trust of vulnerable and marginal groups who most need their protection.<sup>161</sup> Recruitment by the police must therefore aim to create a more representative and diverse police institution, especially where the communities are heterogeneous. Critical to strengthening democratic policing is the principle that the police should be held accountable: not just by government, but by a wider network of agencies and organizations, working on behalf of the interests of the people, within a human rights framework. An effective system of police accountability in line with the checks and balances that shape democratic systems of governance is characterized by multiple levels of accountability.<sup>162</sup>

## **3.3. Analysis of the Police legal framework**

### **3.3.1. The Constitution of Kenya 2010**

#### **(a) The Kenya Police Service under the Constitution of Kenya 2010**

The Article 243 of the Constitution of Kenya 2010 lays the foundation for the establishment of the Kenya Police Service through the National Police Service. It establishes that National Police Service and defines it to comprise the Kenya Police Service and the Administration Police Service.

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<sup>161</sup> Berkeley, G. *The Democratic Policeman*. Boston:Beacon Press, 1969.

<sup>162</sup> *Ibid.*

Article 244 of the Constitution of Kenya 2010 provides for the functions and mandate of the National Police Service to strive for the highest standards of professionalism and discipline among its members.

Moreover, the Constitution further provides that the National Police Service shall prevent corruption and promote and practice transparency, and accountability. The Constitution of Kenya also provides that the National Police Service shall foster and promote relationships with the broader society. Further, the Constitution also provides that it shall train staff to the highest possible standards of competence and integrity and to respect human rights and fundamental freedoms and dignity.

Article 245 of the Constitution of Kenya 2010 also establishes the command structures of the National Police Service<sup>163</sup> and Kenya Police Service. as well as the Administration Police Service<sup>164</sup> At the helm of the National Service is the Inspector General of Police who is deputies with two deputy Inspectors General of Police heading the Kenya Police Service and the Administrative Police service respectively. Moreover, Article 246 of the Constitution of Kenya 2010 establishes and spells out duties, functions of the National Police Service Commission save for the Independent Policing Oversight Authority.

Furthermore, the Constitution of Kenya 2010 has express provisions for the enactment of appropriate and effective laws to ensure smooth management, operations of the police service. As a result, there has been enactment of statutes to guide the management and operations of the service. Besides, the First Schedule to the National Police Service Act 2011 provides the ranking structures in both the Kenya Police Service and the Administrative Police Service hence establishing command protocol within the National Police Service. The highest rank is the Inspector General of Police while the lowest being police constable.

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<sup>163</sup> It provides that the NPS shall be headed by the Inspector General of Police.

<sup>164</sup> Kenya Police Service shall be headed by the Deputy Inspector General of Police.

## **(b) Leadership and integrity under the Constitution of Kenya**

Part of Kenya Police Service problems lie in the lack of focused and visionary leadership, corruption and selfishness which have become hallmarks of Kenyan Police Service.<sup>165</sup> A desire for a new beginning in this respect has been one of the drivers of the push for police reforms.<sup>166</sup> Besides the national values and principles of governance provided under Article 10 of the Constitution of Kenya 2010, the criteria for appointments and the institutions and procedures creates a way in which we could contribute to the development of ethics and public good in police and public service.<sup>167</sup>

Chapter 6 of the Constitution of Kenya 2010 provides a constitutional legal basis for integrity and accountability of all public and state officers. That all authority assigned to State officers should be about service to the people, rather than the power to rule them. All people having such authority should have integrity, competence, objectivity, impartiality in decision making, selfless service and honesty. It is also stated that a full-time state officer shall not participate in any other gainful employment or hold office in a political party.

Chapter 6 also establishes Leadership and Integrity Act 2012 to give effect to the provision of the Constitution of Kenya 2010 on leadership and integrity.

However, many people trash the Act<sup>168</sup> arguing that it was a faded shadow of what is envisioned in the Constitution.<sup>169</sup>

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<sup>165</sup> Supra note 35

<sup>166</sup> See chapter 2

<sup>167</sup>“Understanding the Constitution of Kenya (2010): Leadership and Integrity,” 2012, *Constitution and Reform Education Consortium (CRECO)*

<sup>168</sup> Leadership and Integrity Act No. 19 of 2012

<sup>169</sup> House teams approve diluted Leadership and Integrity Bill at <http://www.nation.co.ke/news/politics/House+teams+approve+diluted+Leadership+and+Integrity+Bill+/-/1064/1485112/-/7yaxvzbz/-/index.html> (accessed 24/8/2013)

This Chapter requires state officers to conduct themselves in an ethical way, whether in private or in public life; they are not supposed to have bank accounts outside Kenya; and also, they should not receive personal gifts or donations other than on behalf of the State. The Ethics and Anti-corruption Commission<sup>170</sup> was enacted to provide a legal framework for enforcement of the provisions of the Leadership and Integrity Act.<sup>171</sup>

This translates to reduction in corruption and bribery since gifts and donations to public servants are prohibited and there is also a likelihood of prosecution should by the Ethics and Anti-Corruption Commission.<sup>172</sup>

### **3.3.2. The National Police Service Commission Act 2011**

The National Police Service Commission Act 2011 is designed to make further provisions for the functions and powers of the National Police Service Commission as provided under section 10 the qualifications and procedures for appointment, and for connected purposes.<sup>173</sup>

The establishment of the National Police Service Commission is orchestrated to bring change and transformational reform in the management and governance of the Kenya police service. The management of the national Police Service had been under the direct influence of the Commissioner of Police and the Office of the President. This as result made the service vulnerable to improper influence to its operations.

The National Police Service Commission is an independent institution<sup>174</sup> and that in the performance of its functions; the Commission shall not be subject to the direction, control or supervision of any other authority or person except as is prescribed in the Police Service

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<sup>170</sup>Ethic and Anti-Corruption Act 2011, Laws of Kenya, Government Printers and Press.

<sup>171</sup>Preamble to the Act.

<sup>172</sup> Transparency International report, "Police reform in Kenya: "A drop in the ocean" Amnesty International Publications 2013, United Kingdom.

<sup>173</sup>see also Constitution of Kenya; Article 246 on functions and duties of the National Police Service Commission

<sup>174</sup> Supra note 36 , Article 24; National Police Service Commission Act,2011, Section 4

Commission Act 2011. This indeed is a positive and transformative step in the history of policing in Kenya. As discussed in Chapter two, policing in Kenya was under whims of the president who delegated his/ her duties to the Commissioner of Police.

Section 2 of the Police Act (repealed) provides that the Commissioner of Police shall be appointed by the President. This therefore terminates the exclusive executorial powers over control and regulation of policing in Kenya. In addition, Article 253 of the Constitution of Kenya 2010 provides that the Commission has exclusive constitutional protection as it is categorized among other commissions are bodies corporate with perpetual succession and a seal; and is capable of suing and being sued in its corporate name hence cannot be created or disbanded by any authority to the contrary.

The appointment of the Chairperson and members of the committee are to be done through a transparent and accountable process through a selection panel as provided section 6 of the Act. This is designed to enhance accountability and transparency.

Section 11(b) of the National Police Service Commission Act 2011 charges commission with duty of recruitment and appointment of persons to hold or act in an office and to determine promotions in the service, while observing gender and Kenya regional balance. This is a departure from the past in which members of the force were recruited through the office of the Commissioner of Police hence giving room for corruption and nepotism as well as marginalization of particular communities as far as police recruitment was concerned under section 4 of Police Act, Cap 84 (repealed). This provision is intended to stem corruption and related vices as well as bringing in to force ethnic, regional and gender balance in the force.

Section 10 of the National Police Service Commission Act 2011 tasks commission with a duty to report to the government; the President and the National Assembly. This further enhances accountability and transparency. The National Assembly shall ensure that the Commission and other offices within the Police Service carry out and perform their functions as provided for by law. The Act also provides that evaluate and report to the President and the National Assembly on the extent to which the values and principles referred to in Article 10 and 232 are complied with the Police Service.

The Commission shall also keep under review all matters relating to the standards or qualifications required of members of the service. The standards in the police force today have deteriorated which is coupled with poor service delivery to a majority of Kenyans.<sup>175</sup> Keeping standards and qualifications under review will ensure that better service delivery as well as keeping abreast with global policing advancement. By setting standards and qualifications for members of the force will also help curb corrupt activities related to recruitment and promotion of members of the service.

Furthermore, the Commission shall keep under review all matters relating to salaries, allowances and other terms and conditions of service in addition to exercising disciplinary control, including hearing and disposal of appeals by persons in the service. Section 10 of the Act also provides that commission shall with advice from the Salaries and Remuneration Commission; determine the appropriate remuneration and benefits for the service and staff of the Commission. This will effectively address the long decried poor remuneration and benefits for members of the force.<sup>176</sup> In exercising the disciplinary control the disputes within the force shall be dealt with meritoriously.

The Commission shall in conjunction with the Policing Oversight Authority ensure monitoring and identifying patterns and trends in complaints against the police.<sup>177</sup> By monitoring the and addressing the complaints made by the members of the public and taking appropriate actions, the commission shall contribute significantly in stemming impunity and abuse of rule of law. In addition, the Commission shall help make the police officers more accountable and responsible for their actions.

The commission is also tasked under section 10 of the Act with developing policies and providing oversight over training in the service. It also approves training curricula and oversees their implementation. Inadequate training has been a major challenge to the service hence resulting in poor service delivery. The service has also in many instances failed to address and

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<sup>175</sup> Supra note 35

<sup>176</sup> See Chapter 1 and 2.

<sup>177</sup> supra note 31 section 10(o) supra note 28 section 6(g)

deal with high crime rates.<sup>178</sup> Training curriculum review therefore will ensure that the members of the service are abreast and equipped to deal with mutating nature of crimes in the society.

### **3.3.3. The National Police Service Act 2011**

#### **(a) Restructuring of the National Police Service**

The Constitution of Kenya 2010 and the National Police Service Act 2011 unlike the former provides very elaborate guidelines on the establishment of the National Police Service. It provides that the National Police Service comprises the Kenya Police Service; and the Administration Police Service. This is a break from the past whereby the Police was divided into two units namely the Kenya Police and the Administration Police.<sup>179</sup> This is in a bid to ensuring that service is under a single effective and accountable command.<sup>180</sup>

The Waki Commission report recommended complete merger and integration of the Kenya Police and the Administration Police service into one unified service. However, the subsequent Task Force on Police Reforms in Kenya led by Retired Judge Philip Ransely recommended partial merger and integration of the service. As a result, the constitutional and legislative drafters relied on the Ransely Report thereby adopting partial approach integration of the forces. It is evident that the integration has been carried only consolidating the Police Act (repealed) and Administration Police Act (repealed) to form the National Police Service Act 2011.

Section 9 of National Police Service Commission Act 2011 provides that National Police Service shall be commanded at the helm by an independent Inspector General of Police and his or her two deputies appointed through a thorough vetting process. This elaborate appointment process does away with presidential prerogative over the appointment and performance of the office of the Inspector General of Police. Under the repealed Police Act<sup>181</sup> the appointment and removal from office of the Commissioner of Police was at the pleasure of the president under section 23,

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<sup>178</sup>Supra note 26

<sup>179</sup> Supra note 219

<sup>180</sup> Supra note 30; see also recommendations in Government of Kenya, *Report of the Commission of Inquiry into Post-Election Violence*, (2008), Government Printers and Press, Nairobi,

<sup>181</sup> Police Act cap 84, Laws of Kenya, Government Printers and Press.

24, and 25 of Repealed Constitution of Kenya 1969 and an elaborate procedure for such was not provided for under the Act.<sup>182</sup>

The National Police Service Act 2011, under the First Schedule has reduced the number of rank in the police service for efficiency in service delivery. The new structure in the Kenya Police service has descending in manner: Deputy Inspector-General, Assistant Inspector-General, Senior Superintendent, Superintendent, Assistant Superintendent, Chief Inspector, Inspector, Senior Sergeant, Sergeant, Corporal, and Constable.

Act under Section 15 also provides an elaborate procedure for removal of Inspector General of Police and his deputies from office. This ensures the officers security of tenure free of interference.

In the performance of functions set out under the Constitution of Kenya 2010, the Act or any other law, the Inspector-General shall have all the necessary powers for the performance of such functions; and uphold the national values, principles and objects set out in Articles 10, 232 and 244 of the Constitution of Kenya 2010.

Section 8 and 9 of the National Police Service Act 2011 establishes Deputy Inspectors General to under the command of the Inspector General with duties, powers and functions that are supplementary and complementary to those designated for the Inspector General of Police. These functions include, improving transparency and accountability, manage, monitor and evaluate as well as undertake the supervision of the Kenya Police Service. They are also mandated to coordinate training; provide internal oversight in the Kenya Police Service. This will therefore ensure the smooth, effective and efficient functioning of the service.

Section 5 of the National Police Service Act 2011 provides that the composition of the National Police Service shall, so as far is reasonably practicable uphold the principle that not more than two-thirds of the appointments shall be of the same gender; and reflect the regional and ethnic diversity of the people of Kenya. This is a bid to stem tribalism and ethnic and regional imbalance that is currently evident in the service. This is very essential to the image and performance of the service.

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<sup>182</sup> Supra note 219

## **(b) Defined mandate of the Kenya Police Service and the Administration Police Service**

The two police services are creation of the Police and the Administration Police Acts, Chapters 84 and 85 of the Laws of Kenya (now repealed) respectively. Historically, the regular police has always enjoyed a preeminent position in matters of national security. The force was established in 1906 with the aim of providing security to the business class, the Kenya-Uganda railway and guarding the exclusive urban quarters of European settlers.<sup>183</sup>

The regular police have an extensive mandate of enforcing all laws and regulations, protecting life and property, preserving peace, preventing and detecting crime and apprehending offenders to maintain law and order in the Kenya.<sup>184</sup> On the other hand the APs main role is assisting government officers (read provincial administrators and other civil servants) in the execution of their lawful duties, preservation of public peace and national defence in the event of war or an emergency. The AP has a limited role in the prevention of crime and apprehension of offenders.

The National Police Service Act 2011 consolidated the Police Act (repealed) and the Administration Police Act (repealed) hence bringing the two divisions under one command. However, the Act has maintained the roles and command structures. The Act outlines the functions and duties of the Kenya Police Service so elaborately that will ensure that there is little conflict between the two divisions of the service as experienced previously between the Administration and Kenya Police service.

Section 24 of the Act provides the functions of the Kenya Police Service to include; provision of assistance to the public when in need; maintenance of law and order; preservation of peace; protection of life and property; investigation of crimes; collection of criminal intelligence; prevention and detection of crime; apprehension of offenders and enforcement of all laws and regulations with which it is charged, among others as provided under section 24 of the Act.

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<sup>183</sup> See Chapter One generally.

<sup>184</sup> Transparency International report, "Police reform in Kenya: "A drop in the ocean" Amnesty International Publications 2013, United Kingdom

The Kenya Police Service may also perform any other duties that may be prescribed by the Inspector-General under the Act or any other written law from time to time.

On the other hand, section 27 of the Act provides for functions of the Administration Police Service. This include; provision of assistance to the public when in need; maintenance of law and order; preservation of peace; protection of life and property; provision of border patrol and border security; provision of specialized stock theft prevention services; protection of Government property, vital installations and strategic points as may be directed by the Inspector-General; rendering of support to Government agencies in the enforcement of administrative functions and the exercise of lawful duties; co-coordinating with complementing Government agencies in conflict management and peace building; apprehension of offenders; performance of any other duties that may be prescribed by the Inspector-General under this Act or any other written law from time to time.

Notwithstanding, it is important to note that the functions and duties of the Kenya Police Service and the Administration Police are complementary. However, the manner and area of control differs from one division to the other.

However, pundits have argued that a merger of the two forces is the only panacea for this jostling over turf. This proposal is reactive, myopic and not strategic. Kenya is not the only country with law enforcement agencies that have overlapping mandates. The United States has well over 120 law enforcement agencies with the Federal Bureau of Investigations (FBI) and the Central Intelligence (CIA) being the most visible. The two agencies spar occasionally over turf and territory but this rarely gets into the public limelight owing to excellent managers who never let sibling rivalry by their minions get into the way of the overall objective of providing national security.

Strengthening the AP does not necessarily weaken the Kenya Police since the two play very diverse albeit complimentary roles. The two units only require excellent managers who can provide strategic transformative leadership and resolve petty invidiousness between their operatives for the overall national good.

### **(c) Funding of the National Police Service**

Section 116 of the National Police Service Act 2011 provides that the Service shall be allocated adequate funds by the National Assembly to enable the Service to perform its functions and the budget for the Service shall be a separate vote. Moreover, the Inspector-General is under duty to

ensure that every police station, post, outposts, unit, unit base and county authority is allocated sufficient funds to finance its activities. This is intended to address the financial challenges that the service has faced contributing adversely to service delivery.<sup>185</sup> The financial challenges have resulted to inadequate equipment, policing, housing and remuneration of members of the service.

Section 117 of the National Police Service Act 2011 provides that the funds of the Service shall consist of monies allocated by the National Assembly for the purposes of the Service; and such monies as may be lawfully granted, donated or lent to the Service from any other source, with the approval of the Cabinet Secretary and the Cabinet Secretary responsible for finance.

Moreover, unlike the past, section 10 of the Act provides that the Inspector General of Police is empowered to prepare budgetary estimates and develop a policing plan before the end of each financial year, setting out the priorities and objectives of the service and the justification thereof. Previously, the funding and budgetary allocation was literary the prerogative of the office of the president.<sup>186</sup>

Effective budgetary allocation to the police service will alleviate the poor working conditions that service is facing.

There is a considered increase in the funding of the National Police Service in the form of consecutive increment in annual budgetary estimates. In the fiscal year 2009/10, the Ministry of State for Provincial Administration and Internal security got 3.573billion with the Police department getting the lion's share of about 1.36billion.<sup>187</sup> In the subsequent fiscal year 2011/12 the ministry got a net allocation of 4.584billion with police department getting a lions share of

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<sup>185</sup> Oliver, Dawn and Gavin Drewry. Public Service Reforms: Issues of Accountability and Public Law. London: Biddles Ltd., 1996.

<sup>186</sup> See Chapter 1 and 2

<sup>187</sup> Republic of Kenya, 2009/2010 Estimates of Development Expenditure of the Government of Kenya For the year Ending 30<sup>th</sup> June 2010, 2009, Government Printer, Nairobi.

1.832billion shillings.<sup>188</sup> The 2013/14 fiscal it was estimated that the ministry could get 4.984 billion shillings.<sup>189</sup>

#### **(d) Accountability of the National Police Service**

The National Police Service is expected to strive for the highest standards of professionalism and discipline among its members; prevent corruption and promote and practice transparency and accountability as well as comply with constitutional standards of human rights and fundamental freedoms.<sup>190</sup> Article 10 of the Constitution of Kenya 2010 stipulates the national values and principles of governance<sup>191</sup> that Police Service as an organ of government and members of the service as public officers are bound to adhere to. Article 75 of the Constitution of Kenya 2010 emphasizes the need for integrity, transparency and accountability, equity, social justice, human dignity, human rights among others values to be adhered by state organs as well as public officers.

Besides, section 10 (p) of the National Police Service Act provides that the Inspector General of Police is mandated to monitor police performance as well as establish and devolve the services of the Internal Affairs Units that are able and equipped to conduct investigations into police misconduct in a fair and effective manner that will directly report to his or her office. This is a positive step in curbing police irresponsibility, brutality and corruption. Moreover, the Inspector General of Police is also mandated to cooperate with other national police service organs. Section 10(t) also mandates him/her to act on the recommendations of the Independent Policing Oversight Authority, including compensation to victims of police misconduct; and perform any other lawful act on behalf of the Service.

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<sup>188</sup> Republic of Kenya, 2011/2012 Estimates of Development Expenditure of the Government of Kenya For the year Ending 30<sup>th</sup> June 2013, 2011, Government Printer, Nairobi.

<sup>189</sup> Republic of Kenya, 2012/2013 Estimates of Development Expenditure of the Government of Kenya For the year Ending 30<sup>th</sup> June 2013, 2012, Government Printer, Nairobi.

<sup>190</sup> Transparency International report, "Police reform in Kenya: "A drop in the ocean" *op. cit.*

<sup>191</sup>The Constitution of Kenya 2010, Article 10. These national values and principles of governance include good governance, integrity, transparency and accountability, equity, social justice, human dignity, human rights, non-discrimination, rule of law among others.

Section 49 of the National Police Service Act, 2011 also governs rights, duties, functions and powers that may be exercised by Police officers. It provides that police officers are subject to the constitution of Kenya 2010 and Bill of Rights. A police officer may exercise such powers and shall perform such duties and functions as are by law imposed or conferred on or assigned.

As far as putting in place mechanisms to increase police service accountability and oversight, there are steps that have been made such as establishment of the Police Service Internal Audit Unit, the Independent Policing Oversight Authority and the Police reform unit<sup>192</sup>

However, the envisioned vetting of members of the National Police Service stalled. The vetting was also rocked with controversy as vetting of the police was being conducted in secrecy and hence lacked transparency.<sup>193</sup> It has been argued that there is no legal framework to guide the vetting processes and procedures.

#### **(e) Equipping the Police Service**

Section 10 of the National Police Service Act 2011 mandates the Inspector General of Police to equitably designate and determine the establishment and maintenance of police stations, posts, outposts, units or unit bases in the county and determine the boundaries of the police stations, outposts or unit bases as well as determining the distribution and deployment of officers in the Service and recommend to the Commission and the County Policing Authorities.

Moreover, Article 244 of the Constitution of Kenya 2010 mandates the National Police Service to train staff to the highest possible standards of competence and integrity and to respect human rights and fundamental freedoms and dignity; and foster and promote relationships with the broader society. The Inspector General of Police is also mandated under section 10 of the Act to recommend the establishment of, manage and maintain training institutions, centers or places for the training of officers joining the service and other officers. Training is very essential in policing in Kenya given the rate and prevalence of crime and insecurity. Most police officers lack adequate expertise and skills to deal with the skyrocketing levels of crime as well as crime

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<sup>192</sup> Revelation of a senior officer at the Police reform Unit.

<sup>193</sup> - See more at: <http://www.the-star.co.ke/news/article-60320/rights-group-wants-police-vetting-stopped#sthash.Cm1Brfh3.dpuf>

sophistication.<sup>194</sup> Police also require continued training to address the changing trends in crime locally and globally.

The Section 131(c) of the Act provides that the Service Standing Orders issued for administration of the police service shall not be inconsistent with the Constitution, or any other any written law. The orders will also be made available to each serving police officer and wherever possible, be accessible to the public.

#### **(f) County and community policing**

Section 41 of the National Police Service Act also introduces the County Policing Authorities to oversee and promote community policing as well as monitor trends and patterns of crime in the county including those with a specific impact on women and children. The Authorities will also monitor progress and achievement of set targets and provide financial oversight of the budget of the County police as well as providing feedback on performance of the police service at the county level of county police.<sup>195</sup> This is designed to stem crime and also improve the relationship between the police and the public at the grassroots.

Steps are being made to make community policing a success through collaboration with the Swedish government which seconded their officials to Kenya to help making community policing a success in Kenya.<sup>196</sup> The Police Service through the Police Reforms Implementation Committee has identified a number of counties to kick start community policing being enrolling it throughout Kenya. Moreover, the recent spate of terrorist attacks has seen the government ask Kenyans to mind community policing as a means of fighting the rampant insecurity. It has since developed a *nyumba kumi* initiative that is likely see many Kenyans cooperate in curbing insecurity.

#### **(g) Welfare of the Police Service**

Section 82 of the Act also allows the police to form associations that must be recognized by the Inspector General of Police. Such associations shall be bringing to the notice of the

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<sup>194</sup> Supra note 26

<sup>195</sup> Ibid;

<sup>196</sup> Report of the Police Reform Implementation committee, 2012.

Inspector-General, the Commission and the Cabinet Secretary any the matters affecting the general welfare and efficiency of the Police, negotiating and reporting for action on behalf of the officers in respect of any grievances, the terms and conditions of employment and any other matters concerning the police officers. This is an improvement from the past in which police officers were not allowed to join associations or any forms trade unions.<sup>197</sup> Through this the police will effectively negotiate for better pay and other issues that affect them.

### **3.3.4. Independent Policing Oversight Act 2011**

#### **a) Oversight over the National Police Service**

There is established the Independent Policing Oversight Authority under Independent Policing Oversight Authority Act 2011. It provides for civilian oversight of the work of the Police; to establish the Independent Policing Oversight Authority; to provide for its functions and powers and for connected purposes.<sup>198</sup> This is designed to create and maintains police accountability and responsibility. The Waki Commission and Honorable (Retired) Philip Ransely Reports record the police service as unaccountable and smelling of impunity.<sup>199</sup>

During the post-election violence the police is recorded to have contributed significantly in violation of human rights.<sup>200</sup> The Waki report records that most of the death were as a result of gun shots and police brutality. The establishment of the Independent Oversight Authority is a forward step towards ensuring police accountability and respect as well as protection of human rights by being check to police activities.<sup>201</sup>

The Authority in ensuring that it performs its functions effective has been accorded statutory protection from any form of interference. The section 4 of the Act accords the Authority absolute independence and states further that the Authority shall observe the principle of impartiality and rules of natural justice in the exercise of its powers and the performance of its functions.

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<sup>197</sup> See Chapter 2.

<sup>198</sup> Preamble to the Act

<sup>199</sup> Supra note 26

<sup>200</sup> Supra note 21

<sup>201</sup> See Chapter 2

The main objective of the authority shall be to hold the Police accountable to the public in the performance of their functions; give effect to the provision of the Constitution as provided under section 5 of the Act that the Police shall strive for professionalism and discipline and shall promote and practice transparency and accountability. The authority shall as well ensure that independent oversight of the handling of complaints by the Service.<sup>202</sup>

Section 7 of the Independent Policing Oversight Act 2011 provides oversight in ensuring police accountability shall have the powers and duty to investigate any complaints related to disciplinary or criminal offences committed by any member of the Service, whether on its own motion or on receipt of a complaint, and make recommendations to the relevant authorities, including recommendations for prosecution, compensation, internal disciplinary action or any other appropriate relief, and shall make public the response received to these recommendations. This is designed to make the police more accountable and professional and stem vices such as corruption, police brutality and human rights abuses as well as ensure better service delivery.

The Act also provides that the Authority shall also receive and investigate complaints by members of the service; hence complementing the National Police service commission in protecting the welfare of members of the service.

The authority has published its first report dubbed Kenya Police Oversight Baseline Survey Report as required by the establishing Act. The Survey was designed to provide data/information that IPOA will use to monitor the process and outcomes of professionalizing the National Police Service and assessing the public perception of the Service over time. The research design and data collection was based on two approaches; Perception surveys and Case file reviews. The perception surveys aimed at assessing both the Public and Police perceptions about police performance and policing in general; while the case file reviews (the first of its kind in Kenya) provided an opportunity to interrogate actual police performance. Data collection took place between January and February 2013.<sup>203</sup>

### **3.4. Conclusion**

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<sup>202</sup> Ibid.

<sup>203</sup> Kenya Police Oversight Baseline Survey Report.

The analysis of the legal framework for police reforms points that Kenya Police Service legal framework is efficacious in dealing with the perennial challenges undermining the mandate of the Kenya Police Service. However, there are various challenges as identified and discussed in the previous chapters that are likely to undermine the implementation of police reform. This includes proposed amendment to the National Police Service Act, 2011. The amendments will seek to amend the Act to clearly streamline and define the roles of the Inspector General of Police and the National Police Commission.

However, the amendment are seen a means to undermine constitutional provision on the appointment, removal, functions and powers of the Inspector General of Police. The proposed amendments will allow an individual wishing to remove the IG to directly petition the President.

Section 13 (3) of the Bill provides that the President will then recommend to Parliament the removal of the IG who is an independent office holder. This appears to contravene the Constitution which provides that Parliament petitions the President to form a tribunal and not the President to recommend the IG's removal to the House. The amendments have also left out the National [Police](#) Service Commission from playing any role in the removal of the IG. The current Act provides that the commission shall receive a petition from any individual desiring the removal of the IG and deliberate on it, and if approved by two thirds of the nine-member commission, it will then write to Parliament.

This proposed amendments are unconstitutional to the extent that they seek alter the functions of the National Police Service Commission which are constitutional grounded. The move to amend the National Police Service Act therefore would require a constitutional amendment to see the light of the day.

The next chapter deals with the instances best practice of policing in Sweden and South Africa.

## CHAPTER FOUR

### 4.0. Benchmarking of police reforms against cases of international best practice

#### 4.1. Introduction

The chapter deals with instances of best practice in police reforms. It examines policing in Republic of South Africa and Sweden with a view to benchmarking policing practices. The challenges discussed in chapter 2 are compatible with the challenges facing the South African Police Service which makes South Africa an ideal case study both having advanced legal frameworks to deal with the challenges. On the other hand Sweden presents a good case study on account of compatibility and progressiveness. Besides, the legal framework is based on the Ransely Report, whose recommendations were informed by including other factors, benchmarking visits to study policing mechanisms, structures, and operational approaches towards policing to among other countries Sweden, Botswana and United Kingdom and North Ireland.<sup>204</sup>

#### 4.2. Policing in Sweden

The Swedish Police Service has a wide range of police laws.<sup>205</sup>

Sweden has a national police service, responsible to the Ministry of Justice.<sup>206</sup> The police service comprises the Swedish National Police Board, the Swedish National Laboratory of Forensic Science and 21 Swedish County police authorities, each responsible for the policing of the county in which it is situated. It is the duty of the police to safeguard the legal rights of the individual, to prevent and detect crime and to ensure that anyone who commits an offence is identified and brought to justice. The police service with its more than 23,000 employees working at the local, national and international level is one of the largest government services in Sweden.

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<sup>204</sup> Supra note 26

<sup>205</sup> A presentation of the Swedish Police Force published by the National Police Board., at [http://www.polisen.se/Global/www%20och%20Intrapolis/Informationsmaterial/01%20Polisen%20nationellt/Engelskt%20informationsmaterial/Polisen\\_en\\_presentation\\_110506.pdf](http://www.polisen.se/Global/www%20och%20Intrapolis/Informationsmaterial/01%20Polisen%20nationellt/Engelskt%20informationsmaterial/Polisen_en_presentation_110506.pdf) (accessed 13/7/2013).

<sup>206</sup> Ibid.

#### **4.2.1. Management of the Swedish National Police Service**

The Swedish Police is head by The Swedish National Police Board.<sup>207</sup> Swedish Police Act 1984, Section 7 provides that the National Police Board (NPB) is the central administrative and supervisory authority for the police service. It is headed by the National Police Commissioner, who is appointed by the government. The main duties of the NPB are to supervise the police and to ensure co-ordination and the rational use of resources in the police service. The NPB may also be instructed by the government to direct police work aimed at the prevention and detection crimes against the safety of the realm. The development of new technology and work methods in the police service is another important area of activity. The NPB is the supervisory authority for the National Laboratory of Forensic Science and is also responsible for basic and advanced training within the police service. Such training is provided by the National Police Academy in Solna and the police programmes at the universities of Viejo and Umea.

#### **4.2.2. Funding of the Swedish National Police Service**

The NPB also decides how funds allocated by the government to the police service are to be distributed among the police authorities and is responsible for the co-ordination of border controls, international police work, central police records and the planning of police responses to special incidents. The NPB has independence over its budget and also right to determine its priorities in the budgetary process as provided under section 19 of the Act.

#### **4.2.3. Community policing and the Twenty-one police authorities**

Most police officers are stationed in one of the 21 police authorities, which operate within the same boundaries as the 21 counties in Sweden.<sup>208</sup> The police authorities are responsible for police work at the local level, such as responses to emergency calls, crime investigations and crime prevention. Their responsibilities also include other duties, such as the issuing of passports and various kinds of permits and license.

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<sup>207</sup> Police Legislation Model Sweden, The Swedish Police Act, 1 October 1984, *Geneva Centre for the Democratic Control of Armed Forces (DCAF)*

<sup>208</sup> A presentation of the Swedish Police Force, at [www.swedishpolice.com/pdf](http://www.swedishpolice.com/pdf) (accessed 12/8/2013).

Moreover, county police authority decides how its work is to be organized the structure of the police authorities differs. Normally, however, a police authority is organized in a manner such that the management consists of the County Police Commissioner and the Assistant County Police Commissioner.<sup>209</sup> The County Police Commissioner is responsible for ensuring that work at the county police authority is carried out efficiently and in accordance with pertaining acts and regulations. A police authority is led by a Police Board made up of the County Police Commissioner, and a number of politically appointed members.

The community police officers' work is problem-oriented, both in uniform and in plain clothes.<sup>210</sup> Community police visibility and presence is an important part of the Police's security building and crime prevention work.<sup>211</sup>

Community policing is mainly done through collaboration with other actors, primarily the municipality's school and after-school activities as well as social services, which can influence the development of crime and increase safety. There is collaboration fora aimed at youth and larceny crimes, security-building work and contingency for emergency events.<sup>212</sup>

Collaborations is designed to have the community police form a liaison with other actors as a local crime prevention council that meets regularly and in which every organization has a mandate to adopt measures designed to reduce crime and increase security.

#### **4.2.4. Police oversight in Sweden**

The police are a government service with considerable powers. To safeguard the legal rights of the individual and ensure the observance of democratic values and principles, it is therefore

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<sup>209</sup>KnudOlander et al, Review of Development Cooperation between Sri Lanka Police and Swedish National Police Board, at <http://www.sida.se/Publications/Import/pdf/sv/0743-Review-of-Development-Cooperation-between-Sri-Lanka-Police-and-Swedish-National-Police-Board.pdf> (accessed 12/6/2013)

<sup>210</sup> Goldsmith, Andrew J. and Colleen Lewis, eds. Civilian Oversight of Policing: Governance, Democracy and Human Rights. Oxford: Hart Publishing, 2000.

<sup>211</sup> See UTHR-J (2007). A Bullet for a Fig Leaf – Verbal Bludgeoning to Subvert International Monitoring. Special Report No. 27, September 2007. [www.uthr.org/SpecialReports/spreport27.htm](http://www.uthr.org/SpecialReports/spreport27.htm) (accessed 12/3/2013)

<sup>212</sup> The Swedish Police, An introduction, at <http://www.sida.se/Publications/Import/pdf/sv/0743-Review-of-Development-Cooperation-between-Sri-Lanka-Police-and-Swedish-National-Police-Board.pdf> (accessed 12/6/2013)

important that their work be supervised. Responsibility for such supervision is shared by several different bodies:

First, the National Police Board, it performs inspections with a view to checking that the work of the police is carried out efficiently in accordance with the directives issued by the government and parliament and with due observance of the legal rights of the individual. Second, the Office of the Parliamentary Ombudsmen, it is a parliamentary supervisory body responsible for checking that state and municipal public services and public servants adhere to acts and regulations and treat the citizens fairly.<sup>213</sup> Third, the National Audit Office is an independent authority responsible to Parliament which audits all public services in the country. Fourth, the Office of the Chancellor of Justice, it is a government body that supervises the public services. It supervises authorities and their officials with a view to ensuring that they make the best possible use of the resources placed at their disposal and carry out their work efficiently and effectively.<sup>214</sup>

### **4.3. Policing in South Africa**

The South African Police Service (SAPS) is headed by the National Police Commissioner. The service has 1116 police stations divided among the nine provinces. Commissioner is appointed in each province. The 9 Provincial Commissioners report directly to the National Commissioner.<sup>215</sup>

Section 199 of [Constitution of South Africa](#)<sup>216</sup> lays down that the South African Police Service has a responsibility to prevent, combat and investigate crime, maintain public order, protect and secure the inhabitants of the Republic and their property, uphold and enforce the law, create a safe and secure environment for all people in South Africa, prevent anything that may threaten

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<sup>213</sup> The National Democratic Institute for International Affairs, Democratic Oversight of Police Forces Mechanisms for Accountability and Community Policing , 2005, Rule of Law Series Paper, at [http://www.ndi.org/files/1906\\_gov\\_policing\\_080105.pdf](http://www.ndi.org/files/1906_gov_policing_080105.pdf) (accessed 24/8/2013)

<sup>214</sup> Doyle, Charles. "Use of the Military to Enforce Civilian Law: Posse Comitatus and Other Considerations", in Congressional Research Service, Washington, DC: Library of Congress, 20 July 1988.

<sup>215</sup> G. Newham, T. Masuku&Dlamini, Diversity and Transformation in the South African police service, A study of police perspectives on race, gender and the community in the Johannesburg policing area, 2006 at [http://www.apcof.org/files/7941\\_diversity%5B1%5D.pdf](http://www.apcof.org/files/7941_diversity%5B1%5D.pdf) (accessed 12/8/2013)

<sup>216</sup> 1996, at [http://www.servat.unibe.ch/icl/sf00000\\_.html](http://www.servat.unibe.ch/icl/sf00000_.html) (accessed 12/7/2013)

the safety or security of any community, investigate any crimes that threaten the safety or security of any community, ensure criminals are brought to justice and participate in efforts to address the causes of crime.<sup>217</sup>

Section 207 of South African Constitution provides that the President as head of the national executive appoints the National Commissioner of the police service, to control and manage the police service.

#### **4.3.1. South African Police Divisions**

The SAPS headquarters in Pretoria is organized into six divisions. These are the Crime Combating and Investigation Division, the Visible Policing Division, the Internal Stability Division, the Community Relations Division, the Supporting Services Division, and the Human Resource Management Division.

The Crime Combating and Investigation Division hold overall responsibility for coordinating information about crime and investigative procedures.<sup>218</sup> It administers the SAPS Criminal Record Centre, the SAPS Commercial Crime Unit, the SAPS Diamond and Gold Branch, the South African Narcotics Bureau, the Stock Theft Unit, the Inspectorate for Explosives, murder and robbery units located in each major city, and vehicle theft units throughout the country. In addition, the division manages the National Bureau of Missing Persons, which was established in late 1994.

The Visible Policing Division manages highly public police operations, such as guarding senior government officials and dignitaries. The division's all-volunteer Special Task Force handles hostage situations and other high-risk activities. The Internal Stability Division is responsible for preventing and quelling internal unrest, and for assisting other divisions in combating crime. The Community Relations Division consults with all police divisions concerning accountability and respect for human rights. The Supporting Services Division manages financial, legal, and administrative aspects of the SAPS. The Human Resource Management Division helps to hire, to train, and to maintain a competent work force for the SAPS.

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<sup>217</sup> [SAPS: Profile Vision and Mission](http://www.saps.gov.za/org_profiles/vision_mission.htm) at [www.saps.gov.za/org\\_profiles/vision\\_mission.htm](http://www.saps.gov.za/org_profiles/vision_mission.htm) (accessed 12/8/2013)

<sup>218</sup> South African Police Act, 1995 at [www.southafricanlaws.org](http://www.southafricanlaws.org) (access 8/9/13).

#### 4.3.1. Community Policing in South Africa

As a result of the apartheid regime policing and public police relation in South Africa suffered a major set back<sup>219</sup> and there was necessity for the post apartheid regimes to professionalize the police force as well as keeping a responsible and public friendly police service.<sup>220</sup>

Community Policing came in handy to address the challenges the policing in South Africa.<sup>221</sup> This was driven by the need to protect the people of South Africa from all criminal acts. This was carried out rigorously in non-partisan fashion, regardless of the political belief and affiliation, race, religion, gender or ethnic origin of the perpetrators or victims of such acts.

The police are guided by the belief that they are accountable to society in rendering their policing services and shall therefore conduct themselves so as to secure and retain the respect and approval of the public.<sup>222</sup> Through such accountability and friendly, effective and prompt service, the police is seen to endeavor to obtain the co-operation of the public whose partnership in the task of crime control and prevention is essential.<sup>223</sup>

However, a number of authors have pointed out that the political popularity of community policing can be attributed to the flexibility or definitional vagueness of the concept itself it incorporates a variety of differing or even conflicting definitions, the interpretation of which may be embraced and promoted by role-players across the political spectrum.

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<sup>219</sup> Abel, R.L. 1995 *Politics by Other Means: Law in Struggle against Apartheid, 1980–1994*. London: Routledge; see also Sonderling, N. 2006 ‘South Africa’, in Das, D.K., Palmiotto M.J., et al (eds), *World Police Encyclopedia: Volume II L–Z Index*. London: Routledge

<sup>220</sup> Richard Chackerian, *Police professionalism and citizen evaluations: a preliminary look*, *Public Administration Review* 34(2) 1974, 141–148 at <http://www.issafrica.org/uploads/Paper240.pdf> (accessed 3/7/2013)

<sup>221</sup> Brown, Lee P. “Community Policing: A Practical Guide for Police Officials,” in *Perspectives on Policing*, National Institute of Justice, No. 12. Washington, DC: National Institute of Justice, September 1989.

<sup>222</sup> United Nations 1995 *United Nations and Apartheid 1984–1994*. New York: United Nations Publications; Saunders, C. & Southey, N. 1998 *Dictionary of South African History*. Cape Town: David Philip.

<sup>223</sup> Cawthra, Gavin. *The SAP and the Transition from Apartheid*. London: Zed Books Ltd., 1993.

The South African Police realizes that the organization must not only be attuned to the community but also function in the context of the community.<sup>224</sup> Effective policing therefore means the strengthening of relationships through which co-operation and voluntary obedience to the law will be maximized. An attempt is being made to implement this principle of partnership with the public in every facet of policing.”

Part of this attempt was the creation of police-community liaison forums at local level which were established, run and chaired by police officers for ‘consultative’ purposes. The limitations of these structures were soon apparent.

The National Peace Accord also established structures by which a more representative and legitimate input from political and community organizations could be acquired at local, regional and national level. These included Regional and Local Dispute Resolution Committees which reported to a National Peace Secretariat, as well as a Police Board. Despite this limitation, these structures provided the means, for the first time, by which political and community organizations could make an input, albeit limited, in police planning.<sup>225</sup>

#### **4.3.2. Police oversight and accountability in South Africa**

Section 208 of the South African Police Act establishes a constitutional foundation for oversight over the South Africa Police Service. It provides that a civilian secretariat for the police service must be established by national legislation to function under the direction of the Cabinet member responsible for policing.

Ministerial responsibility for policing sits with the Minister for Safety and Security, who sets policing policy and establishes provisions for civilian oversight.<sup>226</sup> The Service is headed by a

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<sup>224</sup>Pelser, E., Schnetler, J. and A. Louw (2002) Implementation of the Community Policing Policy. In Pelser, E., Schnetler, J. and A. Louw (2002) ‘Not Everybody’s Business: Community Policing in the SAPS’ Priority Areas’ ISS Monograph No. 71, March. <http://www.iss.co.za/PUBS/MONOGRAPHS/No71/Chap4.html> (accessed 11/8/2013) See also: Pelser, E., Schnetler, J. and A. Louw (2002) Impact of the Community

<sup>225</sup> South African Police Service Interim Regulations for Community Police Forums and Boards’ Government Gazette Notice 384, 11 May 2001.

<sup>226</sup>Frame, I. et al (eds) 2008 Africa South of the Sahara 2008 (37th edn). London: Routledge.

National Commissioner (appointed by the President), supported by Deputy National Commissioners who have responsibility for particular portfolios.<sup>227</sup>

The Constitution creates a plethora of police oversight mechanisms. However, there is a gap between the accountability framework on paper and the reality on the ground. Police abuse of power remains a problem. Internal discipline is the responsibility of the senior police hierarchy, including the National Commissioner, Deputy National Commissioners and Provincial and District Commissioners. Under the police disciplinary regulations, the police organization can deal internally with a complaint made by a member of the public.<sup>228</sup>

The premier police oversight body is the Independent Complaints Directorate (ICD). The ICD oversees both the SAPS and the metropolitan police. It investigates deaths that take place in police custody or as a result of police action, police misconduct and criminal cases brought against the police. The ICD reports annually to Parliament.<sup>229</sup>

The National Secretariat for Safety and Security works closely with the Ministry for Safety and Security and advises on police policy, as well as implementation of policy.<sup>230</sup> The Secretariat, replicated at provincial level, has a role (among others) to monitor police activity at provincial level. The National Assembly Parliamentary Portfolio Committee on Safety and Security and the National Council of Provinces Select Committee on Security and Constitutional Affairs are responsible for overseeing the work of the executive and making laws. Much of their monitoring

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<sup>227</sup> Goldsmith, Andrew J. and Colleen Lewis, eds. *Civilian Oversight of Policing: Governance, Democracy and Human Rights*. Oxford: Hart Publishing, 2000.

<sup>228</sup> Miller, J. (2002) *Civilian Oversight of Policing: Lessons from the Literature*. Global Meeting on Civilian Oversight of Police, Los Angeles, May 5-8.

<sup>229</sup> Sammond, N. (2000) *A Need to Know: The Struggle for Democratic, Civilian Oversight of the Security Sector in Commonwealth Countries*. Commonwealth Policy Studies Unit (CPSU) Report, at <http://www.cpsu.org.uk/downloads/NEED2.PDF> (accessed 25/8/2013)

<sup>230</sup> *Police Use of Violence / Force / Brutality for*: Centre for the Study of Violence and Reconciliation (1999) 'A New Day? Controlling Police Violence and Corruption'. *Crime & Conflict*, No. 18, Summer, <http://www.csvr.org.za/papers/papakdb.htm> (accessed 23/8/2013)

and oversight work is undertaken in the context of approving the annual budget of the SAPS, as well as reviewing the SAPS's annual reports.<sup>231</sup>

The Provincial Legislatures' police oversight role is primarily to assess the quality of service delivered and to ensure that good relationships with local communities are maintained. They can establish commissions of inquiry into specified matters. Community Police Forums are in place to foster partnership between police and local communities.<sup>232</sup> The Forums are intended to assist the sharing of information and joint determination of the way communities are policed. This partnership model achieves an oversight function, albeit limited, by giving communities a voice around police conduct. Local Municipal Oversight Committees have oversight over the metropolitan police, who are also overseen by the ICD.<sup>233</sup>

The Public Prosecutor, headed by a National Director of Public Prosecutions, has a police oversight role through its duties to prosecute, supervise prosecutions, engage in civil litigation and monitor the operation of the courts. The office reports to the Minister of Justice and Constitutional Development.<sup>234</sup>

A Public Protector is vested with the authority to investigate improper conduct in public administration, including police conduct. The Protector's functions are similar to those of an Ombudsman. It receives complaints of misconduct and illegal practices of public agencies and can conduct investigations where required. A Commission for Gender equality is responsible for promoting and sustaining gender equality. This includes overseeing the conduct of police regarding gender through monitoring, informing, educating and fostering gender parity in public life.

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<sup>231</sup>Sonderling, N. 2006 'South Africa', in Das, D.K., Palmiotto M.J., et al (eds), World Police Encyclopedia: Volume II L–Z Index. London: Routledge.

<sup>232</sup> Amnesty International 2008 Amnesty International Report 2008: The State of the World's Human Rights. London: Amnesty International.

<sup>233</sup> Rauch, J. & van der Spuy, e. 2006 Recent Experiments in Police Reform in Post-Conflict Africa: A Review, [http:// www.idasa.org.za/](http://www.idasa.org.za/) (accessed 25 June 2013).

<sup>234</sup> Berg, J. 2003 Research on Police Accountability and Oversight Mechanisms in South Africa: 1998–2003. Cape Town: Institute of Criminology, University of Cape Town.

#### **4.4. Lessons from Sweden and South Africa**

National Police Service of Kenya should endeavour to train staff to the highest possible standards of competence and integrity and to respect human rights and fundamental freedoms and dignity; and foster and promote relationships with the broader society. The Swedish National Police Board as well as the South African Police Service has established a well refined curriculum for proper training of police officers. This is an aspect that the Kenya implementation of the legal framework should emulate.

Even though the Constitution of Kenya 2010 has express provisions under Chapter Four on the Bill of Rights on protection and respect for fundamental human rights and freedoms, the Kenya police service should emulate the Swedish National Police Service, in respecting human right while engaging in security operations. The county policing authorities should be constituted to oversee and promote community policing as well as monitor trends and patterns of crime in the county including those with a specific impact on women and children. The Authorities should also monitor progress and achievement of set targets and provide financial oversight of the budget of the County police as well as providing feedback on performance of the police service at the county level county police. This will is designed to stem crime and also improve the relationship between the police and the public at the grassroots.

Bearing in mind the police oversight in Sweden, there is need to strengthen the police oversight mechanisms in Kenya. Independent Policing Oversight Authority which seeks to provide for civilian oversight of the work of the Police should be strengthened. This will create and maintain police accountability and responsibility. The establishment of the Independent Oversight Authority is a step forward towards ensuring police accountability and respect as well as protection of human rights by being check to police activities. The relevant stakeholders should be closely engaged in ensuring that the legal framework on police oversight is fully enforced and implemented.

The National Police Service should be allocated adequate funds by the Kenya National Assembly to enable the Service to perform its functions. This is the practice in Sweden where SNPS has a separate vote in the national budget with independence to determine its own budget based on the need of the Swedish Police Service.

The Swedish National Police Board and the South African Police Service respectively embarked on process of the equipping their Police services with the view to increasing their efficiency in crime prevention and detection as well as the maintenance of law and order. The National Police Service in Kenya should implement the provisions of the National Police Service Act providing that every police station, post, outposts, unit, unit base and county authority is allocated sufficient funds to finance its activities. This is intended to address the financial challenges that the service has faced contributing adversely to service delivery. The financial challenges have resulted to inadequate equipment, policing, housing and remuneration of members of the service.

There is also need for the implementation of the provision of the National police Service Act related to establishment effective community policing mechanisms in line with the provisions of the National Police Service Act, 2011. The success of the Swedish Police Service in ensuring law and order as well as prevention of crime is attributed to entrenchment of community policing mechanisms. South Africa is also encouraging and establishing a robust framework for community policing. However, it is crucial that a robust policy framework on community policing is put in place to facilitate its implementation as fast as possible.

#### **4.5. Conclusion**

This chapter has examined policing in the Republic of South Africa and Sweden and drawn vital lessons which we can borrow. The next chapter (Chapter 5) will conclude on the findings of the study and outline the recommendations based on this study.

## CHAPTER FIVE

### 5.0. Conclusion and Recommendations

#### 5.1. Introduction

This chapter contains the conclusion deduced from the study and the recommendations on the implementation of the Kenya police legal framework. It will also analyze the hypothesis in line with findings of the study.

#### 5.2. Conclusion

The objectives of this study were to identify the perennial challenges undermining the police service ability in Kenya to effectively execute its mandate. Secondly, critically analyze the legal framework on police reforms in Kenya with a view to determining its efficacy in addressing the challenges identified above and finally to identify cases of international best practice with a view to benchmarking and assessing the adequacy of the Kenyan model alongside the identified cases.

This study has identified perennial challenges that have undermined the execution of the mandate of the police service. The mandate of the police has been identified in Chapter 2 of the study as well as the challenges. This study has also made an in depth analysis of the legal framework on the police reform in Kenya at Chapter 3. It has also analyzed whether the legal framework on police reform in Kenya is efficacious in addressing the challenges.

This study finds that Kenya in comparison to the Sweden and South Africa has a good legislative framework capable of realizing the required changes and reforms in its policing system. It has robust legal framework ranging from its constitution which lays the foundation to the enacted statutes on the same.

For instance, the National Police Service Commission Act establishes and prescribes powers, functions and duties of National Police Service Commission. The National Police Service Commission is orchestrated to bring change and transformational reform in the management and governance of the Kenya Police Service. It is an independent institution and is only subject to the constitution of Kenya and National Police Service Commission Act.

### **5.3. Recommendations**

In view of the above conclusions, the following recommendations are preferred.

There is need for the government and related stakeholders to crack a whip on the rampant corruption that is currently bewildering the police force by full enforcement of Ethics and Economic Crimes Act as well as fresh vetting of members of the force. This has in effect in improving its operations as well as boosting confidence and service delivery.

There is need for police service agencies and the government to initiate the process of enacting legal framework that will facilitate and guide the stalled vetting of police officers and other members of the service.

The office of Attorney General should advise the government appropriately on the unconstitutional nature of the proposed amendments to the National Police Service Act and other police laws.

The National Police service should strive to achieve the universal principles of democratic policing which include stability, protection of the human and fundamental rights, legality, proportionality, public interest, good faith (bona fide) conformity with international law.

There is also need for protection and full implementation of the existing police legal framework so as to fully realize the envisioned reforms. The attempts by government through the office of the AG to amend the police laws are in bad faith and will only derail the reform process. Increasing the powers of the Inspector General of Police will do little to enhance police accountability but rather entrench impunity. The National Police Service Amendment Bill 2013 is unconstitutional to the extent that there are express constitutional provisions as relates to the functions of the National Police Service Commission and the Office of the Inspector General of Police. Article 246(3) of the Constitution of Kenya 2010 provides for powers and functions of the National Police Service Commission. Any amendment seeking to alter these functions will require a prema facie amendment of the constitution.

Owing to the comparative analysis of the Sweden police regime, there is need that the Government protects the autonomy of the police oversight authorities so as to enhance and inculcate police responsibility and accountability. The roles of the National Police Service Commission and Independent Policing Authority as envisioned in law must be appreciated and supported. The National Police Service Commission Act and the Independent Policing Oversight Authority Act has clear provisions on the independence of the Commission and Oversight Authority respectively. The Government should ensure full implementation of the provisions

National Police Service should ensure professional and competent police service through implementation of National Police Service Act requiring training staff to the highest possible standards of competence and integrity and to respect human rights and fundamental freedoms and dignity; and foster and promote relationships with the broader society.

Training is very essential in policing in Kenya given the rate and prevalence of crime and insecurity. Most police officers lack adequate expertise and skills to deal with the skyrocketing levels of crime as well as crime sophistication. Police also require continued training to address the changing trends in crime locally and globally. As a result, they will be able tackle effectively the issue related to ethnic uprising and secessionist groups.

National Police Service should ensure implementation of the Act requiring establishment of County Policing Authorities to oversee and promote community policing as well as monitor trends and patterns of crime in the county including those with a specific impact on women and children. The Authorities should also monitor progress and achievement of set targets and provide financial oversight of the budget of the County police as well as providing feedback on performance of the police service at the county level county police. This will is designed to stem crime and also improve the relationship between the police and the public at the grassroots.

The National Police Service should also stem tribalism and favoritism within the ranks of the service by implementing provisions of the Act the clearly outline for procedures and process for deployment, discipline, promotion and recruitment of officers.

There is need to strengthen the police oversight mechanisms in Kenya. Independent Policing Oversight Authority which seeks to provide for civilian oversight of the work of the Police should be strengthened by ensuring full implementation of the provisions of the IPOA. This will

create and maintain police accountability and responsibility. The establishment of the Independent Oversight Authority is a step forward towards ensuring police accountability and respect, decline in impunity as well as protection of human rights by being check to police activities.

The National Police Service should be allocated adequate funds by the National Assembly to enable the Service to perform its functions and the budget for the Service should be a separate vote. The National Police Service should be accorded the independence to budget and prescribe its priorities.

The National Police Service should also ensure that every police station, post, outposts, unit, unit base are adequately funded and operational. This will boost police presence and aide in crime prevention and detection as well as enhancing community policing mechanisms.

The Government should step up the war against corruption by ensuring that anti-corruption legal framework and the police legal framework are fully implemented and enforced.

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