UNIVERSITY OF NAIROBI

INSTITUTE OF DIPLOMACY AND INTERNATIONAL STUDIES

KNOWLEDGE AND UNDERSTANDING OF INTERNATIONAL LAW BY SECURITY FORCES: A CASE STUDY OF THE KENYA NATIONAL POLICE SERVICE.

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A Research Project submitted in partial fulfillment of the Degree of Masters of Arts in International Studies
DECLARATION

I declare that this research proposal is my original work and has not been presented for a degree in any other university.

Sign: ..............................  Date: ..............................

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This research proposal has been submitted for examination with my approval as university supervisor

SUPERVISOR:

Sign: ..............................  Date: ..............................

MR.MARTIN NGURU.
DEDICATION

I would like to dedicate this research to my family my brother Antony mukui, my mother Salome Chege and Maria Gorreti my sister and my wife Dorcas Kendi for all their direction and sacrifices. May God bless them abundantly.
ACKNOWLEDGEMENT

This work would not have been complete without the tireless effort of my supervisor, MR. MARTIN NGURU whose critical input, patience and constant advice shaped the end product.

I also appreciate the good work done by all my lecturers at the Institute of Diplomacy and International Studies for laying the groundwork for this scholarly work, and my classmates for their encouragement and solidarity in the coursework.

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God bless you all
ABSTRACT

The enactment of Kenya’s new constitution in 2010 brought with it several changes to Kenya’s legal environment one of the monumental changes are contained in article 2(5) which states that the “the general rules of international law shall form part of the constitution”. And Article 2(6) also goes on to state that “any treaty or convention ratified by Kenya shall form part of the law of Kenya under this constitution “The law of Kenya similarly states that the chief goal of the Kenya police service is the maintenance of law and order this research thus seeks to inquire into whether the Kenyan police are aware of the existence of this international laws ratified by Kenya and whether they are able to handle matters relating to this laws in the performance of their duty. This research looks into the way the Kenya police has interacted with one such law that is the Rome statute. The research also delves into the police education curriculum and makes the discovery that little emphasis is made on imparting knowledge on international law. Finally the research relies on primary data from about 50 respondents stationed in Vihiga County. The research comes with the conclusion that most police officers are not aware of the existence of international laws ratified in Kenya and are consequently not equipped to handle such matters. The research makes appropriate recommendations on how this state of affairs can be remedied.
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CHAPTER ONE: INTRODUCTION TO THE STUDY.

1.1. Statement of the Problem

Since the founding of modern states there has always been a conflict between international law on the one hand and state law on the other hand with states seeking to maintain their sovereignty. It is because of this desire to maintain sovereignty that states choose to be bound only by the international laws which they have consented. The process of a state consenting to an article of international law is what is called ratification as stated by article 2(6) of the Constitution.

Ratification according to article 2(1) (b) of the Vienna Convention on the Law of Treaties of 1969 is an international act where a state establishes on the international plane its willingness to be bound by a treaty. In bilateral treaties this takes effect after the exchange of pertinent documents between the state parties while in multilateral treaties this takes effect when states deposit an instrument of ratification with one of the parties or as a common practice with the United Nations Secretary General.¹

To date Kenya has ratified various treaties and convections which include the following human rights instruments: The International Covenant on Civil and Political Rights, The International Covenant on Economic, Social and Cultural Rights, The African charter on Human and People’s Rights. It has also ratified instruments on the rights of women, children and minorities and those governing

issues such as Criminal Justice, Administration of Justice, Torture and Labor Relations. ²

Article 2(5) of the constitution also states that the general principles of international law principles also constitute part and parcel of the constitution of Kenya. This includes good faith, responsibility and the general principles of law³.

The Kenya Police Service’s main mandate is the maintenance of law and order as well as the enforcement of all laws including international treaties and conventions ratified by Kenya as stated by article 2(6) of the constitution.

1.2: Background to the study.

Article 2(5) of the Constitution of Kenya states that, “the general rules of international law shall form part of the constitution”. Article 2(6) also goes on to state that “any treaty or convention ratified by Kenya shall form part of the law of Kenya under this constitution”⁴. The National Police Service Act in article 24 outlines the various functions of the police service which include the maintenance of law and order, the apprehension of offenders, investigation of crimes and the enforcement of all laws and regulations which it is charged with among others.⁵

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This then presents a problem for the police service are its officers able to arrest and deal with perpetrators of crimes contained in the various treaties and conventions which Kenya has ratified and which the constitution declares under article 2(6) to form part of the law of Kenya and which directly relate to police functions. Would a normal police officer on his patrol duties be able to recognize the violation of this Acts? Do they know the principles of international law stated in article 2(5) of the constitution and declared to form part of the constitution? Would for instance a police officer on beat and patrol duties be able to recognize a violation of these acts? Would he know which offence to book in the occurrence book and fill in the charge sheet so that he could sustain a case before a court of law?

This study envisions answering these questions and others relating to this important question as we move towards a more global and internationalized world.

1.3 Objectives of the Study

The main objectives of this study are to enquire into the knowledge and understanding of international treaties and conventions ratified by Kenya by Members of the National Police Service and to enquire into their capacity to deal with such laws in the field. It will be guided by the following specific objectives.

i. To examine the knowledge by police officers of international treaties and conventions which relate to police duties and have been ratified by Kenya.

ii. To examine the capacity of police officers to deal with matters of international law in the course of their duties.
iii. To examine if the police training curriculum includes the understanding of international law by police recruits.

1.4. Justification of the study.

The constitution being the supreme of the law of the land placed great responsibility on the members of the national police service in stating that all treaties and conventions ratified by Kenya would form part of the laws of Kenya. This is because the police are the body charged with the maintenance and the enforcement of all laws in Kenya and as such they cannot be able to enforce or maintain these laws unless they are aware and understand the said laws.

1.4.1 Policy justification.

This research will thus be beneficial as it will explain the extent to which members of the national police service know and understand the international treaties and covenants that Kenya has assented to and their capacity to deal with them while working in the field.

The research will also be beneficial as it may provide useful recommendations to policy makers as they tackle security issues and help to improve the police training curriculum.

1.4.2 Academic Justification.

Little research has been done to establish whether police officers are aware that of the existence of international laws that relate to their duties and whether they understand them. This is important especially as we move towards a political union in the East African region and the body of international laws set to increase dramatically and as we move towards a more global world and some of the laws
such as the Rome Statute requiring police officers to take responsibility for action or inaction.

The research therefore aims to contribute to the body of knowledge in these areas.

1.5 Literature Review.

1.5.1 Introduction to International Law.

Law is a tool to regulate the interactions amongst members of a society. There can be no society without a system of laws to regulate the mutual relations amongst its members. International law so to speak assumes a society of nationals and governs the relations between these members. International law is the body of rules of conduct, enforceable by international sanction, which confer rights and impose obligations primarily, though not exclusively on sovereign states though not exclusively upon sovereign states and which owe their validity both to the consent of states as expressed in custom and treaties and to the fact of the existence of an international community of states and individuals. In that sense, international law may be defined more briefly as the law of the international community albeit not exclusively.

International law has also been defined by Sir Cecil Hirst as “the aggregate of rules which determine the rights which a state may claim on behalf of itself or its nationals against another state.” However like all laws international law is not static but dynamic and constantly evolving in the process of its application to new emerging situations.

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8 Cecil Hurst(1950)*International Law*. Stevens and Sons Limited London p8
Significant developments have taken place since the end of the Second World War which has rendered the traditional definition of international law inadequate. These developments relate to the establishment of a large number of international organizations and institutions such as the United Nations Organization, The World Bank and World Health Organization. These international institutions are now regarded as international legal entities and subjects of international law. The new developments are also revolving around the individual. There is an emerging concern about such divergent matters about the individual as human rights which for the first time were conceptualized which are conceptualized in the United Nations Charter and operationalised in the Universal Declaration on Human Rights of 1948. Labour is also a key issue as actualized in the various conventions of the International Labor Organization.

An individual has also been subjected to duties where he can be held responsible for committing the crime of genocide, crimes against peace, crimes against humanity, war crimes and the conspiracy to commit these crimes. It is therefore not possible to regard international law as sorely governing the relations among states.\(^9\) International law may thus be said to be a body of rules that is derived from the consent of states through various treaties and conventions. It may also be stated that initially international law was meant to regulate the interaction between states but the number of actors has since increased to include international organizations such as the United Nations, the World Trade Organization, among others. There is also

an increased move towards individual responsibility for crimes such as genocide, war crimes and crimes against humanity as well as piracy.

1.5.2 Sources of international law.

The sources of international law have generated considerable debate among writers and commentators and are capable of conveying more than one meaning. However the traditional starting point for any discussion on the sources of international law has been article 38 of the International Court of Justice. It states therein that;

1. The court whose function is to decide in accordance with international law such disputes as submitted to it shall apply;

   a) International conventions whether particular or general establishing rules expressing rules expressly recognized by the contesting states.

   b) International custom as evidence of a general practice accepted as law

   c) The general principles of law recognized by civilized nations

   d) Subject to article 59 the judicial decisions and the teachings of the most highly qualified publicists of the various nations as subsidiary means for the determination of the rule of law

2. The provision shall not prejudice the power of the court to decide a case et aequo et bono if the parties agree thereto.\textsuperscript{10}

The sources of international law are therefore those listed above, that is treaties and conventions, customs, general principles of law and judicial precedence as well as the writings from the most qualified publicists.

1.5.3. Treaty Making and Ratification

Article 2(1)(a) of the Vienna Convention on the Law of Treaties defines a treaty as an international agreement concluded between states in written form and governed by international law, whether in a single instrument or in two or more related instruments and whatever its particular designation"  

There are basically two types of treaties that is bilateral and multilateral treaties. Bilateral treaties may be defined as treaties between two states for example between Kenya and Uganda. However bilateral treaties can have more than two parties for example negotiations between the European Union and China or the east African community. This is because it puts obligations not on individual states but on the European Union as a community. The other types of treaties are called multilateral treaties. These are treaties agreed among several states and often establish obligations and rights on each state against the other. Such treaties include the treaty of the United Nations, World Trade Organization and Regional treaties such as the Lisbon Treaty creating the European Union. International conventions such as the Universal Declaration on Human Rights are also multilateral treaties.

Ratification on the other hand may be defined as an act which signifies its agreement to be bound by the terms of a particular treaty. To ratify a treaty the state

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first signs it then full fills its own national legislative requirements. Once the appropriate national organ whether parliament senate or the head of state or a combination of this takes the decision to be party to the treaty then the instrument of ratification signed by the state authority usually the head of state is sealed and signed and deposited with the office of the secretary general of the united nations. It should also be noted that in bilateral agreements the treaty may be kept by one of the parties or both may keep the signed treaties of the other. Therefore with the ratification of a treaty a state completely states its desire to be bound by the contents of the treaty. However states have the right to withdraw from treaties through a domestic action usually through the legislature and international action often contained in most treaties.

1.5.4 Kenya constitution and International law

The Kenya constitution was officially promulgated in August 2010. This was after a constitution making process that had taken more than 20 years to complete. The process had begun in earnest in 1991 with the repeal of section 2(a) of the constitution and transformed Kenya from a single to a multiparty state and put a limit to the term of the president to 10 years. In the year 2000 the constitution reform committee was set up and professor Yash Pal Ghai was appointed as its chair with the aim of spearheading Kenya’s first constitutional reform process. The result was the Bomas draft of the year 2004 which was rejected by government which then introduced the famous Wako draft which was put to a referendum in 2005 and defeated. In 2008 parliament would make major changes to the
constitution to through the national reconciliation act which introduced the position of prime minister and two deputies.

In August 2010 a new draft constitution prepared by a committee of experts led by Nzamba Kitonga was put to a referendum and was passed by 67% of the elected voters and consequently it was promulgated on 27th August 2010. Article 2 of the constitution deals with the supremacy of the constitution and begins by stating that the constitution is the supreme law of the republic and that it binds all persons and state organs at both levels of government and that no person may claim to exercise state authority except as directed by this constitution.

Article 2(5) states that “the general principles of international law shall form part of the law of Kenya” there are two schools of thought to this on the one hand there is the school that holds that the general rules refer to customary international law rules. Examples of such rules are the equality of states, immunity of heads of states, non-interference in the internal affairs of other states and the prohibition against the use of force. The other school holds that general rules of international law are synonymous with general principles of international law. International customary law is however generally accepted as the main source of such rules.12

Olouch Asher states article 2(5) of the constitution envisages the direct and automatic application of the general rules of international law within the municipal

law of Kenya without further legislative intervention. In essence he states, the rules would apply in their own right and the article therefore excludes the application of English law doctrines of incorporation and transformation which have which have traditionally defined the application of international law in municipal in the United Kingdom\textsuperscript{13}.

Article 2(6) on the other hand sates that “any treaty or convention ratified by Kenya shall form part of the law of Kenya under this constitution. Justice Alfred Mavedzenge states that under this section international agreement apply as part of the Kenyan domestic law so long as they have been ratified. Ratification of international agreements in turn is regulated by the treaty making and ratification act no 45 0f 2012.under the act which applies to all multilateral and some bilateral treaties, the national executive is responsible for initiating the treaty making process as well as negotiating and ratifying all treaties, however parliament and cabinet have to approve all treaties before they are ratified. Once an agreement is ratified it has a dual effect: the agreement binds Kenya in relation to other state signatories and its provisions become authoritative law within the country.\textsuperscript{14}


\textsuperscript{14} Justice Alfred Mavedvenge, Comparing the Role of International Law in Kenya and South Africa. Cornel international law journal online(vol1).p 101.pp99-102
1.5.5 National Police Service and International law.

The national police service is the institution responsible for the maintenance of law and order in the country. The National Police Service Act of 2011 article 24 states that the functions of the police shall include: the maintenance of law and order, investigation of crimes and the enforcement of all laws.\textsuperscript{15} As stated earlier since once laws are ratified they become part of the law of Kenya then the police have the duty to maintain and enforce these laws as well as investigate the crimes that may arise from these laws. Of note also is the issue of human rights and how the constitution sets up new standards for the police in line with international standards. According to a human rights report in 2009 whether they are police or military any Kenyan security agency carrying out law enforcement activities are bound by Kenyan and international human rights law, Kenya’s constitution and international treaty obligations unequivocally prohibit torture, rape, and other inhumane and degrading treatment. The conduct of the police is also governed by the police act and the United Nations code of conduct for law enforcement officials. The report gives an example of the Mandera operation on disarmament and states that the violations are of such a nature that they fall within the jurisdiction of the Rome statute and the ICC.\textsuperscript{16} Under article 7 of the International Covenant on Civil and Political Rights (ICCPR) which Kenya ratified in 1976 “no one shall be subjected to torture, cruel, inhuman or degrading punishment”

Another issue is that the adoption of international law lays personal criminal responsibility on the police for violations of this laws through international institutions such as the International

\textsuperscript{15} National Police Service Act Article 24. Kenya Law Review.
Criminal Court (ICC) as well as local courts. This was clearly seen in the bringing before the International Criminal Court of the then commissioner of police Major General Hussein Ali. International law lacks many of the characteristics of national law, however complicated an understanding of international law is important since opportunities for prosecution may be obvious or lie hidden within the overlapping maze of laws.\(^{17}\)

The police also need to learn and understand international law so as to be able to deal with emerging international security issues such as terrorism, piracy, extradition, migration as well as international trafficking of persons and international cybercrimes such as child pornography. Also with the increasing prominence of tourism in Kenya police also need to understand international law so as to be able to deal with crimes committed by foreign nationals

1.6 Hypotheses

This study will be guided by the following hypotheses.

\(H_1\): Majority of police officers are not aware of the existence of international treaties and conventions ratified by Kenya and which relate to police duties.

\(H_2\): Police officers do not have the capacity to deal with matters of international law

\(H_3\): The police training curriculum plays a major role in imparting knowledge of international law among police officers.

1.7 Theoretical Framework.

Theories are formulated to explain, predict, and understand phenomena and, in many cases, to challenge and extend existing knowledge, within the limits of the critical bounding assumptions. The theoretical framework is the structure that can hold or support a theory of a research study. The theoretical framework introduces and describes the theory which explains why the research problem under study exists.

1.7.1 Monism and Dualistic Theories of International Law.

Monism and dualism are terms used to describe two approaches that states take in applying international law in their domestic systems. In states with a monistic legal system international law does not need to be translated into national law the act of ratifying an international treaty immediately incorporates that treaty into national law. For states with a dualist system international law is distinct and separate from national law and is not directly applicable domestically. It must be translated into national legislation before it can be applied by the courts or implemented by the executive.

Under the 1963 constitution Kenya was a dualist state; any treaty or convention ratified by the country did not have the force of law unless it was domesticated by the passage of appropriate legislation, article 2(5) and 2(6) of the constitution seem to convert Kenya from a dualist to a monist state as treaties do not now have to be domesticated for them to have force of law in Kenya.
The difference between the monist and the dualist system relate at a practical level, to the difference in steps needed before an international treaty has effect within the national system and what a court is to do when the obligations in the international and national systems differ.\(^\text{18}\) Mwagiru argues that the dualistic system practiced by Kenya since independence had many anomalies including making the treaty making process the politicized and held captive by the executive. This overpowering imperial executive in turn generated rationales such as the domestication of treaties, as the basis on which treaties can be applied in municipal law. The doctrine of domestication has certain effects jurisprudential, philosophical, and political and it is these that have rendered the erstwhile treaty practice ineffective as a means of solving pressing treaty puzzles of the day in Kenya.\(^\text{19}\)

1.8 Methodology of the study.

This research will utilize several research instruments; one is questionnaires which will be handed to junior officers from the rank of constable to senior sergeant. The possible limitation of this method is that some officers may not be willing to give their opinion freely because of fear of their senior officers.

The research also aims to utilize the interview method which will target senior officers from the rank of inspector who may not have the patience or time to fill a questionnaire. The possible limitation is that some of them may be busy or may not be willing to answer questions.


The research also proposes to utilize social media through such social networking sites as whatts app and face book. This will involve forwarding the questions to the respondents and then they can forward back via the same media. This is advantageous as it gives the respondent the freedom and privacy to answer the questions in their own free time and also without fear. It also makes it easy for the interviewer to make follow up questions.

The research will also utilize secondary sources of data from magazines, periodicals, journals and books which have been written on the subject matter. The drawback to this method is that this is a relatively new area and therefore very little has been done on the research topic.

1.8.1 Data Analysis

Data analysis is a body of methods that help to describe facts, detect patterns, and develop explanations. The researcher analyzed the collected data and drew comparisons and conclusions from both quantitative and qualitative data through application of relevant statistical methods in order to establish patterns and relationships between the different variables.

1.9 Scope and limitations of the study.

This research will study representative sample from the members of the national police service both members of the criminal investigation department as well as members of the police service.

The study will limit itself to only those international instruments that Kenya has ratified. The study will also limit itself to those laws that deal with human rights and the treatment of individuals and also those that have criminal responsibility and hence fall directly under the functions of the police service.
This study may be inhibited by the availability of police officers who are often busy and often not available to give interviews or fill questionnaires. The research also faces time constraints because of the deadline required to complete the research may not be adequate to cover the subject adequately. Another problem is that some of the respondents may not be willing to participate without the authorization of their senior officers or officers higher to them in rank.

1.9.1. Operational definition of terms.

i. **International law**-for the purposes of this research international law means and includes all treaties and conventions ratified by Kenya and the general principles of international law as stated by article 2(5) and 2(6) of the constitution. This research however narrows the scope of international law to include only those laws ratified by Kenya which are directly related to police functions.

ii. **Police officer**-for the purposes of this research police officer means the members of the national police service and includes members of the directorate of criminal investigation, police service, administration police and general service unit.
1.10. Chapter Outline.

Chapter One: Introduction and General Orientation

Chapter one comprises of introduction/ background of study, statement of the problem, a review of existing literature and a theoretical framework, objectives of study, hypothesis, scope of the study, as well as the methodology to be used.

Chapter Two: The Kenya police and the Rome statute.

This chapter analyses the Rome statute as a case study of an international law and looks at the impact it has had on the police service and how the police have dealt with it and whether knowledge or the lack of it has any effect.

Chapter Three: The Kenya police curriculum and international law.

This chapter critically analyses the Kenya police curriculum and the effect that it has on the knowledge of international law among police officers.

Chapter Four: Data Analysis

This chapter analyzes the data collected in the previous chapters by comparing and contrasting with the hypotheses and the theoretical framework that was used to guide the study to see if the research had met its objective and either confirm or nullify the hypotheses of the research.
Chapter Five: Conclusions and Recommendations.

This is the final chapter of research in which the researcher will provide conclusions and recommendations of the study.
CHAPTER TWO: THE KENYA POLICE AND THE ROME STATUTE.

2.1. Background to the Rome Statute.

In July 1998 120 states signed a statute in Rome known as the Rome statute establishing the international criminal court. For the first time in the history of mankind states had accepted jurisdiction of a permanent international body to try the perpetrators of the most serious crimes committed in their territories or by their nationals once the Rome statute came into force in July 2002.

According to the Rome statute the international criminal court is not a substitute for local courts. Indeed it is the duty of every state to prosecute the crimes committed within its jurisdiction. The international criminal court only comes in when either a state is unable or unwilling to take action against the commission of such crimes as described in the Rome statute.20

The Hague conferences of 1899 and 1907 were the first attempts by the international community to build world peace through multilateral commitments. Over the intervening years many treaties have been entered by many countries all of them proclaiming the law and purporting to prohibit egregious (extraordinarily bad crimes) crimes. However success has been scant because meaningful enforcement seemed out of reach. The Rome statute however achieved what seemed impossible,

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that is the establishment of an institution empowered with the ability to punish the most heinous crimes.  

2.2 Nuremberg Tribunals and the Tokyo war tribunal

The post world war two tribunals to try German and Japanese war criminals established precedents for the ICC. These were known as the Nuremberg tribunals. In August 1945 as World War II was ending two events changed the nature of war. One was the dropping of bombs on the Japanese city of Nagasaki and effectively introduced the world to the danger that could be caused by atomic weapons. Two days later on the 8th of August allied representatives signed a diplomatic agreement that chartered the world’s first military tribunal for the prosecution of war criminals. In October that year that tribunal would hold its first session in Nuremberg Germany and began the process of punishing Nazi leaders for committing crimes against the peace, war crimes and crimes against humanity. Of course there was nothing special about the victors punishing the losers in war.

Throughout history losing soldiers and citizens had been killed or even sold into slavery. While states had been forced to pay reparations to the victorious states. However the punishment was not given for the advancement of justice rather it was seen as the accepted price of losing. Nuremberg was however different and a turning point in history mainly because the consideration of justice was paramount. The Nazis were not simply prosecuted because they had started a war or that they

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had caused destruction and human suffering but rather that they had committed crimes—that is committing crimes that violated widely held standards of justice.22

The Nuremberg trials represented a break with the past traditions of war and justice. One thing is that traditionally justice was traditionally bound by a body of laws and individuals were punished when they violated statutes set up by states in their laws. That is there never existed any form of international criminal law that could try individuals. Secondly is that traditional criminal justice recognized the concept of jurisdiction. Courts and laws were valid only at particular times and places. This meant that you could not punish someone for something that they had committed outside their own laws that is to say the Nazis traditionally could only be tried for violating German law. However in Nuremberg the prosecutors relied not on German law but on widely held standard of justice that were held internationally though they had not been codified into a body of international law.

The decision to prosecute these military leaders represented another new concept that individuals were held responsible for actions that had been previously regarded as actions of the state. At Nuremberg, generals were deemed responsible for executing a war plan that originated with Adolf Hitler. The roster included the men who gave orders as well as the men who followed the orders; official positions were not considered as sufficient excuses.

The Nuremberg trials, then it may be said, established the primacy of three principles. One that Individuals can be held personally responsible for their actions even if they are following the orders of the state. Second that individual can be prosecuted for crimes that are violations of international law understood as widely held standards of justice rather than legally codified local statutes. Thirdly that international law gives effective jurisdiction to foreign jurists-an international team (composed of mainly American and British jurists) had the authority to prosecute German citizens for crimes committed in Germany and elsewhere in the theater of war.

The situation was no different in Japan with the Tokyo War Tribunal being established under the aegis of an occupying military power. It was also known as the International Military Tribunal for the Far East (IMTF). The direct background of the Tokyo trials which is somewhat different from the German trials can be found in the declaration on Japan by the allied principal powers in World War II. The Cairo declaration of 1943 spelled out that they would be satisfied with nothing less than the unconditional surrender of Japan and the purpose of this war is to stop and punish Japanese aggression. The Potsdam declaration of 1945 issued by the same allied powers stated that stern justice would be meted on all war criminals including those who visited cruelties on their prisoners.

The Moscow conference of foreign ministers of the big four of 1943 had already issued a declaration on July 1 1943 that a tribunal would be established in Japan. However unlike the European case, the allied powers recognized the military supremacy of the United States in the Far East. The United States had the
responsibility of setting up a military tribunal to try the most heinous Japanese crimes.\textsuperscript{23} The American supreme allied commander for the pacific was tasked with the responsibility of selecting ten allied members present in the Far East to form the tribunal. When it was finally prepared the memoranda for the tribunal would define war crimes as:

“A. Planning, preparation or waging of war of aggression or a war in violation of international treaties, agreements and assurances or participating in a common plan or conspiracy for the accomplishment of any of the foregoing.

B. Violations of the laws and customs of war such violations shall include but not be limited to murder, ill-treatment or deportation to slave labor or for any other purposes of civilian population, of, or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas or elsewhere improper treatment of hostages, plunder of public or private property wanton destruction of cities towns or villages or devastation not justified by military necessity.

C. Murder, extermination, deportation or other inhumane acts committed against any civilian population before or during the war on political racial or religious grounds in execution or in connection with any crime defined herein whether or not in violation of the domestic law of the country perpetrated.”

What is most important or significant in the Tokyo charter is the jurisdiction over persons and offences as stipulated in article 5 as follows.

“The tribunal shall have the power to punish far eastern war criminals that as individuals or as members of organizations are charged with offences which include crimes against peace. The following acts or any of them are actions coming within the jurisdiction of the tribunal for which there shall be individual responsibility crimes against the peace; conventional war crimes and crimes against humanity.”

Although there were many who accused the United States and its allies of waging a “victors justice” a general consensus emerged in the postwar years of the righteousness of the two tribunals. To most, the trials seemed an effective way to recognize injustice and punish it accordingly. This consensus would fuel an initiative in the United Nations for the establishment of an international criminal court, a permanent court that would have the powers to prosecute any potential Hitler or Tojo with the support of the international community.

2.3 The International Tribunal for the Former Yugoslavia (ICTY) and The International Tribunal for Rwanda (ICTR)

The idea of a court did not materialize, a failure attributed to the tensions of the cold war. It would however be revived by new atrocities in the waning years of the 20th century with the war in the Balkans. With this war the United Nations resuscitated the model of an international tribunal with the establishment of the adhoc International Tribunal for the Former Yugoslavia (ICTY) through a Security Council resolution. Not long after another tribunal was to be set up to prosecute
crimes that occurred in Rwanda; that is the International Criminal Tribunal for Rwanda (ICTR).

The statute of the ICTY and ICTR played a significant role in reaffirming the concept of individual criminal responsibility for core international crimes in international law. The ICTY statute provides that it shall have the power to prosecute persons responsible for the violation of international humanitarian law committed in the territory of the former Yugoslavia since 1991. The international crimes falling within the jurisdiction of the ICTY are stated as: i) Grave breaches of the Geneva Convention ii) violations of the laws or customs of war iii) genocide iv) crimes against humanity. Individual criminal responsibility extends beyond persons who actually committed the crimes to any person who actually planned, instigated, ordered or aided and abetted in the planning, preparation or execution of the crimes in question. The statute also states that official position shall not relieve a person of criminal responsibility or mitigate against punishment. Finally it states that a superior shall not be relieved of criminal responsibility if the alleged crime was committed by a subordinate if the superior knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take necessary action to prevent the commission of such crimes or to punish the perpetrators.

The ICTR statute contains similar provisions as regards to the crimes against international humanitarian law committed in the territory of Rwanda and Rwandan

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citizens responsible for such violations committed in the territory of neighboring states between first January and December 1994. The international crimes within the jurisdiction of the ICTR are i) genocide ii) crimes against humanity iii) violations of article iii common to the Geneva conventions and of additional protocols. While these crimes are not identical to those of the ICTY they essentially refer to the same category of crimes.25

The ICTY and ICTR expanded responsibility to all those who actually command and control military units even if the responsible commander has civilian status. This trend recognizes two political realities. The first is the civilian control of the armed forces and its potential to lead to criminal misconduct ordered, permitted, abetted or unpunished by civilian authorities. The second is that in totalitarian regimes or authorities the line between the military and the government26 An example of this was Ranko Cesic who was arrested by Serb authorities and transferred to the ICTY. A former camp guard at the Luka detention camp was indicted along Goran Jelisic and charged with individual criminal responsibility for six crimes against humanity and two violations of the custom of war.27

In conclusion one may say that the ICTR and the ICTY expanded the notion of individual criminal responsibility for crimes committed. They also extended the definition of crimes to include those committed outside a state of war such as the World War II. They extended the notion that military commanders could be held

responsible for actions taken by their juniors if they are aware and if they fail to take action to prevent juniors from committing the crimes. While the Nuremberg trials focused mainly on the trial of top leadership, ICTR and ICTY introduced the notion that junior officers could be tried for taking orders that led to the violations of humanitarian law. Thus they could no longer claim that they were simply following orders.

2.4 Negotiations of the Rome Statute.

Negotiation for the formation of an international institution that would be responsible for trying the greatest breaches of humanitarian violations began in 1999, with a United Nations General Assembly Resolution convening the United Nations Preparatory Committee for the establishment of the International Criminal Court. The purpose of this Committee was to create a text that could later be adopted by states. It began with a preliminary text of sixty eight articles from the International Law Commission. After sixteen weeks of meetings to draft a comprehensive statute, the PREPCOM sent to Rome a draft convention of 116 articles with 1700 brackets containing disagreed language.²⁸

The achievement of the diplomatic conference that followed was unique in that the entire statute comprising 128 articles was adopted by an overwhelming majority of the 160 participants within a short period of five weeks. This is more so considering the 1700 worthy of disagreements. During the conference, 200 additional proposals were submitted as well as numerous suggestions and ideas circulated informally by

the delegates. The task of producing a document for negotiation at such a short period of time was therefore daunting. The fact that the Conference succeeded in adopting the Rome Statute was in itself a great achievement.

Unlike previous negotiation conferences, the Rome conference had a large group of negotiating states (160), which were actively assisted by more than 20 intergovernmental organizations, 14 specialized agencies of the United Nations and a coalition of some 200 nongovernmental organizations. In addition some 474 journalists were accredited to cover the event. The non governmental agencies representing a wide range of issues were particularly active. They produced papers and publications on a daily basis, organized meetings and briefings with delegations and provided the media with a close analysis of the important developments. They provided vital momentum and their contribution was key to the success of the conference.

The large number of states with different systems of law and values naturally brought divergent opinions. The need to conduct negotiations in six languages further compounded the issue. To minimize these and other obstacles, various forums meeting in less formal settings were created to conduct consultations and negotiations on the core issues in addition to the formal structure of the conference.

In April 2002 10 countries ratified the statute at the same time at a special ceremony held at the United Nations headquarters in New York city. This brought the number of signatories to sixty which was the minimum number required to bring the statute into force as defined in article 126 of the statute. The treaty entered into
force shortly after on July 1st 2002. The ICC can only prosecute cases on or before that date.

2.5 Crimes under the jurisdiction of Rome statute.

Article 5 of the Rome statute states the crimes that are within the jurisdiction of the ICC. It states that “The jurisdiction of the court shall be limited to the most serious crimes of concern to the international community as a whole. The court has jurisdiction in accordance with this statute with respect to the following crimes.

a) The crime of genocide
b) Crimes against humanity
c) War crimes
d) Crime of aggression…”

Article 6 defines genocide to include killing the members of a group, causing serious bodily or mental harm to the members of a group, deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part, imposing measures meant to prevent births within the group and forcefully transferring the children of that group to another group.

Article 7 on the other hand defines war crimes as including any of several acts directed at a civilian population as part of a systematic attack. They include murder, extermination, enslavement deportation, imprisonment or other deprivation of physical liberty, torture rape sexual slavery, and crime of apartheid among others.

Article 8 defines war crimes as: a) grave breaches of the Geneva conventions of 1949

b) other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law and include intentionally directing attacks at civilian populations c) in the case of armed conflict not of an international character, serious violations of article three common to the four Geneva conventions of 12th August 1949 namely acts like murder mutilation, taking of hostages or passing of sentences and carrying out executions committed against persons not taking part in hostilities including combatants who have laid down their arms. e) Other serious violations of the laws and customs applicable in armed conflict not of an international character within the established framework of international law.

2.6 Individual criminal responsibility under the Rome Statute.

Article 25 (3) of the Rome statute states that a person shall be criminally held criminally responsible for punishment for a crime within the jurisdiction of the court if he or she i) commits such a crime whether as an individual or jointly with another person, regardless of whether that person is criminally responsible ii) orders solicits or induces the commission of such a crime iii) aids or abets in the commission of such a crime iii) in any other way contributes to the commission of such a crime by a group of persons acting with a common purpose , iv)in relation to the crime of genocide directly inciting others to commit genocide.
Article 26 excludes from jurisdiction those who were below 18 years at the alleged commission of the offence.\textsuperscript{30}

Article 27 states that the jurisdiction of the court shall apply equally to all persons regardless of their official capacity. In particular it states that official capacity as a head of state or government Member of Parliament, an elected representative or government official shall in no case except a person from criminal responsibility nor shall it in itself constitute grounds for sentence reduction. It further states that the immunities enjoyed by an individual because of their official capacity shall in no way prevent the court’s jurisdiction over him or her.

Article 28 states that a military commander or person effectively acting as a military commander shall be criminally responsible for crimes within the jurisdiction of the court committed by forces under his or her effective command and control as the case may be as a result of his or her failure to exercise control properly over such forces where:

I. That military commander either knew or owing to the circumstances at the time should have known that the forces were committing or about to commit such crimes and;

II. That military commander failed to take all necessary and reasonable measures within his or her power to prevent and repress their commission or

to submit the matter to competent authorities to competent authorities for investigation and prosecution.

III. The superior either knew or consciously disregarded information which clearly indicated that the subordinates were either committing or about to commit crimes.

IV. The crimes concerned activities that were within the effective control and command of the superior.\footnote{Statute of the International Criminal Court (2002) Article 28.}

This in essence means that military and civilian producers can no longer bury their heads in the sand or delegate the “dirty work” to the men on the ground while they escape responsibility for serious violations of international humanitarian law. The Rome statute also seems to indicate that commanders bear the greatest responsibility for the actions taken by the men under their command.

2.2 The Kenya Police Service and the ICC.

On 15\textsuperscript{th} March 2005 Kenya officially ratified the Rome Statute bringing the number of states party to the statute to 98 while 139 states were signatories. The statute entered into force in Kenya on June 1\textsuperscript{st} 2005.

Kenya’s general elections in 2007 were be a dark time in the country’s history. It was followed by inter-communal violence that erupted as anger over the conduct of the elections combined with a culture of impunity and historical injustices. The violence left over 1000 Kenyans dead and 700,000 displaced. The violence only
ended with the signing of the national accord that led to the formation of a government of national unity led by the two protagonists, Raila Odinga and Mwai Kibaki. This deal or ceasefire was brokered by the panel of eminent persons led by former Secretary General of the United Nations Kofi Annan.\textsuperscript{32}

As part of the political negotiations that brought the post-election crisis of 2007–08 to an end, PNU and ODM officials agreed to establish several Commissions of inquiry. These included a Commission of Inquiry into post-election violence (CIPEV) answerable to the AU panel of eminent personalities. After drawing on existing documentation and conducting its own investigations CIPEV concluded that while the post election violence was spontaneous in some geographic areas, and as a result of planning and organization in other areas, in some places, what started as spontaneous violent reaction to the perceived rigging of elections later evolved into well organized and coordinated attacks. The commission found that Kenya’s state security agents had failed ‘institutionally to prepare for, anticipate and prevent the violence’ and they were themselves guilty of gross human rights violations.

The commission recommended that a special tribunal should be established with ‘the mandate to prosecute crimes committed in order to overcome chronic impunity, which it deemed to be at the heart of post-election violence. Moreover, conscious of how successive governments in Kenya have failed to implement recommendations

of commissions of inquiry in the past, CIPEV’s report included a safety clause stipulating that ‘in default of setting up the Tribunal, consideration will be given by the [AU Panel of Eminent African Personalities] to forwarding the names of alleged perpetrators to the special Prosecutor of the [ICC]’. 

Following a number of attempts to establish a special tribunal through the Kenyan parliament, the names of those alleged to be most responsible for the post-election violence were passed to the prosecutor of the ICC in July 2009. On 26 November 2009, after analyzing the information handed over by CIPEV, the Office of the ICC Prosecutor used its powers to initiate an investigation on its own initiative. This marked the first time an ICC investigation was launched without referral from a state that is party to the Rome Statute or the United Nations (UN) Security Council. On 31 March 2010, the prosecutor’s request to proceed with an investigation was authorized by a majority decision of the Pre-Trial Chamber (PTC), the panel of ICC judges that confirms indictment and issue arrest warrants or summons to appear.

Throughout the post-election violence period the police were used to quell the violence and protect civilians. However there soon emerged accusations that the police were actively involved in human rights abuses. The police were accused of rape, murder and taking sides.\footnote{Peter Kagwanja, Robert South Hall. \textit{Kenya’s Uncertain Democracy: The electoral Crisis of 2008}. Routledge P123-124.}
On December 15 2010 the ICC prosecutor Luis Moreno Ocampo requested for ‘summons to appear’ to be issued to six Kenyans; William Samoei Ruto, Francis Sang, Henry Kosgei, Uhuru Kenyatta and Hussein Ali for their alleged criminal responsibility for the commission of crimes against humanity.

Of the six Mohamed Hussein Ali, was the head of the Kenya police during the post election violence. He was charged together with Uhuru Kenyatta and Francis Muthaura. He was alleged to have conspired with Francis Muthaura an advisor of the then president Mwai Kibaki to order the police forces that he commanded not to intervene in violence perpetrated by the Mungiki sect. He was alleged to have been criminally responsible for murders, deportation, rapes and other forms of sexual violence committed by the mungiki on civilians deemed to be loyal to the Orange Democratic Movement. He was also accused to have conspired with the co accused Francis Muthaura to order the police to use excessive force against civilians in Orange Democratic Movement loyal areas.

The court would later on 22nd January 2012 rule that there was not enough evidence to sustain a case against the former police commissioner. However despite the acquittal the doctrine of command responsibility had been established, that is superiors could be tried for orders that they had given to their juniors. This meant that police commanders could be held responsible for the actions that resulted from the orders that they gave to their juniors as well as actions taken by officers under their direct command if they did nothing to prevent the commission of this crime.
The doctrine of individual responsibility also places a challenge on junior officers in that they will be held responsible for the actions that they commit in the obedience of orders. Thus police officers can no longer claim that they were just obeying orders. This brings a problem to the police because of the harsh penalties for those who refuse to obey the orders of superiors. However there is respite in this issue because the National Police Service Act of (2009) declares that police should obey only lawful commands. However the police can effectively do this only if they are aware of the Rome statute as well as its contents.

Article 27 of the Rome Statute states that:

1. “this statute shall apply equally to all persons without any distinction based on official capacity as head of state or government, a member of government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this statute.

2. Immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law shall not bar the court from exercising jurisdiction over such a person.”

Article 27 presents a problem for Kenya police because the two most powerful individuals in the country are currently facing charges at the ICC. The Rome statute requires states to hand over suspects to the chamber once warrants are issued. The problem is whether Kenya police officers would be willing to arrest the commander in chief and the president of the republic of Kenya or his deputy.
Section 27(2) speaks of immunity and privileges enjoyed by individuals. This includes immunity from arrest in other countries through the doctrine of diplomatic immunity. On 28th November 2011, Justice Nicholas Ombija, a judge of the High Court of Kenya, delivered his ruling on an application for issuance of a provisional warrant of arrest against President Omar al Bashir. President Bashir was in Kenya as a guest of the president in order to attend the inauguration of Kenya’s new constitution yet there was a warrant of arrest issued by the ICC and all states signatories to the ICC which were expected to arrest him in their jurisdictions. The application had been filed by the Kenyan Section of the International Commission of Jurists, (ICJ Kenya), and had joined both the Attorney General and the Minister for Internal Security as the Respondents. Over several days of hearings, the court heard arguments from all the sides through their lawyers. The court also allowed Kenyans for Justice and Development Trust (KEJUDE) to appear as an Interested Party.

After many submissions from the government side represented by the office of the attorney general. The Court accepted ICJ-Kenya’s submission that “the International Crimes Act 2008, like the Rome Statute, does not recognize immunity on the basis of official capacity”. In doing so, the Judge decided that “the High Court in Kenya clearly had jurisdiction not only to issue warrant of arrest against any person, irrespective of his status, if he has committed a crime under the Rome Statute, under the principle of universal jurisdiction, but also to enforce the warrants should the Registrar of the International Criminal Court issue one”.

This is relevant to the police because they were tasked with doing the task of executing the warrant but they did not do it. One of then must ask the question whether Kenyan police have the power to carry out the orders and decisions of the ICC without political interference.
The threshold for the ICC for crimes is usually very high. Thus without a thorough knowledge of this threshold, the police officer may not be able to differentiate genocide as defined the Rome statute and a murder. For example would police charge rustlers who had raided a village and killed people with genocide?.

2.3. Conclusion.

The journey to the Rome Statute has been a long one. The Kenya police service must continue doing its best to adapt to this piece of legislation especially this time when our country is in direct relation with the ICC. It is hoped that the police will continue to acquaint themselves with the provisions of the Rome Statute so as to better understand their responsibilities and powers under the Act. Police officers and especially commanders must take into account that the statute holds them directly for failing to control their juniors which leads to them performing the crimes stated in the statute. They must therefore guard against issuing unlawful orders as well as obeying such orders from civilian authorities.
CHAPTER THREE: THE KENYA POLICE TRAINING AND KNOWLEDGE OF INTERNATIONAL LAW AMONG POLICE OFFICERS.

3.1: A History of the Kenya Police

Since many centuries ago east Africa experienced the influence of foreign restraints. First came the Arabs and other Persians then came the Portuguese and other Europeans. During the 1880s the British colonial office had increasingly taken over administration of the region from the Imperial East Africa Trading Company. The commissioner of the region was given the right to establish a police or other forces in defense of the protectorate. With this the armed forces was established.\textsuperscript{34}

The history of policing in British East Africa began in 1896 one year after the proclamation of the protectorate when the colonial office ordered the first police station to be opened in Mombasa. The main aim was to provide security for British stores and premises in Mombasa. During this time however, the term commonly used was “askari” Arab Swahili word meaning soldier and was used to describe indigenous troops in East Africa and the Middle East serving in the armies of European colonial powers. The name can however also describe police and security guards. During the period of European rule in East Africa, locally recruited “askari” soldiers were employed by the Italian, British, German and Belgian colonial forces. They played a crucial role.

\textsuperscript{34} Hans Sommer. \textit{A History of the Kenya Police with a focus on Mombasa} in Academia.Edu (2007) pp1-10.
One of the effective elements of law and order in British colonial Africa was the establishment and enforcement of law and order. Colonialism was above all a law and order system because colonialism essentially involved the transfer of one legal system and institutions from one society to the other.35

The officer in charge of the Mombasa force came from Mombasa and had previously served in India. Originally the force consisted of some 150 agents including Somalis, Indians and some 150 Comorians. In addition to the colonial police the imperial British East Africa Company also had at its disposal some policing units. For the protection of its trade and commerce the company could appeal to the east African rifles and the Ugandan rifles. The two would later merge into the kings African rifles. In addition a railway engineer established the Ugandan railway police.

The main tasks of these forces were related to the territorial and economic establishment of colonial rule. The main goals of these forces were related to the territorial and economic establishment of colonial rule. The first important internal duties of the police were developed with the passing of the palm wine regulations in 1900. this law stipulated that all persons distributing and selling win had to have a

license provided by a district collector. The free movement of wine was considered disadvantageous for African employment in European countries. It was thought that Africans who depended on wine as a source of livelihood could easily avoid work with the British occupies. The consumption of wine was also considered detrimental to the quality of work done by the African labor force.

The Administration Police Service traces its origins to the passage of an act in 1902 designed to bring the tribal areas of Kenya under government control and taxation. This Act allowed the Village Headsman to “rely on village ‘toughs’ and bullies to affect the often unpopular policies of the Colonial Government and to put in place arbitration and other enforceable mechanisms. These local toughs took up the role of Native Police.

The first major police reorganizations took place in 1902. More police stations were opened and the railway police force were absorbed in to the official colonial police force to become British East Africa Police (in 1920 it was renamed Kenya police) improvements were made in drill and discipline, new uniforms were introduced, a finger print bureau was set up in the Nairobi headquarters and more inspectors were appointed. The inspectors were mainly Europeans assisted by assistant inspectors who were mainly Asians. The rank and file was mainly composed of Africans. By 1910 the force contained no less than 2000 men largely enforcing the law in the
urban centers with the unarmed tribal police left to control the inland native reserves.

During the First World War the police service battalion was formed to fight against the German enemy in the neighboring German East Africa. After the war duties resumed to normal but the force was expanded. After the end of the war in 1918, 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.\(^{36}\)

The Kenyan East African Protectorate, with the exception of the ten-mile wide coastal strip leased from the Sultan of Zanzibar was proclaimed a crown colony in July 1920 changing its name to Kenya Colony, while the title of the force changed to Kenya Police Force. In 1926, the Criminal Intelligence Unit was established with the sole responsibility of collecting, tabulating and recording the history and data of criminals, undesirable and suspicious persons. Special sections like fingerprint bureau and C.I.D. were created starting with a skeleton staff composed of former police officers from Britain and South Africa. This was the foundation of today’s Kenya Police Force.

In the same year, the Railway Police Unit was also established to deal specifically with prevention and detection of offences in the railways from the coast to Kisumu, including Kilindini Harbor and branch lines. As the years progressed, the scope of police activities increased and it was called upon to deal with traffic problems such as accidents and parking. The police were also called upon to deal with cattle rustling in the countryside.

As a preparation for the Second World War, police recruits were deployed in Northern Frontier Districts to counter the threat from Italian Somali Land and Ethiopia. In addition to fighting alongside regular soldiers, the Kenya Police acted as guides, interpreters and carried out reconnaissance missions in the enemies’ territories.

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 and 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. This led to the replacement of the expatriate officers in the senior ranks by Africans. Since then, the Force has realized tremendous achievements in various fields of operation. Among them, due to the increase in criminal activities and in line with the police resolve to effectively deal with security threats and to bring down crime to minimal levels, various specialized units have been formed. They include 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.
3.1.2: Historical Background of Police Training in Kenya.

In 1897, Kenya Police Force was established in Mombasa during the construction of the Kenya – Uganda railway. There was little emphasis on training then. In 1911, a training depot was established in Nairobi to improve the skills and efficiency of the police. Between 1925-1931 Mr. R.C.B. Spicer re-organized Police training methods.

In 1940, the second training depot was opened at Maseno and in 1948 the Nairobi Training Depot was transferred to Kiganjo, Nyeri – which was an Italian prisoners’ of war camp and renamed Kenya Police Training School. At the same time Maseno Training Depot was discontinued. In 1965, the training institution was renamed Kenya Police College. The improvement of the college infrastructure has been slow but steady. At the beginning, the buildings were derelict and inadequate. Between 1951-1953, both ‘A’ and ‘B’ messes were constructed to accommodate senior officers undergoing training. In 1983, the current administration block was put up.37

Training at the college was primarily concerned with producing police constables with sound knowledge of police procedures and law. In 1961 the first Higher Training Course (HTC) was started. It was then that the first female Direct Entry Inspector of Police was also admitted. Today, the college offers a wide range of courses, which include among others Traffic Management, Community Policing, Public Relations, and Customer Care and Stress Management. This training function originally centralized in Kenya police college is now split into specialized training in states such as the CID training school, provincial training centre,

37 National Police Service Website. “History of police training in Kenya”
force driving school, signals training schools, langata dog unit training centre, antistock theft training centre, armourers training school, General Service Unit Training School in Embakasi and Magandi and the administration police training in Embakasi.38

3.2: Kenya Police Basic Training Curriculum.

The Kenya police training curriculum as currently constituted is aimed at equipping recruit constables with the necessary skills, knowledge and attitudes to carry out basic police duties.

The specific objectives are:

i. Initiate the recruits into police culture, interpret and apply basic laws relevant to their duties.

ii. State and explain police administration and procedures.

iii. Demonstrate and apply police practical work.

iv. Appreciate and respond appropriately to the environment, in which they work and make rational decisions in the course of their duties.

v. Appreciate interpret and respond appropriately to environmental factors, which impact on their work.

vi. Demonstrate competence in weapon handling, justifiable use of firearms and tactful combat in their work.

vii. Demonstrate achievements of predetermined level of physical and mental fitness.

viii. State the rules governing various games and sports and to display physical and mental fitness in the course of task performance.

ix. Appreciate the role played by various games and sports in promoting physical and mental fitness, and the rules governing, such games and sports.

x. Demonstrate the achievement of high-level discipline, confidence, and loyalty to the force.

xi. Demonstrate teamwork spirit.

xii. Interpret and enforce the basic laws related to vehicular and human traffic.

xiii. Translate theory into practice in real life situations during the attachment in a police station for three weeks

Subjects taught in the recruits’ course include:

i. Police Procedure Theory

ii. Police Procedure Practical’s

iii. Criminal Law

iv. Criminal Procedure Code

v. Liberal Studies

vi. Traffic Management

vii. Musketry

viii. Drill

ix. Physical Training

x. First Aid
As seen above there is little or no training on international law during the police basic training. It is clear that the police recruits are not equipped to deal with matters of international law such as international terrorism, piracy, international trade law or even international humanitarian law.\(^\text{39}\)

3.3. Police Law Examination.

After police recruits have graduated into police constables they are then posted to the various stations and formations all over Kenya. The next step in their training is the completion of police law exams. Every police officer must pass at least three exams in order to be promoted to the next rank of corporal or inspector depending on their level of education.

Police law is taken every year in the month of August and January include the following exams.

1. Penal code

2. The evidence Act

\(^{39}\) Kenya Police Service website “\emph{Kenya Police curriculum}”
3. The criminal procedure code.

4. Station Command and police practice.

5. Local acts which include other acts passed by parliament such as the witness protection act, Sexual Offences, Traffic Act, Liquor licensing Act, Children’s act among others, As in the basic training course little emphasis is put on international law in these exams the assumption being that it is not that important to a police officer’s daily performance of his duties.

3.4. Promotion Training Courses.

The next stage in the training of a police officer are the promotion courses for the rank of caprol to senior sergeant this are usually done at the various training colleges and usually last for between two months for the rank of sergeant and senior sergeant and four months for the rank of caporal which is the longest course.

The curriculum is composed of:

i. Police Procedures

ii. Drill

iii. Skill at arms and field craft,

iv. Criminal law which includes penal code, criminal procedure code, evidence act, local acts such as the sexual offences act and the children’s act.

v. Liberal studies which includes human rights and sociology.

vi. Management.
Even in these courses little emphasis is laid on international law except briefly in the lessons on human rights and even then the time taken is not sufficient to cover the wide scope that is International law.

3.5 Inspectors Supervisory Courses.

Next a police officer if he is successful to rise through the ranks will attend the inspector course. This is meant for those who after training, will become officers commanding stations commonly called the OCS or deputy officers commanding stations commonly called the deputy OCS or officers in charge crime branch commonly called the OC crime. The subjects taught in the course are:

i. Drill

ii. Skill at arms and field craft,

iii. Criminal law which includes penal code, criminal procedure code, evidence act, local acts such as the sexual offences act and the children’s act.

iv. Liberal studies which includes human rights and sociology.

v. Command and leadership.

We can also see that even in this course there is no emphasis on international law and the value that it would to this leaders of the police stations and the crime branch of the police service. It is the specifically this officers who decide which offences one arrested is to be charged with, the interrogation methods to be used and if in their opinion there is no offence disclosed then the officer commanding station or OCS is empowered to order that a suspect be released. It would
thus seem that they are not equipped through training to handle cases dealing in international law in the inspector course.  

3.6: Higher Training Course.

The next level of training for a police officer is the Higher Training Course or HTC. This is meant for officers of the rank of chief inspector and after training they are meant to become gazetted officers of the rank of superintendent of police (sp) their main duties are mainly to become the officers commanding police divisions commonly known as the OCPD or the officers in charge of division criminal investigation known as the DCIO. They have greater command responsibilities than the members of inspectorate rank being in charge of several police divisions.

The subjects taught at this course include:

1) Financial Accounting - Police Practical Procedure Faculty
2) Store accounting - Practical Procedure Theory
3) Management
4) Criminal Procedure Code
5) Command and leadership
6) Criminal law
7) Traffic
8) Musketry
9) Drill
10) Liberal studies.

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[^40]: Kenya Police Service website “Kenya Police curriculum”
3.7 Senior Command Course

This is the highest course offered in the Kenya Police College. The officers attending are of the ranks of Senior Superintendent of police and above. Objective of the course include the following:

i. Enforce the law without discrimination,

ii. Apply different styles of policing,

iii. Conform to the requirements of transparency and accountability.

iv. Articulate the role of the police in a pluralistic society.

It is evident that even in this course meant for the senior most police officers training on international law is not emphasized.

3.8 Importance of International Law in Police Training.

All states are bound by international law, to varying degrees to protect the human rights of people living within their jurisdiction. The extent to which they fail to meet some of their most important legal obligations in this respect depends crucially on all the processes of law enforcement and particularly on those executed by police agencies. However while it may be assumed that police officers are aware of national law governing the exercise of their powers and protecting human rights it is demonstrably clear that they are largely unaware of international legal provisions in this respect and international instruments directly addressed to police officers. It is also clear that police officials have little understanding of international humanitarian law also known as the laws of war.
The importance of police in protecting rights and meeting standards as required by international is one substantial reason for advocating that the international dimension of human rights protection should form part of the body of knowledge of police officials and certainly of police leaders and those responsible for training and educating the police. Another substantial reason is that it is important to introduce and maintain a human rights culture within police agencies as a means of securing good behavior by police.\textsuperscript{41}

In times of armed conflict international humanitarian law regulates the conduct of hostilities, the permissible means and methods of warfare and protects victims of armed conflict. As police officials become increasingly involved in armed conflict in a variety of ways and they are the ones often used by states to deal with internal conflicts or civil war, it is clearly important that police especially police leaders should understand relevant principles and of this branch of law. They need to so as a matter of good professional practice, in order that they may behave correctly and understand the protections that they are entitled to and promote the protections of others.

It is absolutely essential that both branches of law inform police response to terrorism which may or may not occur in the context of armed conflict. Acts of terrorism are murderous assaults on individuals and human kind generally and subversive of civilized virtues common to all cultures and societies. However when police or other state officials react by violating the great principles of justice and humanity embodied in human rights law and international humanitarian law they further erode the same values which it is their function to protect.

\textsuperscript{41} Ralph Crawshaw ,Stuart Cullen and Dr Tom Williamson Human Rights and Policing Martinus Nijhoff Publishers( 2007)p (i-xvii)}
To focus on human rights and good behavior in policing is not only important as an end in itself it is also important as a means of securing effective policing in peace times and in times of conflict. The support of the community essential to effective policing in a democracy is dependent in upon police respecting the rule of law, and respecting the human rights of individuals within that society.


International police cooperation is not a new phenomenon it is indeed rooted in the broader international security system and by extension international relations. The trans-national nature of crime, largely influenced by globalization, has underscored the need for greater collaboration among law enforcement agencies. It is, therefore, no surprise that we are witnessing an increase and growing interest in international police collaboration, especially because the ease with which people move between countries also implies easier corridors for criminals to move from. As Max-Peter Ratzel, Director of Europol, said: “Nowadays, there are no boundaries for organized criminal groups. Because of modern technology and enormous resources, these groups are illegally active worldwide. In fact, organized crime represents a threat to the structure and values of our democratic systems affecting European citizens’ security and freedom.”

International cooperation in police training is therefore an element, an important element, of this age-old paradigm. The rationale and structures for and approaches in international cooperation in police training should therefore be contextualized within international police cooperation. The need for international police cooperation stems from the paradigm of globalization. Even though

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the phenomenon of globalization is not a new one, it is nonetheless animated by dramatic advances in technology, particularly information technology.

As a result, traditional policing has been complicated by fundamental political, socio-economic and technological trends including but not limited to: Increasing regional integration within Africa that has implied open borders for the movement of people, goods and services with greater ease and speed. As a global phenomenon, this has also been accentuated by the widespread use of modern means of cellular and satellite communications that tend to make the use of cable communication redundant.

As alluded to already, the incidence of intra-state conflicts in Africa—particularly in the Mano River Union area of West Africa, the Great Lakes Region and the Horn of Africa have not only had regional ramifications. They have involved the proliferation of small arms and light weapons for the illegal exploitation of natural resources, and led to the destruction of states, the displacement of large segments of populations as internally displaced persons.

Coupled with porous borders across the length and breadth of the continent, these modernization opportunities and regional insecurity and instability have served to create greater opportunities and avenues for criminal activity, including mercenaries and warlordism, not only nationally and regionally, but also between the continent and other regions of the world.

In more recent times international as well as regional terrorism has created another dimension for the nexus between criminal and terrorist networks, threatening individual freedoms, and national and global security. Africa has been drawn into the next world war of asymmetric warfare not as a matter of choice, but of indirect linkages with international actors and issues.
The foregoing issues are certainly not peculiar to Africa, but are symptomatic of global trends.\textsuperscript{43} In the light of such dynamics, it is arguable that there is a commensurate need for national police services to close ranks and “combat” international crime together. This synergy is necessary to protect individual rights and freedoms, as well as the democratic and economic stability of nation states within spheres delineated as regions of common security and justice. It is also pertinent here to note that international police cooperation is but only one dimension of the fight against international crime and terrorist networks. In the democratic context, such cooperation should extend to and involve other law enforcement and rule of law pillar institutions, such as judicial, corrections, customs and immigration. To be effective, however, such cooperation needs to be institutionalized at all levels, national, regional and international.

The objective of regional and international cooperation in police training should be to achieve such ideals as were set out by Interpol\textsuperscript{44}.

“to enhance cross-border coordination cooperation of police work in the region and improve communication of crucial criminal information among police in Africa … including measures (and priorities) to fight terrorism and organised crime, trafficking in human beings, drug trafficking [and drug abuse], stolen motor vehicles and environmental crime.”

One may very well expand on the broad category of organized crime, emphasizing cross-border crimes of the trafficking in small arms and light weapons, illicit diamonds and other precious minerals, illegal immigration, etc., as constituting the raison d’être for international Police cooperation. While training will not guarantee victory, it is generally held that it will help to


\textsuperscript{44} Interpol 18\textsuperscript{th} African Regional Conference (Accra,Ghana,15 July 2005)
achieve a number of desirable non-tangibles, including quality leadership, and quality personnel with sharpened skills and instincts, while ensuring common standards of drills and procedures, among others.

The areas for cooperation may include motor vehicle theft investigation, Motor vehicle theft investigation, Crime intelligence, Commercial crime Cyber (computer) crimes, Terrorism Stock theft, Firearms identification and safe handling. The focus of regional cooperation in police training should go beyond the scope of the modular operational training issues. It should, for instance, also include a component of best practices on regional cooperation itself, as well as best practices in national approaches in community policing. After all, regional security is the sum total of national safety and security.

It should also provide for police leadership and management at the senior and middle levels through sharing best practices and making use of the transfer of relevant industrial and business management models and practices.

The need for international cooperation in police training has gained paramountancy in tandem with an increasing need for international police cooperation in international relations. This paradigm shift arises from political, socio-economic and technological changes. While these trends have augured well for the movement of goods, services and people, they have also been of help to international criminal and terrorist networks. In Africa, this paradigm has also been exacerbated by the incidence of violent armed conflicts and the resultant complex emergencies involving the massive displacement of populations. The regional and international dimension of crime and peacekeeping therefore underscore the need for multilateral arrangements for policing society and for regional keeping.
While regional police organizations have institutionalized regional cooperation in policing and training, their efforts stand to gain from further assistance and support from the international community, as well as non-police policy research institutions and academic faculties. The challenge therefore is how to achieve practicable coordination and cooperation in the establishment of regional centers of excellence in accordance with the demands of policing and regional security policies. The efforts to realistically meet this demand may have a lot to learn from military infrastructure for in- and out-service professional development, for operational defense and security roles. Thus, in this direction, it should be possible for existing police colleges to form regional associations which, if properly managed and resourced, could serve as a useful and effective platform and/or vehicle for deepening international cooperation in police training, as well as standardizing training and education at levels higher than national.

To meet the challenges of international cooperation in police training, Festas Aboagye suggests the following approaches may help and are worth considering. Establishment of a regional police centre of excellence. Though argued to be supported by partners, with Interpol in the lead, such facilities should be staffed by regional officers to help build local capacity and facilitate regional rollout of training course modules.

This recommendation notwithstanding, regions could consider the institutionalization of specific training course modules in selected national institutions that will then serve as regional facilities. If supported regionally as they should, such national facilities will be able to become centers of excellence in the specific disciplines of choice.

Establishment and institutionalization of an Association of regional police training colleges to support the functions of the Training Sub-Committee, in terms of the coordination of training.
courses, including exchanging resource persons, research data and teaching materials. Institutionalization of periodic regional seminars at appropriate functional levels of police hierarchy, including the leadership and management level, for instance, to discuss trends and share best practices in cross-border crime and peacekeeping. Invitation of external resource persons from non-police policy research institutions and organizations, and university faculties

3.10: Conclusion.

Looking at various aspects of police training in Kenya beginning with a brief history of policing in Kenya and having seen that the initial goals of police training were to enable the colonial government to assert their authority and control of the country and thus most of the training for police officers at the time was meant to teach the native police to learn how to use arms and various instruments of violence. We may conclude that little emphasis was made on the law because there was no law to speak except that which was the white mans law.

The Kenya police training curriculum as currently constituted does not in any way incorporate international law in the aforementioned curriculum. It is clear that the Kenyan police training curriculum does not incorporate international law both for junior as well as senior police officers and they are therefore not well equipped to handle matters of international law in their training.

International law is very important to police training as it helps them to effectively perform their functions as well as relate effectively with the community that they serve as well to understand their limits and protections under international law and thus more emphasis should be stressed in incorporating it in police training.
Finally we may state that emphasis should be placed in encouraging international police cooperation in training of police officers. This is because crimes have become of a transnational nature and increasingly requiring cooperation among police officers from regions as well as on a global scale.
CHAPTER FOUR: DATA PRESENTATION AND ANALYSIS.

4.0: Introduction

The main goal of this chapter is to present the data collected and provide an analysis of the findings in line with the hypothesis and objectives of the research. The methodology of the research involved the use of questionnaires as well as interviews. A total number of 50 respondents were interviewed mainly from Vihiga and Mbale police station. They were mainly from the CID as well as the regular police.

4.1 Analysis of the Respondents.

The total number of respondents in the research totaled to 50 and were drawn mainly from Vihiga and Mbale police stations, from different ranks in the service that is from the rank of Constable to the rank of Senior Superintendent of police (SSP). The respondents were both male and female, they also had varying years of experience in the service.

Table 4.1: Age of the Respondents.

<table>
<thead>
<tr>
<th>Age</th>
<th>Frequency</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>18-19</td>
<td>2</td>
<td>4</td>
</tr>
<tr>
<td>19-30</td>
<td>15</td>
<td>30</td>
</tr>
<tr>
<td>30-40</td>
<td>26</td>
<td>52</td>
</tr>
<tr>
<td>40-50</td>
<td>6</td>
<td>12</td>
</tr>
<tr>
<td>50-55</td>
<td>1</td>
<td>2</td>
</tr>
</tbody>
</table>
Figure 4.1: Respondents Gender

Table 4.2: Rank of Respondents.

<table>
<thead>
<tr>
<th>Respondents rank</th>
<th>Frequency</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Constable</td>
<td>32</td>
<td>64</td>
</tr>
<tr>
<td>Corporal</td>
<td>6</td>
<td>12</td>
</tr>
<tr>
<td>Sergeant</td>
<td>3</td>
<td>6</td>
</tr>
<tr>
<td>Inspector</td>
<td>3</td>
<td>6</td>
</tr>
<tr>
<td>Chief inspector</td>
<td>3</td>
<td>6</td>
</tr>
<tr>
<td>Superintendent</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Senior superintendent</td>
<td>2</td>
<td>4</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>50</strong></td>
<td><strong>100</strong></td>
</tr>
</tbody>
</table>
Presentation and Analysis of the Questionnaire Instrument

4.2.1. Knowledge of Ratification Process
The respondents were asked to state if they understood the process of ratification or domestication of international treaties. The response was as follows:

**Table 4.3: Knowledge of Ratification Process.**

<table>
<thead>
<tr>
<th>Response</th>
<th>Number</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes.</td>
<td>12</td>
<td>24</td>
</tr>
<tr>
<td>NO</td>
<td>28</td>
<td>56</td>
</tr>
<tr>
<td>Partly.</td>
<td>10</td>
<td>20</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>50</strong></td>
<td><strong>100</strong></td>
</tr>
</tbody>
</table>

Of the respondents who answered yes most stated that they had read about it or come to know about treaty ratification through the media that is through television or through the newspapers and especially during the debates on the international criminal court. Those who stated that they partly understood it said that they had heard word used in mass media but were not quite sure what it meant. However, most of the respondents stated that they had never heard of the word or the process either in their duties as police officers or in their studies or in the media.

**4.2.2 Knowledge of International Treaties and Conventions Ratified in Kenya.**

The respondents were asked if they were aware of any international conventions or treaties that had been ratified or domesticated in Kenya. They responded as follows.
Most respondents who stated that yes they were aware of treaties domesticated or ratified in Kenya 65% stated the Rome statute as the main example while some 10% stated the law on piracy although they were unable to state the exact law but new that piracy was illegal in Kenya. Some officers also stated the law on refugees this were officers who had previously worked in the northeastern province and interacted with refugees. Some 25% also stated the United Nations charter as well as the Universal Declaration on Human Rights.

Also officers mainly those from the criminal investigation department also stated that they were aware that there were international anti terror and anti bank fraud laws but could not state the names of the laws.

However a majority still stated that they were not aware of any such laws but were more conversant with domestic law especially criminal law such as the penal code and the criminal procedure code.
4.2.2. Sources of Knowledge of International Treaties Ratified by Kenya.

The 17 respondents who had stated they were aware of international treaties and conventions ratified by Kenya were then required to state where they had learned about international law and they answered as follows:

Table 4.4: Sources of knowledge of International Treaties Ratified by Kenya.

<table>
<thead>
<tr>
<th>Response</th>
<th>Number</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mass media</td>
<td>10</td>
<td>58</td>
</tr>
<tr>
<td>Basic training</td>
<td>2</td>
<td>11</td>
</tr>
<tr>
<td>Promotional courses</td>
<td>4</td>
<td>23</td>
</tr>
<tr>
<td>Other sources</td>
<td>1</td>
<td>5</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>50</strong></td>
<td><strong>100</strong></td>
</tr>
</tbody>
</table>

Most of the 17 respondents, 58%, stated that mass media was the main source of information for them on international law. 11% of respondents stated that they had learned about international law during their basic training as police recruits. 23% stated that they had learnt about international law from the various promotional courses at the Kenya police college. 5% stated other sources such as through further studies in university and colleges or in the course of prosecuting cases as investigating officers, some stated that they had learned about the domestication of international law through social media such as face book and twitter.
4.2.4 Experience in dealing with matters of International Law

The respondents were asked to state if they had dealt with a matter relating to international law. They responded as follows:

**Table 4.5: Experience in dealing with matters of International Law.**

<table>
<thead>
<tr>
<th>Response</th>
<th>Number</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>12</td>
<td>24</td>
</tr>
<tr>
<td>No</td>
<td>38</td>
<td>76</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>50</strong></td>
<td><strong>100</strong></td>
</tr>
</tbody>
</table>

Most of the respondents 76% stated that they had never in their years of service in the police dealt directly with a matter relating to international law and had mostly dealt with matters relating to Kenyan criminal law such as the penal code sexual offences act and the criminal procedure code.

Only 24% of the respondents stated that they had ever dealt with a matter of international law. Most stated that they had dealt with such matters as relating to aliens who had entered the country illegally, refugees who had entered Kenyan territory or who had to be repatriated or who had been arrested for not having proper documentation. Others still stated that they had dealt with international law in their dealings with terrorism suspect especially those of foreign origin.
However most of the respondents who had stated in the affirmative could not
differentiate whether the laws that they had used were instruments of international
law domesticated in Kenya or laws passed by the Kenyan parliament through the
normal process.

**4.2.4 Frequency of dealing with matters relating to International Law.**

The 12 respondents who had answered in the affirmative were then required to state
how often they had dealt with the aforementioned matters of international law.

| Table 4.6: Frequency of dealing with matters relating to international law |
|---|---|---|
| **Response** | **Number** | **Percentage** |
| Less than 5 times | 7 | 58 |
| 5 -10 times | 3 | 25 |
| 10-20 times | 2 | 16 |
| **Total** | **12** | **100** |

Most of the respondents stated that they had dealt with matters relating to
international law less than 5 times. This is attributed by the fact that such cases are
not often reported in police stations most stated they had done so when they had
worked in areas where there were plenty of refugees or transit points for aliens or in
terrorist prone are. 16% of the respondents stated that they had dealt with such
matters more than 20 times. This it was noted were members of the criminal
investigation department who had worked in units such as the anti terror or the anti fraud units.

4.2.5 Participation in International Cooperation.

The respondents were asked if they had participated in international cooperation with officers from another country or jurisdiction.

Table 4.7: Participation in International Cooperation.

<table>
<thead>
<tr>
<th>Response</th>
<th>Number</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>6</td>
<td>12</td>
</tr>
<tr>
<td>No</td>
<td>44</td>
<td>88</td>
</tr>
<tr>
<td>Total</td>
<td>50</td>
<td>100</td>
</tr>
</tbody>
</table>

An overwhelming majority of 88% of officers had not participated in the course of their duties had not had the opportunity to participate international cooperation with officers from neighboring countries or from any other jurisdiction outside Kenya. 12% percent of officers stated that they had indeed had chance to participate in international cooperation in the line of duty. However these were often officers who had been in the service for long and had therefore worked in different areas and formations. Others were officers who had previously worked in special formations in the criminal investigation department (CID) such as Interpol and cybercrime. Some senior officers also stated that they had had opportunities with other senior officers in regional seminars and workshops. However the frequency of this international cooperation was stated as being not so often.
4.3 Presentation and Analysis of the Interview Instrument.

The research conducted interviews with three senior officers of the rank of superintendent and senior superintendent of police. The three held the posts of Division Criminal Investigation Officer (DCIO), The Officer Commanding Police Division (OCPD) and the County Criminal investigation Officer (CCIO). They had all been in the service for more than 20 years and had seen the police metamorphosis from a force into a service. They had also worked in various regions and formations in the country since their recruitment into the force.

Their interview was also deemed to be of value because they had been in leadership positions and hence had the final say on matters dealing with international law within their jurisdiction. Asked whether they thought that knowledge of international laws ratified by Kenya was important to a police officer in the performance of his duties they all responded in the affirmative stating that indeed it was important though they all agreed that it was secondary to knowledge and understanding of criminal law such as the penal code and local acts such as the sexual offences Act and the Children’s Act.

They stated that this was foremost because these were the cases that police dealt with every day. The third respondent (CCIO) stressed on the importance of international law in fostering correct human rights practices among police officers as they interact with both the public and potential suspects.
Asked if they had interacted with elements of international law during their lengthy years of service in the police. The third respondent (CCIO) responded in the affirmative. He stated that having previously stationed at the anti terror police unit he constantly interacted with international law as he prosecuted and interrogated and arrested terror suspects sometimes having to seek the assistance of regional officers in international cooperation. The second respondent (OCPD) also stated that he had interacted with elements of international law having once been posted o Mombasa where he had dealt with the issue of terrorism as well as the issue of aliens. He however reiterated that it was difficult in essence to distinguish between international law parse and that which had been domesticated as law in Kenya and hence admissible before a court of law in the preparation of a charge sheet. The first respondent (DCIO) also stated that he had previously dealt with international law having been the Officer Commanding Police Station (OCS) at a station near Kakuma refugee camp. He had dealt with the law of refugees and stated that often there was no clear understanding of what the Kenyan law stated and what the international refugee law stated.

Asked how knowledge on international law can be enhanced among police officers they all agreed that this should start at the college during the initial basic training course for recruits and then progress through the various promotional courses. The second respondent (OCPD) stated that perhaps it was time that certain international law legal documents domesticated by Kenya especially those dealing with human rights and international crimes are included in the police law exams so that it
becomes mandatory for all police officers desiring to get promoted from the rank of constable to learn them.

All the respondents also agreed that it was important that senior officers learn international law especially criminal law such as contained in the Rome statute so that they may understand the protection accorded to them as well as the crimes under which they may be prosecuted for in the act for actions taken during internal conflict such as the post election violence of 2007-2008.
CHAPTER FIVE: SUMMARY OF FINDINGS, CONCLUSION, AND RECOMMENDATION

5.1: Introduction.

This chapter presented the summary of the data findings, conclusion drawn from the findings highlighted and recommendation made there-to. The conclusions and recommendations drawn were focused on addressing the objectives of this study which were to examine the knowledge of existence of international treaties and conventions ratified by Kenya by police officers, to examine the capacity of police officers to deal with matters of international law in the field and to examine the role played by police training curriculum in understanding of international law by police officers.

5.2 Summary of Findings

5.2.1 Knowledge of the existence of international treaties and conventions ratified by Kenya among police officers

This research set out to find out whether indeed police officers are aware of the existence of international treaties and conventions which have been domesticated or ratified in Kenya in light of Article 2(5) of the constitution of Kenya which states that “the general rules of international law shall form part of the constitution and 2(6) of the constitution which state that”. Article 2(6) also goes on to state that “any treaty or convention ratified by Kenya shall form part of the law of Kenya under this constitution".
The police thus being the enforcers as well as maintainers of law and order in the republic the research sought to inquire if indeed they were aware of the existence of such treaties and conventions as well as the principles of international law. The research interviewed and gave questionnaires to 50 officers in Vihiga County of different, ranks, age, experience, formation and position. Of the 50 respondents only 17 or 34% said they were aware of treaties or conventions ratified or domesticated by Kenya. Of this, majority were those who had worked in areas that had an influx of refugees or that had worked in formations dealing in counter terrorism or such areas as bank fraud and cybercrime. When asked which laws they were conversant with most stated the Rome statute which has been widely discussed in the media. It was interesting that most of the respondents did not state the laws on human rights which are supposed to guide officers in the performance of their duties as they interact with the citizens as well as those they arrest.

It may thus been concluded that a majority of police officers are not aware of the existence of international treaties and conventions ratified or domesticated in Kenya and though there is some level of knowledge it is only in a small scope and officers are not able to effectively differentiate those laws that have emanated from the parliamentary process and those that have emerged from international process.
5.2.2. Capacity of police officers to deal with matters of international law in the field.

This research set out to find out if police officers have the capacity to deal with matters of international law when they are working in the field or in the line of duty. The respondents were asked whether they had dealt with matters regarding international law in their years of service. Only 24% of the respondents stated in the affirmative that they had indeed dealt with matters of international law. Most of the officers who stated in the affirmative also stated that they had mainly dealt with matters touching on refugees, aliens and terrorists.

A small group mainly from the criminal investigation had dealt in such areas as bank fraud and cyber crime by virtue of being in formations that dealt in such matters. Asked the frequency with which they had dealt with matters of international law majority (58%) of the respondents stated that they had dealt with such matters less than 5 times in their service. 16% stated that they had dealt in such matters more than 20 times and this was noted was because they were members of the criminal investigation department who had worked in such formations as fraud, anti terror and Interpol.

76% of the respondents stated in the negative that they had not dealt with matters of international law in the field they stated that they had mainly dealt with matters relating to criminal law in Kenya as stated in the penal code, criminal procedure code and acts such as the sexual offences act and the children’s act.
We may thus conclude majority of police officers are not experienced to deal with matters arising from international law by virtue of their being no prior experience in such matters and the limited experience only being in a small scope.

2.3 Role played by police curriculum in understanding of international law among police officers.

Finally this research set out to find the role if any played by the police curriculum in fostering the acquiring of knowledge and understanding of international laws ratified in Kenya.

An analysis was done of the police curriculum right from the basic course for newly recruited officers, the courses undertaken by junior officers from caporal to senior sergeant, to courses taken by the members of the inspectorate class and courses taken by senior officers of the rank of superintendent and senior superintendent. Also courses taken at the senior command course.

It was noted that there is little emphasis on teaching international law save for human right law. More emphasis is put on criminal law such as penal code, criminal procedure code, evidence act and local acts such as public order act and the witness protection act.

The respondents who had responded in the affirmative that is that they understood or had dealt with matters with international law were requested to state the source of their knowledge of international law. 58% responded that most of the information they had gotten from mass media such as newspapers and television as well as magazines. 11% stated that they had gotten the knowledge from their basic training.
course at the Kenya police college. 23% stated that they had acquired the information from the promotional courses at the college.

An analysis was also done of the police law exams which are mandatory for all constables to pass before they are promoted. They concentrate mainly on criminal law and no place is left for international law as it were.

In conclusion it is clear that though there are efforts to teach international law course, the concentration is mainly on human rights issues and therefore though the curriculum plays a role it is not sufficient and should be expanded to include other elements of international law.

5.3: Conclusion.

This study concludes that though there is some knowledge of international law among some police officers the knowledge is limited in scope and more need to be done so as to enable our officers deal effectively with the challenges of an increasingly global world as well as enforce the constitutional requirement of article 2(5) and article 2(6) of the constitution.

5.4: Recommendations.

Following the above findings the study makes the following recommendations regarding the knowledge of international law among police officers in Kenya:

i. This study recommends that the police curriculum should be expanded to include more areas of international law so as to enable officers effectively gain knowledge on it.
ii. The study also recommends that the mandatory police law exams should include international law so as to act as a motivator for officers to study on the international laws ratified by Kenya.

iii. Knowledge of international humanitarian law should be enhanced to enable police officers have the ability to effectively relate with citizens as well as suspects without violating their human rights.

iv. This study also recommends increase in international cooperation and training. This is because with the world becoming increasingly global it is important that nations learn to cooperate as crimes increasingly become transnational in nature.

v. The study also recommends that the state set up a system of disseminating new laws to police officers and other agencies laws that have been ratified or passed by parliament to enable them be updated.

vi. Finally the researcher realizes that this study is not exhaustive enough and thus recommends more study to be conducted on the factors that affect the knowledge of international law among police officers as well as on the issue of international cooperation among law enforcement agencies in the region and abroad and what it promises for safer region and globe.
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QUISTTIONERE INSTRUMENT.

INTRODUCTION:

I am a student at the university of Nairobi Institute of Diplomacy and International Studies undertaking a Master’s Degree in International studies. As a requirement I am required to complete a research thesis. I would therefore request your help in fulfilling this objective by answering this questionnaire as honestly as possible.

N/B: All answers are given on condition of anonymity.

1. Age. (Tick where appropriate)

   A) 18-19 years
   B) 19-30 years
   C) 30-40 years
   D) 40-50 years
   E) 50-55 years

2. Experience. (Tick where appropriate)

   A) 1-10 Years
   B) 10-20 Years
   C) 20-30 Years
3. Gender (Tick where appropriate)

A) Male

B) Female

4. Rank (Tick where appropriate)

A) Constable

B) Corporal

C) Sergeant

D) Inspector

E) Chief Inspector

F) Superintendent

G) Senior Superintendent

5. Do you understand what is meant by the term Ratification or Domestication of Treaties or International Conventions (Tick where appropriate)

A) Yes
6. If you answered yes or partly above please elaborate.

7. Are you aware of any treaties or conventions Ratified or Domesticated in Kenya?
   (Tick where appropriate)
   A) Yes
   B) No

8. If you answered yes above please state which of this laws.

9. How did you come to learn about this laws (Tick where appropriate)
   A) Mass Media
   B) Basic Training
   C) Promotional Courses
   D) Other Sources
10. In your work experience have you handled any matter relating to International Law. (Tick where appropriate)

A) Yes

B) No

11. If you answered yes how many times would you say you have handled such matters? (Tick where appropriate).

A) Less than 5 times

B) More than 10 times

C) 10 to 20 times

12. Have you in the course of your duties collaborated with officers from another country? (Tick where appropriate).

A) Yes

B) No

13. If you have answered yes above please elaborate
INTERVIEW INSTRUMENT.

Age

Gender

Rank

Duties

Experience.

1) Do you think that knowledge of international law among officers important in the performance of their duties?

2) Have you interacted with elements of international law in the course of your service in the Kenya police service?

3) How can knowledge of international law among officers be enhanced?

4) What role does the leadership in the police service have to play in enhancing knowledge of international law among officers?