

**POLICE REFORMS IN KENYA, CASE OF NATIONAL POLICE SERVICE
COMMISSION**

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Declaration

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

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Dedication

I dedicate this research project to my dear son Edwin, my brother Justin, my Mum and Dad and my dear friends for their constant monitoring and reminder to soldier on and not to give up. This study is also dedicated to my colleagues at the National Police Service Commission as they strive to ensure that the mandate of the Commission is realized.

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List of Abbreviations

APS	Administration Police Service
CID	Criminal Investigations Department
CIPEV	Commission of Inquiry into Post Election Violence
DCI	Directorate of Criminal Investigations
EACC	Ethics and Anti Corruption Commission
EU	European Union
EU	European Union
IAU	Internal Affairs Unit
ICD	Independent Complaints Directorate
ICJ-K	International Commission of Jurists – Kenya Chapter
ICT	Information, Communication and Technology
ICTJ	International Centre for Transitional Justice
IG	Inspector General
IMLU	Independent Medical Legal Unit
IPID	Independent Police Investigative Directorate
IPOA	Independent Policing Oversight Authority

KIE	Kenya Institute of Education
KNCHR	Kenya National Commission on Human Rights
KNDR	Kenya National Dialogue and Reconciliation
KPS	Kenya Police Service
NATO	North Atlantic Treaty Organization
NPF	Nigeria Police Force
NPS	National Police Service
NPSC	National Police Service Commission
NTFPR	National Task Force on Police Reforms
PEV	Post Election Violence
PRIC	Police Reforms Implementation Committee
PRWG	Police Reforms Working Group
SAPS	South Africa Police Service
SSR	Security Sector Reforms
UNDP	United Nations Development Programme
UNODC	United Nations Office on Drugs and Crime
US	United States

Abstract

The journey towards Police Reforms in Kenya started long after the attainment of Independence in Kenya. Following the emergency of the post election violence in Kenya in 2007/2008, several reports were authored that proposed that there was need for the reform of the security sector in Kenya. These reports proposed restructuring and formation of institutions to oversee the operations of the Police Service. This study looks at the progress made as far as police reforms in Kenya are concerned and specifically investigated the effectiveness of the National Police Service Commission which is one of the institutions that was borne out of the many recommendations made. The mandate of the Commission is to oversee the human resource function of the National Police Service a function that was earlier carried out by the National Police Service and the Public Service Commission of Kenya.

The project outlines the background about the study area and the objectives of the study. It also contains literature review on the security sector reforms in Africa and specifically in Kenya. The study has three objectives all geared towards assessing the effectiveness of the National Police Service Commission as an oversight institution. The study also looked at the policy, legislative and institutional frameworks that have been put in place towards enhancing the realization of police reforms. The research came out with findings that the Commission may not have been very effective due to the many challenges that it has faced as a new institution. Some of these include lack of enough financial resources, lack of tools and human capital, lack of goodwill both from the political arena, the executive and the National Police Service itself.

There is need for the Government to support the Commission in its operations through allocation of enough financial resources to ensure that the Commission actualizes its mandate.

CHAPTER ONE

INTRODUCTION AND BACKGROUND TO THE STUDY

The field of security and police reform is a critical factor for reconstruction in post conflict countries and has become a prominent policy issue discussed globally along international efforts to rebuild a functioning police force in post conflict societies. The field of security is gaining importance as a critical factor in the development strategies of both partner and donor countries.

The United Nations Security Council statement of 20th February, 2007, 16th July, 2010 and other reports of the Secretary General have reiterated that Security Sector Reform (SSR) is critical to consolidating peace, and that it is a priority in the immediate aftermath of conflict as well as SSR programmes being important elements of conflict prevention.¹

As it is evident, political, social and economic development is impossible without sustainable peace and security. According to Wulf², the list of countries in need of security sector reform is long and each country has its own reasons which may be unique or similar with other countries. Some of these may include post-conflict rebuilding, transition from one-party rule to multiparty, a lack of transparency and accountability in public affairs, a disregard for the rule of law, difficulties in the management of scarce resources as well as inadequate civilian oversight over the law enforcement agencies. A country or state that would like to undertake security sector reforms should do so out of national decision for there to be national ownership. This will

¹ Africa Union, (2013) *Policy Framework on Security Sector Reform*, Africa Union Commission, Addis Ababa, Ethiopia, p.2

² Wulf , Herbert (2004), *Security Sector Reform in Developing and Transitional Countries*, Bergholf Research Center for Constructive Conflict Management., Eschborn. P.2

ensure that there is a national responsibility and commitment through provision of the resources required.³

Following the disputed 2007 general elections, violence broke out and out of this various reports including the Commission of Inquiry into Post Election Violence (CIPEV) Report (Waki Report), Report by the UN Special Rapporteur on Extra-judicial, Summary or Arbitrary Executions (Philip Alston Report), and National Task Force on Police Reforms Report (NTFPR) (Ransley Report), among others laid blame on the security sector and made recommendations for its transformation.

Among the recommendations was the formation of institutions to oversee the operations of the police service. These institutions include the National Police Service Commission, the Independent Policing Oversight Authority, the Office of the Inspector General and his two Deputies and the Internal Affairs Unit of the Police Service.

This study investigates the effectiveness of the National Police Service Commission and also explores the challenges that have confronted the Commission as an oversight institution for possible lessons.

1.1 Statement of Research Problem

Police reform in Kenya had remained an elusive matter for the past decades as several reports relating to the conduct of police have been shelved and remain unimplemented. One of the main problems has been the lack of political goodwill and attitude change amongst the police officers especially the top leadership and senior officers. Following the coming into force of the new Constitution that gave birth to several reforms in the police service, there is hope that the police

³ International Centre for Policy and Conflict (2011), *Position Paper on Security Sector Reforms for Kenya*, Nairobi, p.6

reforms in Kenya are going to achieve the purpose for which they were intended. However, the challenge is how effectively the implementation of the proposed reform will be undertaken. It is a major concern in the spirit of reforming the police service that the desired changes be made in order to achieve a more accountable, responsible, professional and public minded and friendly police service. However, there are numerous challenges or bottlenecks that are hindering the full realization of police reforms in Kenya. First, corruption remains a key challenge to implementation of police reforms. According to some reports by the Transparency International, Kenya has always been ranked among the top in the list of corrupt institutions in the world. As a result, the police service remains the most affected and corrupt institution in Kenya. The rampant corruption can also be attributed to poor enforcement of the existing police and anticorruption legal framework as well as the failure of the government in addressing the challenges undermining the mandate of the Kenya Police Service and also of the institutions that have come into effect following enactment of the new Constitution. These include the National Police Service Commission, the Office of the Inspector General, and the Independent Policing Oversight Authority.

In addition, interference in the work of the police service either by the politicians or the executive has made it difficult for the police service to serve the interests of the citizens. The past regimes used the police service to advance their own interests and to oppress their offenders. Following the new legal, policy and institutional frameworks, the police service should be a citizenry outfit that should be geared towards serving the common man. The reason why it was changed from being a 'Force' to a 'Service'.

In the past, provision of security for its citizens was a preserve of the state but today, this is no longer the case. Other actors have come in that have collaborated with the government to ensure security. Lack of accountability has been identified as one of the problems painting the image of

the police service. Improvement in the perceptions by the citizens of police trustworthiness can increase the willingness of citizens to cooperate with the law enforcement agencies and also comply with the law. Accountability in the police force needs to address issues related to police performance, conduct and adherence to human rights standards.

For there to be accountability within the law enforcement agencies or within the security sector, there needs to be institutions that should provide accountability through civilian review of police policies, independent civilian investigations of citizen complaints against the police and through civilian review of police investigations of citizen complaints. Thus the need to have in place oversight bodies that will ensure that possible or alleged wrong doing by the police is investigated effectively and action taken. It is true that the government structures may not be able to hold the police accountable due to fear of being critical of another government department, but these oversight institutions will strengthen the reform process and also hold police accountable.

This study is dedicated to assessing the effectiveness of the oversight institutions and mechanisms that have been put in place in Kenya arising out of the recommendations of various reports following the 2007/08 post election violence.

The main objective of this work is to audit the police civilian oversight agencies in Kenya. Specifically, the work identifies external public oversight agencies administered by civilians and established by the government. This study has specifically analyzed the National Police Service Commission whose mandate involves the human resource management of the police service.

1.2 Objectives

1.2.1 Main Objective

The main objective of this study is to assess the effectiveness of Oversight Institutions in reforming the Police Service in Kenya.

1.2.2 Objectives

1. Evaluate the legislative, policy and institutional frameworks in the reform of the Police Service in Kenya.
2. Examine the role and effectiveness of the National Police Service Commission and the challenges it faces in delivering on its mandate.
3. Make recommendations for effective oversight of law enforcement agencies.

1.3 Justification

The AU Framework advises member states to commit themselves to strengthening instruments for democratic oversight of the security sector. These oversight instruments should promote and uphold good governance principles, the rule of law, respect for the legal framework including human rights and gender equality.⁴ There has been much discussion on the need to maximise the goodwill of the national leaders as an aftermath of the 2007 post-election violence and the 2010 passage of the constitution but little progress in the reforms process. The study seeks to evaluate the on-going police reforms with the outcome useful in the improvement of the process. The study also provides information in the field of academics on the status of the police reforms in Kenya.

⁴ Africa Union, (2013) *Policy Framework on Security Sector Reform*, Africa Union Commission, Addis Ababa, Ethiopia, p.19

This study looks at the legal, policy and institutional frameworks that have been put in place in the police reforms process in Kenya as well as the effectiveness of the National Police Service Commission in delivering on its mandate.

Viewed from an academic perspective, this work is a step towards a better understanding of the dynamics of police reforms in post-conflict countries and the actors pursuing it. In practical terms, it may help those engaged in police reform identify possible pathways and triggers for successful oversight mechanisms. The work presents concrete policy implications and recommendations which could contribute to designing more successful civilian oversight entities geared towards reforming the police service.

1.4 Literature Review

1.4.1 Introduction

Schnabel et al⁵ are of the opinion that accountability is a key requirement of good governance. An organization or an institution is accountable for its performance to those who define its mandate and those who are affected by its decisions or actions. Not only governmental bodies but also the private sector and civil society organizations are accountable to the public and to their institutional stakeholders. Accountability cannot be assured without transparency and the rule of law. In the context of the security sector, security institutions need to be overseen by, and accountable to, civilian and democratically constituted authorities. There must be provisions and opportunities for an autonomous civil society. Active and independent civil society organizations need to be afforded a decisive role in monitoring the performance of security

⁵ Schnabel et al (2011), *Security Sector Reform, Narrowing the Gap between Theory and Practice*, DCAF Publications pg.15

organizations, and in informing and educating the public about the mandates and performance of all actors within the security sector.

On the changing nature of police accountability and growing public and political demand for more effective forms of police accountability, Chan⁶ suggests that there has been a shift toward the adoption of private sector and new public management approaches to police accountability. Based on a neo-liberal critique of traditional government and the management of public services like the police, new philosophies and forms of internal self governance are being proposed. Chan argues that the general political governance of the police is shifting away from traditional models of reactive accountability which depend upon the application of external legal rules, hierarchical and central regulation and punishment centered discipline. This old model of public accountability or review has failed to provide adequate police accountability primarily because of the resilient nature of occupational police culture and its inability to change or control it. The new police accountability is part of a more general trend toward a new public sector managerialism that emphasizes closely managed self-regulation and governance, reinforced by external oversight. Police organizations are being more closely managed and scrutinized internally by a labyrinth of management systems, technologies and procedures and externally by more elaborate public complaint systems and auditors. While the old accountability is seen to have failed, the new accountability has also not been very successful, but Chan argues that it may gradually succeed as modes of internal self-governance and self-regulation are more acceptable to police culture than more traditional, legalistic, external accountability measures.⁷ In short, it is the opinion of Chan and others that the future of police accountability lies in more elaborate and

⁶ Chan, B.L. (1997) *Changing Police Culture. Policing in a multi-cultural society*. United Kingdom: Cambridge University Press. p.38

⁷ Ibid p. 38

effective modes of internal management and self-governance and not in more intricate and powerful forms of external governance and control.⁸

According to Ericson et al,⁹ the growing pervasiveness of the technology of public surveillance means that the police themselves are increasingly being monitored by the public making it even harder to protect themselves from public criticism, review or opinion. The increasing new media scrutiny and surveillance dramatically amplifies incidents and elements of police deviance, feeding public arguments for more civilian review and regulation.

For police accountability to be effective, it must involve multiple actors and institutions performing multiple roles, to ensure that police operate in the public interest. There are some countries that have established police-specific bodies such as police boards, police service commissions and independent police complaints bodies.¹⁰ These institutions can only deliver if they are independent and have statutory underpinning instead of them being established just by a mere decree. There are also those oversight institutions that are established under police act and this may compromise the independence of the institution.

Ziegler and Neild¹¹ argue that accountability in a police force requires the operation of both internal and external control mechanisms that ensure that the police force is performing its job in a manner that respects the rule of law and the civil rights of the people it is to protect. Accountable police forces provide transparency with regard to procedures and their operations.

⁸ Ibid p.38

⁹ Richard Ericson and Kevin Haggerty, (1997), *Community policing*, Oxford University Press, pp.17-25

¹⁰ UN (2011), *Handbook on Police Accountability, Oversight and Integrity*, Criminal Justice Handbook Series, p.49

¹¹ Ziegler, Melissa and Rachel Neild (2002), *From Peace to Governance. Police Reform and the International Community*, Washington, D.C.: Washington Office on Latin America (WOLA) p.8

In addition, Ismail¹² contends that these institutions should be given their own budget separate from that of the police and that they should be subjected to rigorous oversight through reporting to parliament and ensuring that all its reports are made public.

According to Annika¹³, oversight institutions need the support of both the executive and parliament for facilitation of their work as well as scrutiny. There is the need to strike a balance between being independent and at the same time ensuring the support of the political authorities and the police leadership for them to have an impact.

Police exist to guarantee order, safety and security. In securing these, police exercise enormous power. According to Goldstein¹⁴, the police, by the very nature of their function, are an anomaly in a free society. They are invested with a great deal of authority under a system of government in which authority is reluctantly granted, and when granted, sharply curtailed. The specific form of their authority is awesome in the degree to which it can be disruptive of freedom, invasive of privacy, and sudden and direct in its impact upon individual. And this awesome authority is delegated to individuals to the lowest level of the bureaucracy, to be exercised, in most instances without prior review and control.

Nowadays, oversight institutions play various roles including the vetting of officers to ascertain their suitability. Vetting refers to processes for assessing the integrity of individuals to determine their suitability for continued or prospective public employment.¹⁵

Vetting processes combined with the establishment of merit-based appointment procedures not only promote the competence of the members of law enforcement agencies but also significantly

¹² Shahindha Ismail, (December, 2009) *The Police Integrity Commission of the Maldives, Network for Improved Policing in South Asia* (NIPSA) Newsletter, Vol. 1 No.2

¹³ Annika S. Hansen, (2008) Strengthening the police in divided societies – empowerment and accountability in Bosnia-Herzegovina, *Policing and Society*, Vol.18, No.4 pp.339 - 361

¹⁴ Goldstein, H., (1977), *Policing a Free Society*, Ballinger Pub. Co., p.1

¹⁵ Alexander Mayer-Rieckh and Pablo de Greiff (2007) *Justice as Prevention: Vetting Public Employees in Transitional Societies*, (New York: Social Science Research Council).p.135

enhance their independence and that of the entire agency. Creating merit-based appointment procedures also constitutes a condition for the sustainability of a vetting process, ensuring that its outcomes are not arbitrarily reversed.¹⁶

According to Jinadu¹⁷ vetting is part of a justice-sensitive approach to SSR, which, when combined with other SSR programmes designed to improve the accountability, functioning and oversight of public institutions, can contribute to both building the integrity and the legitimacy of the institution concerned. The exclusion of human rights abusers will increase the integrity of the institution by establishing that no one is above the law.¹⁸ But rather than viewing vetting as a one-off process, it should be understood to include developing internal disciplinary processes and external oversight mechanisms to help change the nature of the institution and therefore prevent recurrence of abuse. Vetting is a measure that, if conducted properly, should contribute to building the integrity of the security institution, increasing public trust in it and empowering citizens. It should also increase effectiveness of the institution.

The reputation of the police as human rights abusers therefore directly undermines their capacity to do their job. Thus, removing known abusers from the police, and establishing and adhering to clear disciplinary mechanisms for all officers, demonstrates that human rights abuse is contrary to the ethos of the institution, and that it is punishable and punished. This in turn should contribute to increasing public trust in the police, which is necessary for its proper functioning.¹⁹

Justice-sensitive approaches to SSR are not therefore stand-alone projects, but rather should be an integral part of SSR projects seeking to establish effective and accountable public institutions

¹⁶ Innocent Chukwuma, (2003), "Internal Disciplinary Systems as Important Complement to External Oversight of Police in Nigeria," in *Civilian Oversight and Accountability of Police in Nigeria*, ed. Etannibi Alemika and Innocent Chukwuma (Lagos: Center for Law Enforcement Education), p.58.

¹⁷ Jinadu, L.A. (2000) *The Political Economy of Peace and Security in Africa: Ethno-Cultural and Economic perspectives*, Harare: AAPS Books. pp.1-11

¹⁸ Mwagiru, M(ed) (2008) *Human Security, Setting the Agenda for the Horn of Africa*, Nairobi: Africa Peace Forum.

¹⁹ Goulding, Marrack. (1997). "United Nations Reform: *New Approaches to Peace and Security*." *The Olof Palme Memorial Lecture* delivered 12 June 1997, Stockholm.

in a democracy.²⁰ In the context of Kenya where the security forces continue to be abusive, adopting a justice-sensitive approach may help address the concern that building the technical capacity of the security system may actually enable elements within them to continue to be abusive, only more efficiently.

1.4.2 Nature and Genesis of Civilian Oversight Institutions in Africa

More and more law enforcement jurisdictions have involved citizens in the review systems. On one side of the debate are those that assert that internal review and control is the only way to manage the problem of misconduct. They argue that the involvement of citizens without knowledge of law enforcement procedures and legal limitations will disrupt the process. Those on the other side argue that under democratic systems of checks and balances, law enforcement agencies should not be left to judge themselves. The maintenance of administrative integrity and confidentiality must be weighed against the need for openness in the review process. Unfortunately, most oversight institutions have come into existence as the aftermath of a highly publicized and emotionally charged incident of alleged police misconduct. As a result, some law enforcement administrators have been proactive in taking preventive steps to avert potential tension and conflict.

Improving governance within the security sector and ensuring that it is subordinate to democratic civilian authority is the central concern of the SSR model. All security entities should be accountable to democratically elected civil authorities, independent oversight agencies and civil society. Working level institutional mechanisms providing direct oversight related to issues like human rights and financial management should be formed.²¹

²⁰ Buzan, Barry, Ole Weaver and Japp De Wilde. (1997). *Security: A New Framework for Analysis*. Boulder: Lynne Reinner Publishers. p.21-30

²¹ Mark Sedra, (2010), *Security Sector Reform 101: Understanding the Concept, Charting Trends and Identifying Challenges*, The Centre for International Governance Innovation (CIGI). P.6

According to Sedra²², policing in many countries across the region is still seen as politically partisan, corrupt, abusive and ineffective. Too often, the police are used in the service of particular governments or regimes and this, combined with the extensive record of police abuse and corruption, has contributed to the poor standing of most police agencies among their citizens. As long as poor policing remains the norm, the respect for rights and democratic, economic and social developments will be handicapped rather than enhanced. It is here that the oversight community has a vital role to play. Oversight of the police that clearly shows that complaints are taken seriously and errant officers disciplined is recognized as one of the more effective ways of building confidence in the police.

There has been much discussion on police oversight in Africa over the past two decades. Correspondingly, there have been many attempts to develop institutional mechanisms of police oversight and accountability on the continent.²³

Murphy et al²⁴ asserts that the lack of civilian involvement in and control of the investigative process that sustains public complaints and their subsequent reinvestigation was seen to undermine the credibility and utility of civilian review, and indeed any model of police oversight and public covalence. This trend toward more independent and aggressive civilian involvement in both investigations and direct oversight has been developing since the late 1990s and incorporates different approaches that advance a transformed understanding of the entire policing enterprise. The more radical civilian oversight model argues in favour of a completely independent civilian control over the intake, investigation and response to public complaints of police misconduct.

²² Ibid. p.6

²³ Etannibi EO Alemika, (23–24 March 2011) Policing oversight in Africa, *Prospects, opportunities and challenges*, in the Workshop Report, Policing oversight: *Advances, challenges and prospects*, (APCOF), Johannesburg, South Africa, p.11

²⁴ Christopher Murphy and Paul F. McKenna, (2007) *Police Investigating Police A Critical Analysis of the Literature*, (Canada) p.3 <http://www.cpc-cpp.gc.ca/cnt/tpsp-tmrs/police/projet-pip-pep-eng.aspx>

As a model of accountability, civilian oversight refers to the actual mechanics of holding police accountable for their conduct. It refers to the entire system of ensuring policing services are delivered in a manner that is conducive to the public good and in accordance with standards of justice.²⁵

According to Miller²⁶, civilian oversight involves people outside the justice system or citizens/civilians taking responsibility for holding police officers to account. Civilian oversight therefore involves a network of multiple checks and balances on police that goes well beyond complaints. The reason people think civilian oversight and police complaints are one-and-the same is often due to the fact that demands for greater accountability frequently follow a specific incident of police misconduct, triggering a complaint and a wider debate for stronger oversight.²⁷ This is not to deny the importance of an effective complaints process but to remind readers of the multiple sites where legal governance of police in a democratic society is negotiated.²⁸ Goldsmith²⁹ is of the opinion that civilian oversight falls along a continuum of reactive and proactive approaches to police accountability.

Legitimate arguments about the limitations of citizen review cannot diminish the inherent importance of the idea. Even though research indicates that citizen review systems do not seem

²⁵ McKenna, P.F. (2003). *Police Powers II*. Prentice Hill. P.29

²⁶ Miller, J. (2002). *Civilian Oversight of Policing: Lessons from the Literature*. Vera Institute of Justice. Online. Available: http://www.vera.org/publication_pdf/178,338.pdf

²⁷ Goldsmith, A.J. & Lewis, C. (Eds.) (2000). *Civilian Oversight of Policing: Governance, Democracy and Human Rights*. Hart Publishing. P.117

²⁸ Martin, D. (2007). *Accountability Mechanisms: Legal Sites of Executive – Police Relations – Core Principles in a Canadian Context*. In Beare, M.E. & T. Murray (2007). *Police and Government Relations: Who's Calling the Shots?* University of Toronto Press. Pg.259

²⁹ Goldsmith, A.J. & Lewis, C. (Eds.) (2000). *Civilian Oversight of Policing: Governance, Democracy and Human Rights*. Hart Publishing. P.117

to deter law enforcement misconduct more than internal systems, citizen review systems are almost universally considered to have greater legitimacy in the communities they serve.³⁰

Effective external oversight is another important accountability mechanism to prevent the recurrence of abuses by law enforcement agencies. External oversight mechanisms for the law enforcement sector are not only important to ensure that basic standards are respected in the provision of security, they on preventing abuse also play a critical role in building the legitimacy of law enforcement agencies. Both the independence of external oversight from the agencies it monitors and the publicity of its operations increases public confidence in the effectiveness and fairness of accountability. The tasks of external oversight mechanisms vary and include review functions like monitoring, taking and investigating complaints, sanctioning abuses, identifying systemic root causes, and proposing remedies, and policy functions like overseeing, at the policy and strategic level, the functioning and operations of security agencies. External oversight bodies can have independent enforcement powers for investigations and discipline or play supervisory and advisory roles of referral of complaints and oversight of investigations and discipline.³¹

External oversight mechanisms of the security sector comprise independent civilian oversight bodies, legislative and executive oversight functions, and the prosecutors and the courts. External oversight bodies will be more effective and will avoid the risk of turning into another instrument of political interference if they are broadly legitimized, enjoy independence, and function with transparency. Examples of independent civilian oversight bodies include the Independent Complaints Directorate in South Africa, the Police Services Commission in Nigeria, the

³⁰ Peter Finn (2001) U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, *Citizen Review of Police: Approaches and Implementation*, Washington, D.C pp.1-16

³¹ Ibid p.1-16

Independent Police Complaints Commission in the United Kingdom, the Police Public Complaints Authority in Jamaica, and numerous police review boards in the United States.³²

The past and current oversight institutions in Africa are as a result of the existing conflict of two or more protagonist parties over incompatible goals. When the conflict becomes expensive to maintain in terms of the weaponry purchases and the loss of both life and property, the parties have no alternative but to negotiate for a solution that may involve the engagement of the third party mediator that is aimed at leading the mediation aimed at the creation of a neutral ground for the parties in the conflict.

After reaching an impulse by the parties in a conflict, the two parties invite a respected third party individual or organization to nominate an individual to lead the negotiation aimed at achieving mutual agreement.³³ It is at this level that sobriety is realized among all the parties based on the guidance of the process by the mediator. The issues, actors and stakeholders are identified and analyzed with the aim of getting mutual ground for all parties, aimed at establishing common ground for amicable acceptable solution by all the parties to the conflict.³⁴

It is at this stage that proposal are made on the various areas for reforms and the creation of new institutions that are independent for the implementation of the agreed proposal. Most of the past as well as current reforms are on legal, electoral and the security sector changes because of the fear of dominance of an individual group in the newly formed body. The new institutions that are created as a result of the conflict, do embrace regional inclusivity, wider consultation from the constituency of the various stakeholders to avert any possible fall out in the implementation of

³² Alexander Mayer-Rieckh & Pablo de Greiff, (2007) International Center for Transitional Justice: *Vetting Public Employees in Transitional Societies, Justice As Prevention*, New York: Social Science Research Council, pp. 498-499

³³ Ibid p.499

³⁴ Anicia Lala and Ann Fitz-Gerald (Eds), (2003) *Providing Security for the People: Security Sector Reform in Africa*, Global Facilitation Network for Security Sector Reform, Shrivenham. P.115

the agreement that include specific sector reforms like creation of oversight security institutions.³⁵

In essence, oversight security institutions are highly political processes which have influences and are also influenced by the wider political dispensation at both national and international level.³⁶ It is important to note that oversight security sector reform is not a pure technocrat exercise, but it has effect on the power and interests of the major stakeholders that are involved.³⁷

Various African case studies offer some detail insights about how the political nature of oversight security institutions can well be addressed through a number of ways like creation of political commitment, donor conditionality and peace agreements. Security oversight institutions can only be possible if there is a sense of urgency and need for the oversight institution among governmental leaders and other relevant stakeholders. They are expected to respond and address the actual and the perceived challenges that are key and relevant for both the political leaders and the society at large. In the cases of Morocco, an increase in crime and terrorism created the sense of urgency within the political elites to address these problems and formed an impetus to initiate major security oversight institution in form of programme.³⁸ Oversight security institution should always be linked to specific problems which are urgent and relevant to political leaders. This exercise is expensive to the national government due to the limited national resources and funds while at the same time being confronted with the burden of a costly and barely sustainable large security sector.³⁹ When assured of the oversight institutions' mandate in achieving the desired outcomes, the international community has always provided part of the costs and ensures that the

³⁵ Comfort Ero and Jonathan Temin, (2004) 'Sources of Conflict in West Africa' in Chanfra Sriram and Zoe Nielsen (Eds), *Exploiting Sub Regional Conflict for Prevention*, Lynne Rienner Publishers, Boulder and London.

³⁶ International Crisis Group, (08 December, 2004) '*Liberia and Sierra Leone: Rebuilding Failed States*', ICG Report, Dakar/Brussels.

³⁷ Editorial, "Eradicating Terrorism," *Daily News of Sri Lanka*, 13 October 2008.

³⁸ Abdel-Fatau Musah and J Kayode Fayemi, (2000). *Mercenaries: An African Dilemma*, Pluto Press, London, pp 24-45

³⁹ Martin Lowenkopf, (1995) 'Liberia: Putting the State Back Together', in I. William Zartman (ed), *Collapsed States: The Disintegration and Restoration of Legitimate Authority*, Lynne Rienner, Boulder and London, pp 32-79

process is done in accuracy, open and transparent manner that gives confidence to both the donor community as well as the citizens.⁴⁰

The core and the driving force for sustainable security sector reforms is the oversight institutions that are charged with the responsibility of reviewing and strengthening the national security apparatus after emerging from protracted conflicts. In this context, the oversight institutions are expected to be independent in their mandate without being influenced in any particular way. The holders of such institutions need to be people of high moral authority with the virtue of respect to the humanity and treating all the people as equal without form of discrimination based on the political, racial, class, gender and the social networks that they belong. The oversight security institutions provide strategic level framework for good political environment and providing well structured guidelines for both tactical and technical level that ensures the operational process and the outcome of a cohesive national security sector is enforced and embraced across the country. It is the responsibility of the security reform institutions to ensure sustainable and well elaborate security policy that brings together all the security forces and agencies in the country with a clear command that is respected and upheld across all the forces.⁴¹

1.4.3 Examples of Oversight Institutions in Africa

1.4.3.1 Nigeria Police Service Commission

Various countries have Police Service Commissions whose role is oversight over the police forces or services. Police Service Commissions are vested with one or more of the following powers: employment, discipline, promotion and policy direction. Specific measures may be necessary to guarantee the operational independence of those holding leadership positions in a law enforcement agency. Political interference is often ensured by appointing nonprofessional

⁴⁰ Ibid pp.32-79

⁴¹ Abdel-Fatau Musah and J Kayode Fayemi,(2000). *Mercenaries: An African Security Dilemma*, Pluto Press, London.pp.30-43

faction loyalists or party members to leadership positions in law enforcement agencies. Various models exist to promote the independence of these positions. Efforts focus, in particular, on requiring professional qualifications for leadership appointments and on entrusting external, nonexecutive bodies with appointment powers.

According to Alemika⁴², the Police Service Commission in Nigeria, for instance, is responsible for the appointment and promotion of all members of the Nigerian police except for the Inspector General. The creation of police commissioner posts in Bosnia and Herzegovina provides another example. These posts were created to deter inappropriate interference by any politically appointed ministers of interior. A police commissioner is appointed by an independent board and is responsible for the management and operations of police service.

In Nigeria the transition from military dictatorship to democracy has required changing the image of the police from a tool of an oppressive government to a public service agency. To facilitate this shift, national lawmakers reconstituted the Police Service Commission. Most governments have two unconnected agencies, one to punish misconduct and one to reward good performance, but the commission has both responsibilities, making it unusual and potentially a very effective form of civilian oversight.⁴³

In Nigeria, there is widespread concern about the performance, integrity and conduct of the Nigeria police force. For example, the police are widely criticized for extra-judicial killing, corruption, incivility, brutality and torture, non-response to distress call by citizens. It must be emphasized that no police force can be accountable if the government lacks accountability, as is the case in the country.⁴⁴ While Nigeria does face various external threats, it is not a nation at

⁴² Etannibi E. O. Alemika, (2005) “*Police Accountability in Nigeria: Frameworks and Limitations*,” in *Civilian Oversight and Accountability of Police in Nigeria*, ed. Alemika and Chukwuma, pp. 41–43.

⁴³ Ibid p.42

⁴⁴ Etannibi E. O. Alemika, (2005) *Police Accountability in Nigeria: Framework and Limitations*, University of Jos, Nigeria, p.8

war. Rather, the threat to its security is internal from criminal activity within the borders. The Nigeria Police Force is the only body in the country with constitutional authority to police the society and to provide the security and the maintenance of law and order which the citizen has a right to expect from his or her government.

The Commission is an important element in the reform and modernization of the Nigeria Police Force, which was the product of the yearnings of Nigerians who sought a constitutional and civilian oversight institution for the police. The representative nature of the Commission is demonstrated by the way in which its members are drawn from each of the six geo-political zones in the country in compliance with the federal character provisions of the Constitution. Its composition also accommodates representatives of the judiciary, the police, women, Nigerian press, non- governmental human rights organization in Nigeria, the organized private sector and the civil service of the federation.⁴⁵

Apart from the responsibilities given by the Constitution, the Commission is mandated to formulate policies and guidelines for the appointment, promotion, discipline and dismissal of officers of the Nigeria Police Force, identify factors inhibiting and undermining discipline in the force, and formulate and implement policies aimed at efficiency and discipline within the force.⁴⁶

The activities of the Police Service Commission could be examined through its four core function areas which are appointment, promotion, discipline and standard setting in the Nigeria Police Force.⁴⁷

Under the mandate of appointment, the Commission is tasked with the responsibility of recruiting new officers to join the force. This recruitment is done under the supervision of the

⁴⁵ E. E. O. Alemika and I. C. Chukwuma, (eds) (2003) *Civilian Oversight and Accountability of Police in Nigeria*, Centre for Law Enforcement Education (CLEEN), Lagos Nigeria, p.10

⁴⁶ Police Service Commission (Establishment) Act, No. 15 of 2001, Section 6

⁴⁷ Paper by Cleen foundation, Justice Sector Reform, (March 23-24, 2006). *Civilian Oversight of Policing in Nigeria: Structure, Functions and Challenges*, Centre for Law Enforcement Education (CLEEN) pp.1-15

Commission. Nigeria police force has had challenges due to the low number of officers which was as a result of a moratorium that was in place for 6 consecutive years. Nigeria being a highly populated country required more police officers to police the citizenry thus the recruitment of over forty thousand officers per year. The Commission carries out recruitment at three levels. First are the constable level, then the Cadet Inspectors and then the Cadet Assistant Superintendent of Police. Officers are also transferred from one duty station to another by the Commission.⁴⁸

When the Commission came on board, it discovered that the recruitment exercise into the Nigeria Police Force was not based on defined and established criteria. The recruitment process was characterized by corrupt practices with people paying to ensure that their candidates, even those without the prerequisite physical and educational qualifications were recruited into the Police. In the process, the dregs of the society including criminals and people without credibility got recruited into the Force. The Commission decided to restore credibility in the recruitment process into the Nigeria Police and ensured that only qualified, committed and duly screened applicants are recruited to pursue their career in the Service through the establishment of the Police Recruitment Board. The Board comprises Members of the Commission, Senior Police officers and two representatives of the Federal Character Commission. The Board ensures that only credible candidates duly cleared by their local governments, traditional rulers, etc are screened by it. The Board is charged with the entire recruitment process including advertisement, conduct of examination and final screening into the Nigeria Police Force.

In addition to appointment, the Commission is mandated to promote officers from one rank to another. Stagnation in one rank was very high thus officer's morale and dedication to work was low. The Commission could not handle promotion of officers to all the levels and thus decided

⁴⁸ Ibid p.14

to delegate the promotion of junior officers to the Chief of Police. The Commission however has not been able to carry out discipline matters and instead has delegated this to the Chief of Police. One of the first things the Commission did after inauguration was to formulate a strategic plan since no organization can operate effectively and optimally without such a plan. In the strategic plan, the Police Service Commission envisioned for the Country, a highly motivated, professional, disciplined and accountable Police Service that upholds human rights.

The Commission also realized that there was not scheme of service for the professional or specialist officers serving in the force. The specialist cadre is made up of graduate officers with background in science technology, medicine, veterinary medicine, engineering and works. The Commission constituted a Committee that came up with a scheme of service for these officers.⁴⁹

1.4.3.2 Independent Police Investigative Directorate (IPID) in South Africa

The former Independent Complaints Directorate (ICD) was established in 1997 in terms of chapter 10 of the South Africa Police Service (SAPS) Act 68 (1995), which pre-dates the 1996 Constitution, to promote consistent proper conduct by members of the SAPS and the municipal police services. The legal mandate of the ICD was primarily to investigate all deaths in police custody or as a result of police action, as well as criminal offences and serious misconduct alleged to have been committed by members of the SAPS and the municipal police services. The ICD functioned independently of the SAPS.⁵⁰

The IPID Act 1 of 2011 gives effect to the provision of section 206(6) of the Constitution, ensuring independent oversight of the SAPS and the municipal police services. With the promulgation of the IPID Act on 1 April 2012, the ICD was renamed the Independent Police Investigative Directorate (IPID). The Directorate thereby evolved from a complaints-driven

⁴⁹ Online: Activities of the Commission from 2008 – 2013, www.psc.ng

⁵⁰ Independent Police Investigative Directorate Annual Report 2012/13

organization to an investigation-driven organization.⁵¹ The Directorate is mandated to among other things investigate any deaths in police custody, death as result of police action, complaints relating to a discharge of an official firearm by any police officer, complaints of rape, torture, assault and corruption, among others. It is the responsibility of IPID carry out investigations of specified criminality committed by members of the SAPS and Municipal Police Services (MPS).

The Directorate is mandated to investigate complaints of police corruption in clause 28 which states that the Directorate may investigate matters relating to systemic corruption involving the police. This compels police officers who become aware of any infringements listed in clause 29, to notify the IPID immediately and to submit a written report to the Directorate within 24 hours. National and provincial commissioners, to whom disciplinary recommendations are sent following IPID investigations, must initiate disciplinary proceedings within 30 days of receipt thereof. Quarterly reports on disciplinary actions taken must be submitted to both the IPID and the Minister of Police.⁵² The Minister should also be notified following the conclusion of any related disciplinary process. These developments significantly bolster the potential for the IPID to have a positive impact on police oversight in South Africa. However, questions around the ICD/IPID's capacity to realistically realize its mandate remain.⁵³

1.4.4 Effectiveness of Oversight Institutions

According to Walker,⁵⁴ in the United States, civilians audit, investigate, monitor, and report on the competence and effectiveness of the police in managing police misconduct but do not investigate and adjudicate individual complaints as such. They have complete access to internal police documents, personnel files, and data about use of lethal and non-lethal force. Civilians

⁵¹ Ibid

⁵² IPID Act 1 of 2011

⁵³ Faull A, (2011)– Occasional paper 227 on Oversight agencies in South Africa and the challenge of police corruption, ISS. Pretoria: Institute for Security.

⁵⁴ Walker, S. (2001). *Police accountability: The role of civilian oversight*. Belmont CA: Wadsworth. P.10

outside of the police conduct investigations of citizen complaints, often with access to internal police documents and personnel records. There may or may not be parallel internal police investigations of the same complaints. Under some systems, the civilians only make a recommendation as to how the complaint should be adjudicated and if discipline should be imposed. Under other similar systems, the civilians may be empowered to adjudicate the complaint but not to impose discipline. In still other similar systems, the power to impose discipline is also ultimately put into civilian hands.

Goldsmith⁵⁵ asserts that during the period up to, and including, the 1960s and 1970s, police departments traditionally dealt with public complaints and police officer discipline or misconduct concerns through entirely internal disciplinary systems. Police departments had internal affairs or professional standards units that discerned and investigated instances of misconduct, brutality or corruption and made recommendations on resulting discipline or sanctions. There was essentially no public oversight or involvement in these systems, processes, or procedures and little or no accounting for such actions outside of the department. Public complaints were treated with varying degrees of credibility, with virtually no assurance that they would be pursued, investigated or resolved in a manner that would meet current standards of accountability or transparency. This internal police system approach continued throughout the period conventionally referred to as the 'Professional Era' advanced by Bopp,⁵⁶ and included a conviction that police organizations could be managed by the principles of scientific management formulated for both public and private corporations

⁵⁵ Goldsmith, A.J. & Lewis, C. (Eds.) (2000). *Civilian Oversight of Policing: Governance, Democracy and Human Rights*. Hart Publishing. p.117

⁵⁶ Bopp, William J. (1977). *"O.W.": O.W. Wilson and the search for a police profession*. Port Washington, N.Y. Kennikat Press. P.49

One set of arguments claims that complaints and misconduct, or other areas of policy, are addressed more effectively when civilians are involved in the process than when police deal with such issues on their own. This issue has dominated much of the discussion about the merits of oversight.⁵⁷ Focusing on complaint review, Walker⁵⁸ highlights a number of arguments of this kind. For example, there are claims that oversight ensures more thorough and fair investigations, that more complaints are sustained, or that they result in more disciplinary actions and, as a result, more police misconduct is deterred. Similar types of arguments could be constructed for other areas of police policy. For example, it could be argued that police policies and priorities are more effective and more responsive to the community when civilians are involved than when the police make decisions without civilian input.⁵⁹

Arguments about effectiveness are probably most compelling in contexts where internal systems of review are conspicuously poor or absent, where there are clear and widespread abuses by police, or where police organizations are very poorly managed and organized. This may be the case, for example, in countries undergoing transitions to democracy, which have historically lacked accountability.

However, arguments for and against oversight that rely on questions of effectiveness draw on assumptions that are largely untested and unproven. Furthermore, these assumptions can be very difficult to test empirically. For example, it is extremely difficult to judge whether the sustain rate of complaints is different with or without oversight, because oversight may impact on the kinds of complaints received. Citizen oversight of police practices has long been a controversial

⁵⁷ Joel Miller, (2002) *Civilian Oversight Of Policing, Lessons from the Literature*. Vera Institute of Justice (Global Meeting on Civilian Oversight of Police, Los Angeles,) p.2

⁵⁸ Walker, S. (2001). *Police accountability: The role of civilian oversight*. Belmont CA: Wadsworth. P.10

⁵⁹ Ibid, p.10

issue in law enforcement.⁶⁰ Basically, the concept is defined as a procedure under which law enforcement conduct is reviewed at some point by persons who are not sworn officers. In recent years, more and more law enforcement jurisdictions have involved citizens in their review systems, and highly publicized incidents of alleged police misconduct and their fallout have brought the issue of citizen oversight to center stage in the United States.⁶¹

1.4.5 Conclusion

One of the mechanisms that have been widely accepted that can regulate police powers and the misconduct associated with it is the civilian oversight. These oversight institutions are composed of people from outside the police service or force whose aim is to ensure that the police are held accountable for their actions. As Miller⁶² puts it, civilian oversight of the police is usually in three main areas which are complaints, police misconduct and policy.

Police service commissions engage in proactive approach to police misconduct where they identify and resolve systemic problems within police organizations. The police commissions deal with development of policies, management as well as supervision and training of police officers. Investigations can at times be done by police departments and the commissions' deals with appeals arising out of the cases.

It is the desire for every country to ensure that its citizens are safeguarded. This responsibility lies with the police service or force which has enormous powers which at the end of the day may affect the freedom and the rights of the citizens. It is to this end that the civilian oversight institutions come in handy to ensure that the police are accountable.

⁶⁰ Andrew J. Goldsmith, (1991) ed., *Complaints against the Police: The Trend to External Review*, New York: Oxford University Press. P.125

⁶¹ Samuel Walker, (2001), *Police Accountability: The Role of Citizen Oversight*, Belmont, Calif.: Wadsworth Thompson Learning. P.69

⁶² Miller, J. (2004) *Civilian Oversight of Policing: Lessons from the Literature* in Alemika, E. E. O. and Chukwuma, I. C. (Eds), *Civilian Oversight and Accountability of Police in Nigeria*. Lagos, Centre for Law Enforcement Education (CLEEN).

1.5 Literature Gap

Effective policing oversight operates on three levels. These are state and government control, social or civilian control, and internal control. Each of these spheres of oversight is important and together they are able to provide for a comprehensive system of accountability.

The existing literature has much focus on the state institutions in the security sector with little information on the citizens and other non-state entities like individuals and community based organisations. Studies demonstrate that the desire to support impunity for the sake of short-term stability and reconciliation needs to be carefully weighed against the serious long-term effect that a culture of impunity has on respect for the rule of law, and the effective functioning of law enforcement agencies and institutions, and the government. Long-term stability and security cannot be achieved without a culture of accountability that flows through all public institutions. If Kenya is to be lifted from the abyss of injustice and immorality it is submerged in, corrective measures in the form of restructuring its security sector are imperative. Therefore, the elimination of impunity is a requisite for police reforms to be effective. According to the Organisation of Economic Cooperation and Development⁶³, transitional justice strategies are proposed in security sector reform with the aim of renovating an abusive and inefficient social sector to one that is aware of, respects and upholds human rights. Much of the literature is on the general transitional justice and security sector reforms with little information on the police sector reforms in Kenya.

1.6 Conceptual Framework

SSR is a new concept that came into effect in the 1990 in the academic disciplines. It is one of the concepts that are used to measure the level of success when looking at the processes of

⁶³ International Centre for Transitional Justice, (2011). *One Year Since Promulgation: Assessing the Reform Process in the new Constitutional Dispensation*, The Kenya Transitional Justice Brief, Vol No 2.

political and societal changes such as state transition and democratization. There are those international organizations that limit their full membership to those countries that have reformed their security sector organizations. Some of these organizations include the NATO and the EU.⁶⁴ SSR is posited as being transformative, holistic and as making the link between security and development. Theoretically, it is grounded in the human security paradigm, promoting values of democratization, legitimacy, people-centeredness, local ownership, inclusion and diversity and fore-grounding the security of both the state and its citizens. It seeks to create an accountable, effective and efficient security sector through a set of reforms at the political, institutional, economic and societal levels. It is then little wonder that this system-wide approach to security came to be viewed as the panacea for Africa's security problems.

The security sector actors must adapt to the political and organizational demands of transformation. SSR is a holistic and normative concept which means that the security sector organizations must adapt in a particular way in accordance to rules and regulations established by states. The state must as well change in the way it views security since in the past, the security sector organs used to serve the interests of those in authority or a specific political class.

SSR must be involved in the change of mindsets of all those involved about security. What should be protected and how this is done is of paramount importance when carrying out these reforms. It should not be viewed just like a mere reorganization of the security forces which in essence is just a technical process.

In some national contexts, security sector reform is a form of ongoing process that takes place according to established timelines or practices, such as periodic national security reviews.⁶⁵ In

⁶⁴ Islam Yusufi, (2004): "Understanding the Process of Security Reform in Southeastern Europe," Journal of Security Sector Management, no. 2 p.5

other situations change, sometimes radical change may be driven in response to a conflict or crisis that threatens the protection and security of people or exposes shortcomings in existing arrangements. In many conflict-affected countries the security sector often exercises powers above the law. Instead of giving service to the citizens, they are often used by the state as instruments of destruction to terrorise and oppress; creating a chaotic environment. In the reconstruction and transformation of any post war country, SSR is essential. Therefore, security sector reform describes a process of assessment, review and implementation as well as monitoring and evaluation led by national authorities that has as its goal the enhancement of effective and accountable security for the State and its peoples without discrimination and with full respect for human rights and the rule of law.

Although the modern concept of SSR is applied both to armed forces and other security organizations, subordination of security agencies to civilian oversight and leaders is still the ultimate precondition for any reformed security sector. Those concerns are strongly promoted as a democratic civilian control of security organizations which is a core element of the concept of SSR. The emphasis on democratic civilian control serves to prove that SSR is a value oriented concept which strongly promotes the values of liberal democracy.

Professional security forces are believed to be predictable and reliable instruments in the hands of civilian leaders thus serving as regional confidence building structures. As a result, their reform becomes a precondition for sustainable peace, and therefore, domestic and international stability. SSR also became part of the development agenda in light of links between security and development too. It is not only true that an underdeveloped country is more prone to becoming involved in conflict but underdevelopment became a security issue itself. The broadening of the security agenda to include economic, political, social and environmental security as legitimate

⁶⁵ Bajpai, Kanti. (2000). *“Human Security: Concept and Measurement.”* Kroc Institute Occasional Paper.

security concerns has happened in parallel to more attention being paid to the dignity of human life with a man being acknowledged as a referent security object.

Security has been viewed as a public good and the state is in charge of providing it to its citizens. If the state fails to provide it to its citizens then it is described as a weak or a failed state, it thus becomes a source of insecurity and security threat in itself. Security sector is a part of an efficient state apparatus which provides citizens with a secure environment within which they exercise their basic, economic, social and political rights. Theodor⁶⁶ therefore concludes that SSR has been viewed as a concept of good governance, thus serving as a precondition to the receipt of an economic aid by countries striving for post-conflict or post- authoritarian reconstruction and democratization.

1.7 Hypothesis

1. That effective oversight of police depends on the goodwill of all stakeholders as far as the legislative, policy and institutional frameworks are concerned.
2. The effectiveness of the National Police Service Commission depends on the resources available.

1.8 Methodology

This research is informed by qualitative methods of data collection and analysis. It made use of both primary and secondary data. Secondary data was sourced from academic and policy literature, reports, government publications, international organizations, civil society publications and working papers.

⁶⁶ Theodor H. Winkler, (2002) “*Managing change: The Reform and Democratic Control of the Security Sector and International Order*,” DCAF Occasional Paper, no. 1, (Geneva), p.4

The researcher used key informant interview guide as the data collection instrument for the primary data. The advantage was that the tools were open-ended for collective information without limitations to the responses. The study site was Nairobi, and a total of 40 respondents were chosen through stratified sampling of the sampling population at the National Police Service Commission and the National Police Service.

The study was also informed by the analysis of various reports and laws which include the National Taskforce on Police Reforms Report (NTPR), Commission of Inquiry into Post Election Violence Report, (CIPEV), the Constitution, the National Police Service Commission Act, 2011, the National Police Service Act, 2011 and the South African Police Service Act among others.

1.9 Conclusion

This chapter has clearly given the background to the study including the statement of the problem, objectives of the study, conceptual framework, the literature review and the methodology. In the next chapter, the researcher looks at the police reforms in Kenya with a focus on the triggers of police reforms, and the legislative, policy and institutional frameworks that have been put in place to guide the process of police reforms.

CHAPTER TWO

POLICE REFORMS IN KENYA

2.1 Overview

The main goal of police reform is to transform the Police to a professional, efficient and accountable police service that can be trusted as an institution of peace and social economic development. Police reforms should increase accountability and reliability, enhance professionalism and empowerment of Police officers, reinforce operational and administrative reforms as well as strengthen the institutional, legal and policy instruments governing the police service in Kenya.

Police reform in Kenya dates back to independence period, following the attainment of independence and self rule.⁶⁷ The constitution of Kenya 1963 aimed at ensuring that the police is professional and neutral. This was by giving the police autonomy and by ensuring that there was a Police Service Commission and a National Security Council. In addition, the position of the Inspector General of Police was provided for who was to be appointed by the President after being interviewed and recommended by the Police Service Commission.⁶⁸

The intention of the Independence Constitution was to ensure that the Police Force operated independently, free from political as well as executive interference. The Commission was charged with the responsibility of keeping under review all matters relating to salaries, allowances, standards, qualifications and other conditions of service of members of the Police Force. The Minister in charge of the Police was required to be kept abreast of all the happenings within the police force.

⁶⁷ Report of Kenya Police in collaboration with Kenya Human Rights Commission and the Common Wealth Human Rights Initiative, National Stakeholders Workshop: Validation of Police strategic Plan (Kenya School of Monitory studies , Nairobi – March 25 and 26, 2004)1, available at

http://www.humanrightsinitiative.org/programs/aj/police/ea/articles/wshopreport_feedback_strplan2003-07.pdf

⁶⁸ Yoshiaki Furuzawa, (2011) “*Two police reforms in Kenya: Their implications for police reform policy,*” Journal of international Development and Cooperation, vol.17, No. 1, 2011, pp.51-69.

However, these provisions in the Constitution did not materialize as anticipated. Before their implementation, the Constitution was amended to abolish the Police Service Commission. The police was then supposed to be under the Public Service Commission. This transformed the police force into an extension of the civil service, marking the beginning of a culture of political manipulation and control of the Police Force by the Executive. The amendments mainly boarded on increasing presidential control, influence and power over government institutions and agencies.⁶⁹ The situation thus led to the executorial powers being extended to all government agencies including the Police Force.

Yoshiaki states that as a consequence of inadequate policy, legal and institutional frameworks as well as immense presidential powers following the constitutional amendments, the police faced innumerable evils which include impunity, lack of accountability, rising levels of insecurity, inter-ethnic violence, dishonesty in crime detection and prevention, terrorism, criminal gangs, vigilantism, inadequate funding and equipment, rampant government corruption, poor housing, lack of life or health insurance, eroded public confidence, political interference, and understaffing among others.⁷⁰

Following these developments, the police fell prey and were accused of impunity, excessive use of force and brutality, disregard for human rights, abuse of due process and malignant corruption, extrajudicial killings, torture, arbitrary detention, suppression of dissent, and fomenting ethnic violence among others.⁷¹ Kenyan citizens are left to no option but to believe

⁶⁹ J.B. Ojwang' (1990) *Constitutional development in Kenya: Institutional Adaptation and Social Change*, Acts Press, African Centre for Technology Studies. pp.157-169

⁷⁰ Yoshiaki Furuzawa, (2011) "Two police reforms in Kenya: Their implications for police reform policy," (2011) *Journal of international Development and Cooperation*, vol.17, No. 1 pp.51-69.

⁷¹ Amnesty International, (2003) *Amnesty International Report 2003: Kenya*, UNHCR, at www.omct.org/files/2003/11/2651/2003_eng_vaw_kenya.pdf

that members of the police force are corrupt and that a reasonable number of crimes committed in the country is attributable to police criminality.⁷²

However, owing to failure by the independence government to implement certain crucial propositions of both the Constitution and the Police Act, there were numerous challenges and rot in the force that ensued. The police continued the brutal colonial relationship with the natives as well as abuse and violation of human rights. Video cameras have captured police officers in the act of brutally beating people, taking bribes and so on. As a result, the police force thereby became defacto judge, jury and executioner.⁷³

2.2 Post 2007/2008 Institutional, Policy and Legislative Reforms towards the Police Reform Process.

2.2.1 What triggered the Reform Process

Although the need to reform the Police force has been with us from independence, the Police Reform momentum was aroused by the emergence of the Post Election Violence (PEV) in 2007/2008, which was as a result of the disputed presidential election. Efforts to stop the violence were futile and this led to the indulgence of the African Union. Through the facilitation by the three-member Panel of Eminent African Personalities, under the chairmanship of Mr. Kofi Annan, the Kenya National Dialogue and Reconciliation (KNDR) was launched at the end of January 2008. An agreement was reached on an agenda for talks which led to the signing of the National Accord and Reconciliation Agreement. Various agenda items were agreed upon and Agenda Four covered issues of institutional reform which was intended to address long-term issues and solutions. The Panel also created the Commission of Inquiry into Post-Election

⁷² Dr. Markus H.F. Mohler, (2009), *Principles of Democratic Policing*, DCAF, Geneva, Public lecture on safety /security and police law at the University of Basel.

⁷³ Chief Penny E. Harrington “*Challenges Facing Police Administrators*,” National Center for Women & Policing at <http://www.pennyharrington.com/challenges.htm>

Violence (CIPEV) to investigate the circumstances of the post election violence, and to recommend measures that could bring to justice the perpetrators.⁷⁴

According to the Waki Report, a total of 1,133 people died, 117,216 private properties were destroyed, and about 350,000 people were displaced. The inclusion of Police Reform under Agenda Four stemmed from a strong feeling that the level of post-election violence and destruction would have been minimized had the police responded in a professional non-partisan manner.⁷⁵ There were also widespread allegations of attacks, including killings and rape committed by the police, and allegations of deliberate negligence where the police failed to respond to situations of violence.

The Commission went on to make a number of recommendations calling for wide ranging reforms of the police, and the creation of an effective system of police accountability, as well as the investigation and prosecution of police officers involved in criminal offences during the post election violence. However, there has been little movement towards bringing the police to account, either collectively or individually, for human rights violations during that period.⁷⁶ In 2012, a multi-agency taskforce was constituted by the Director of Public Prosecution to review cases from the post-election violence but up to date no prosecutions have been initiated in respect of any case, including those involving police.⁷⁷

The accord between the two principals recognized that the crisis triggered by the disputed 2007 presidential election results brought to the surface rooted divisions within the Kenyan society, which, if left unaddressed, threatened the very existence of Kenya as a unified country.

⁷⁴ Government of Kenya, *Report of the Commission of Inquiry into Post-Election Violence*, (2008), Government Printers and Press, Nairobi. p.3

⁷⁵ National Task Force on Police Reforms Report, pp.1-3

⁷⁶ Amnesty International, (2013) *Police reform in Kenya: "A drop in the ocean"* London WC1X 0DW, United Kingdom, p.7

⁷⁷ Human Rights Watch, (2011), *"Turning Pebbles" Evading Accountability for Post-Election Violence in Kenya*, <http://www.hrw.org/reports/2011/12/09/turning-pebbles>

Discussions under Agenda Four resulted in far-reaching reforms being identified as being necessary to address the root causes of recurrent conflict and to create a better, more secure and prosperous Kenya. Six long-term issues were identified to be addressed under Agenda Four. These were the constitutional, legal and institutional reforms; land reforms; poverty, inequality and regional imbalances; unemployment, consolidation of national cohesion and unity; and transparency, accountability and impunity. Police Reforms was categorized under Institutional reforms and among the things that were to be looked into were;- constitutional review to establish an independent Police Service Commission; review and define the role of the Administration Police; review laws and issues related to security and policing which was to include the setting up of an independent complaints commission, citizen oversight of police services, enhanced information disclosure, human resource management and capacity building, to make them consistent with modern democratic norms; finalization and roll-out of the National Security Policy to enable relevant sectors to develop their specific sectoral policies; and recruit and train more police officers to raise the police-to-population ratio to the requirement of the UN of 1:450.

In addition to the Agenda Four an agreement to implement certain recommendations emanating from the Commission of Inquiry into Post Election Violence as contained in the Report was also reached. The two parties agreed to initiate urgent and comprehensive reform of the Kenya Police and the Administration Police. The reforms were to be undertaken by a panel of policing experts and would include establishment of an independent Police Service Commission to oversee both the Kenya Police and the Administration Police, an Independent Police Conduct authority, creation of a modern Code of Conduct and achieving ethnic and tribal balance in the Force.

Following slow implementation of the suggested reforms, local and international pressure mounted for the more determined implementation of the reforms envisaged under Agenda Four.

It was after this clamor that a National Task Force on Police Reforms (NTFPR) was appointed in 2009 under the chairmanship of Retired Justice Philip Ransley. The Terms of Reference of the Task Force were to examine the institutional, policy, legislative and operational framework in which the Kenya Police and the Administration Police operated and make recommendations for comprehensive reforms to transform the Police Forces into professional and accountable security agencies that can effectively and efficiently deliver on their mandate.⁷⁸

The task force in addressing the many structural and management problems developed more than 200 recommendations. This included, establishment of National Police Service Commission, Police Reforms Implementation Committee to spearhead police reforms, robust police legal framework, restructuring the police service, community policing mechanisms, among others. Others aimed at modernizing policing and making it more effective, community friendly, and improving the conditions of service, as well as the salaries and allowances of the police.⁷⁹

The purpose of these reforms is to provide policy and legislative framework that provides the legal basis for the on-going police reform initiatives. A review of various legislations, the existing command structure and establishment of oversight institutions are among the main reforms that will form part of this section.

2.2.2 Institutional Mechanisms

A number of institutions were born as a result of the post election violence recommendations by various reports. These are the National Police Service, Office of the Inspector General and his two Deputies, National Police Service Commission, Independent Policing Oversight Authority

⁷⁸ Government of Kenya, Report of the National Taskforce on Police Reforms, 2009, Government Printers and Press, pp.3-4

⁷⁹ Government of Kenya, Report of the National Taskforce on Police Reforms, 2009, Government Printers and Press, Nairobi Kenya.pp.3-4

and the Internal Affairs Unit of the Service. Some of them are anchored in the Constitution while others came about as a result of national legislation by Parliament.

2.2.2.1 National Police Service

Article 243 of the Constitution of Kenya 2010 lays the foundation for the establishment of a National Police Service. This is a unified institution that comprises both the Kenya Police Service and the Administration Police Service. Before the Constitution, the two services operated separately without any unified command structure. The issue of having a unified command structure came up in the Waki Report where they had recommended that the two services be merged. The Commission was of the view that in order to develop a world class police service, the creation of a single police agency was necessary and also the need to delink the Administration Police from the Provincial Administration system to ensure there is independence, unified command and control and consistency and uniformity in the policing standards.⁸⁰ However, the Ransley Taskforce after considering various factors felt that the two services perform different duties and thus should be left on their own but recommended that there be a mechanism for checks and control to prevent abuse. In carrying out their duties, the two services should observe the principle of complementarity to maximize effectiveness.⁸¹

Article 244 of the Constitution of Kenya 2010 provides for the functions and mandate of the National Police Service which are to strive for the highest standards of professionalism and discipline among its members. Moreover, the Constitution further provides that the National Police Service shall prevent corruption and promote and practice transparency, and accountability. In addition, the Service shall foster and promote relationships with the broader

⁸⁰ Government of Kenya, (2008), *Report of the Commission of Inquiry into Post-Election Violence*, Government Printers and Press, Nairobi. P.436

⁸¹ Government of Kenya, (2009) *Report of the National Taskforce on Police Reforms*, Government Printers and Press, Nairobi Kenya. P.38

society, shall train staff to the highest possible standards of competence and integrity and respect human rights and fundamental freedoms and dignity.

This has made it possible for delinking of the Administration Police Service from the Provincial Administration since it is now under the command and control of the Inspector General. During the former regimes, the Administration Police was accused of being used politically by the politicians and the administration in their endeavors to get political power. This has however been curtailed. The Service should be a professional service that should service all the citizens with equality and respect for human rights. The Inspector General can now easily deploy staff from the two services in places where there is need. The perceived rivalry between the two services

2.2.2.2 Office of the Inspector General of Police

Following the recommendations of the Waki Report and the Ransley Report, a unified command structure was found necessary to ensure there is coordination of the services of the two police forces. Before that, the draft Constitution had also recognized the need to have an Inspector General of Police who should be the head of the police service.

Article 245 creates the Office of the Inspector General that was not in the former police force. The Inspector General becomes the head of the two services and shall be appointed by the President. The two services i.e the Kenya Police Service and the Administration Police Service shall each be headed by a deputy Inspector General of Police. The functions of the Inspector-General are generally to co-ordinate the functions of the police at the national level and to advise the government on policy matters.

2.2.2.3. National Police Service Commission (NPSC)

To delink the police service from the Public Service Commission, it was felt there is need to have an institution to deal specifically with human resource issues of the police. According to the

old Constitution, Section 108, the Commissioner of Police had absolute powers to appoint, transfer, deploy, promote, dismiss as well as the sole prerogative of issuing administration orders. It is dangerous in this era and considering the security situation in the world as a whole to vest such immense powers in one person without appropriate checks and balances. Since the Commissioner of Police was a Presidential appointee, it even made matters worse as he was in office at the mercy of the President. Considering all these factors, it was found necessary that a Police Service Commission be formed following recommendations by various stakeholders. Thus the Constitution in Article 246 established the National Police Service Commission and mandated it to recruit and appoint persons to hold or act in offices in the service, confirm appointments, and determine promotions and transfers within the National Police Service. Also the Commission shall, observing due process, exercise disciplinary control over and remove persons holding or acting in offices within the Service. The Constitution also stipulates that the Commission can perform any other functions that may be prescribed by national legislation.⁸² More functions were given to the Commission following the enactment of the National Police Service Commission Act, 2011. This is a step in the right direction to ensure that the police service is independent of any manipulation both from the political arena and the executive. It is also important in the sense that there will be fairness in the recruitment, promotion, appointment and discipline of officers since there is an oversight body to check on the Service by use of laid down policies, rules, regulations and procedures developed by the Commission.

2.2.2.4 Independent Policing Oversight Authority (IPOA)

There is need for the police service to transform their culture and image in the face of the public. This is by adopting principles like justice, equality, accountability and efficiency. With the enormity of powers given to the police, there has always been the tendency to abuse these

⁸² Constitution of Kenya, Article 246, Laws of Kenya

powers as well as instances of misconduct by the police. There is need thus to have the police accountable for their actions and deeds, bear responsibility for any acts of misdeeds and so forth. Issues of extra judicial killings and human rights violations have been raised by various stakeholders and thus needed to be adequately addressed. Among the findings of the Ransley Task Force was the fact that complaints against police conduct had not been traditionally dealt with impartially and that indeed they were often ignored.⁸³ The Task Force, therefore, added its voice to calls for the establishment of police oversight mechanism. External police accountability was found necessary in Kenya and thus the formation of the Independent Policing Oversight Authority (IPOA) through national legislation.

Kenya is the second African country to establish an independent policing oversight body after South Africa's Independent Police Investigative Directorate (IPID) that succeeded the Independent Complaints Directorate (ICD). This is significant for Kenya, in the region, and in Africa in general. The success of IPOA in carrying out its work will have a significant bearing as a benchmark to other regional and African states.⁸⁴

2.2.3 Legal Mechanisms

To actualize the Constitution, a Police Reform Implementation Committee (PRIC) was thereafter established to fast-track, oversee and coordinate the implementation of the recommendations of the Ransley report as well as the Constitution. The Committee prepared five Bills three of which were enacted into law that provide a framework for the implementation of the reforms. These include the National Police Service Act 2011, National Police Service Commission Act No. 30 of 2011, and Independent Policing Oversight Authority (IPOA) Act No. 35 of 2011.

⁸³ Government of Kenya, (2009) Report of the National Task Force on Police Reforms , Government Printer, Nairobi p.xxviii.

⁸⁴ IPOA Annual Report, 2012 – 2013 p.10

2.2.3.1 The National Police Service Commission Act 2011

The National Police Service Commission Act 2011 is designed to make further provisions for the functions and powers of the National Police Service Commission as provided under section 10 (a) to (t). The establishment of the National Police Service Commission is orchestrated to bring change and transformational reform in the management and governance of the National Police Service. The management of the national Police Service had been under the direct influence of the Commissioner of Police and the Office of the President. This as result made the service vulnerable to improper influence to its operations.⁸⁵

The National Police Service Commission is an independent institution and that in the performance of its functions the Commission is not subject to the direction, control or supervision of any other authority or person except as is prescribed in the National Police Service Commission Act 2011. This indeed is a positive and transformative step in the history of policing in Kenya.

Article 253 of the Constitution of Kenya 2010 provides that the Commission has exclusive constitutional protection as it is categorized among other commissions which are body corporate with perpetual succession and a seal; and is capable of suing and being sued in its corporate name hence cannot be created or disbanded by any authority to the contrary.

The appointment of the Chairperson and members of the committee are to be done through a transparent and accountable process through a selection panel as provided for under Section 6 of the Act. This is designed to enhance accountability and transparency.⁸⁶

Section 11(b) of the National Police Service Commission Act 2011 charges the Commission with the duty of recruitment and appointment of persons to hold or act in an office and to

⁸⁵ Ethic and Anti-Corruption Act 2011, Laws of Kenya, Government Printers and Press.

⁸⁶ National Police Service Commission Act, 2011 Section 6

determine promotions in the service, while observing gender and regional balance. This is a departure from the past in which members of the force were recruited through the office of the Commissioner of Police hence giving room for corruption and nepotism as well as marginalization of particular communities as far as police recruitment was concerned under section 4 of Police Act, Cap 84 (repealed). This provision is intended to stem corruption and related vices as well as bringing into force ethnic, regional and gender balance in the Service.

In addition to these, the Commission is required to keep under review all matters relating to the standards or qualifications required of members of the service.⁸⁷ The standards in the police force today have deteriorated which is coupled with poor service delivery to a majority of Kenyans. Keeping standards and qualifications under review will ensure that better service delivery as well as keeping abreast with global policing advancement. By setting standards and qualifications for members of the force will also help curb corrupt activities related to recruitment and promotion of members of the service.

Furthermore, the Commission shall keep under review all matters relating to salaries, allowances and other terms and conditions of service in addition to exercising disciplinary control, including hearing and disposal of appeals by persons in the service. Section 10 of the Act also provides that the Commission shall with advice from the Salaries and Remuneration Commission; determine the appropriate remuneration and benefits for the service and staff of the Commission. This will effectively address the long decried poor remuneration and benefits for members of the force. The Commission shall also in conjunction with the Independent Policing Oversight Authority ensure monitoring and identifying patterns and trends in complaints against the police. By doing this, the Commission shall contribute significantly in stemming impunity and abuse of rule of law. This shall help make the police officers more accountable and responsible for their actions.

⁸⁷ National Police Service Commission Act, 2011, Section 10

The commission is also tasked under section 10 of the Act with developing policies and providing oversight over training in the service, approving training curricula and overseeing their implementation. Inadequate training has been a major challenge to the service hence resulting in poor service delivery. The service has also in many instances failed to address and deal with high crime rates. Training curriculum review therefore will ensure that the members of the service are abreast and equipped to deal with mutating nature of crimes in the society.

There has however been conflict between the Inspector-General and the National Police Service Commission over who should exercise the key functions of discipline, recruitment and transfer of police officers. These events have prompted the introduction of a bill to the National Assembly that seeks to amend the National Police Service Act by transferring the most crucial functions of the National Police Service Commission i.e recruitment, transfer and disciplinary of police officers, to the Inspector-General. Recently also, the powers of the Commission to appoint the Inspector General of the National Police Service were removed from the Commission and given to the President who is supposed to constitute a panel to interview the Inspector General. This was not done in good faith.

2.2.3.2 The National Police Service Act, 2011

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

The Waki Commission report recommended complete merger and integration of the Kenya Police and the Administration Police service into one unified service. However, the subsequent

Task Force on Police Reforms recommended partial merger and integration of the service. As a result, the constitutional and legislative drafters relied on the Ransely Report thereby adopting partial approach. It is evident that the integration has been carried only consolidating the Police Act (repealed) and Administration Police Act (repealed) to form the National Police Service Act 2011.

Section 9 of National Police Service Commission Act, 2011 provides that National Police Service shall be commanded at the helm by an independent Inspector General of Police and his or her two deputies appointed through a thorough vetting process. This elaborate appointment process does away with presidential prerogative over the appointment and performance of the office of the Inspector General of Police. Under the repealed Police Act, the appointment and removal from office of the Commissioner of Police was at the pleasure of the president under section 23, 24, and 25 of Repealed Constitution of Kenya 1969 and an elaborate procedure for such was not provided for under the Act. The Constitution also gives the Inspector General of Police security of tenure for four years, and clearly states the only grounds on which the Inspector General of Police may be removed. In a significant departure from past practice, the Constitution gives the Inspector General of Police operational independence, outlawing political interference with police investigations, law enforcement against particular person(s) and hiring, promotion and disciplinary sanctions. The Cabinet-Secretary for Interior and Coordination of National Government can only give directions to the police on policy issues and these must be in writing.⁸⁸

Section 8 and 9 of the National Police Service Act 2011 establishes the offices of the Deputy Inspectors General to be under the command of the Inspector General. Their duties, powers and

⁸⁸ Transparency International report, "Police reform in Kenya: "A drop in the ocean" Amnesty International Publications 2013, united kingdom.

functions are supplementary and complementary to those designated for the Inspector General of Police. This will therefore ensure the smooth, effective and efficient functioning of the service.⁸⁹

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

Section 5 of the National Police Service Act 2011 provides that the composition of the National Police Service shall, so as far as is reasonably practicable uphold the principle that not more than two-thirds of the appointments shall be of the same gender; and reflect the regional and ethnic diversity of the people of Kenya. This is a bid to stem tribalism and ethnic and regional imbalance that is currently evident in the service. This is very essential to the image and performance of the service.⁹⁰

2.2.3.3 Independent Policing Oversight Authority Act, 2011

On 18 November 2011, the President assented to the Independent Policing Oversight Authority Act No. 35 of 2011 which establishes the Independent Policing Oversight Authority with the functions to investigate any complaints related to disciplinary or criminal offences committed by any member of the National Police Service, receive and investigate complaints by members of the Police Service; monitor and investigate policing operations affecting members of the public; monitor, review and audit investigations and actions taken by the Internal Affairs Unit of the Police Service in response to complaints against the Police and keep a record of all such complaints regardless of where they have been first reported and what action has been taken;

⁸⁹ National Police Service Act, 2011 Section 8 and 9

⁹⁰ National Police Service Act, Section 5

conduct inspections of Police premises, including detention facilities under the control of NPS, among others.⁹¹

The mandate of the Authority is spelt out under sections 5 and 6 of IPOA Act. Section 5 stipulates that the objectives of the Authority are to hold the Police accountable to the public in the performance of their functions; give effect to the provision of Article 244 of the Constitution that the Police shall strive for professionalism and discipline and shall promote and practice transparency and accountability; and ensure independent oversight of the handling of complaints by the Service.

The Authority having been the first civilian policing oversight body in Kenya and the East African region, focused on laying a solid foundation first before embarking on its enormous mandate. According to a Baseline Survey that they carried out, the Authority has gained the confidence of the public and of the members of the NPS. The high number of public complaints received up to date is a sign of confidence the public and police have on the Authority to restore and make police account for their actions.⁹²

2.2.3.4 Internal Affairs Unit

The internal complaints mechanisms in the police were provided for under Chapter 20 of the Kenya Police Standing Orders. The mechanism gave the procedure on how to handle complaints by the public and the police. However, the Ransley Task Force realized that the mechanism had not been effective as far as complaints are concerned since there has not been an external oversight mechanism to check on the internal mechanism. The Task Force in its recommendations felt that a unit should be established in the two police services that will be handling investigations, arrest and prosecution of offending police officers in liaison with the

⁹¹ Independent Policing Oversight Authority Act, 2011, Section 6 pp.1008 -1009

⁹² Annual Report and Financial Statements for the year ended 30 June 2013, IPOA, pp.16-17

Attorney General and also the unit that will be responsible for managing internal police complaints.⁹³

The Police Reforms Implementation Committee initiated the drafting of the Internal Affairs Unit Guidelines. By the time PRIC left, the guidelines were awaiting validation by stakeholders. In addition to this, Section 87 of the National Police Service Act 2011 established an Internal Affairs Unit (IAU) whose functions are to receive and investigate complaints against police by the public and police against police and promote uniform standards of discipline and good order in the Service as well as keep a record of complaints or investigations made.⁹⁴ The Unit is supposed to be located separate from the service. However, as it is now, the Unit is located within the same premises as the police services. i.e Vigilance House and Jogoo House. The Unit is required to work closely with IPOA, the Coroners, the Chief Firearms Licensing Officer as well as the National Police Service Commission. In addition, this Unit is required to work independently without the control or direction of either of the services. However, the Unit as it is now is not independent and has not forwarded any reports to these institutions due to the poor working relationship between the services and the institutions and also reluctance to accept reforms within the service by the officers themselves. At times it is seen as being sabotage to the work of the oversight institutions. At one time, the National Police Service Commission appointed an officer to fill the post of the In charge of the Unit but this was quashed by the Inspector General. The Inspector General went ahead and recruited an officer without competitive recruitment process as was supposed to be the case.

The appointment of Investigators, location of office outside Police Service headquarters and development of operating systems and procedures are at an advanced stage.

⁹³ National Task Force on Police Reforms Report, (2009), pp.72-73

⁹⁴ NPS Act Section 87

2.2.4 Policy Mechanisms

2.2.4.1 Service Standing Orders

Following the recommendations of the Ransley Task Force, it was found necessary to have Service Standing Orders to move away from the Force Standing Orders which were in place earlier. Now that the two services are under one command, it is necessary to have Standing Orders that cater for the two services. The earlier force standing orders were colonial and did not reflect the new reformed police service. The process of coming up with the Service Standing Orders was initiated after the enactment of the National Police Service Act, 2011.

The new orders establish the formation of various units of the service and their scope of work and will cater for regular and Administration Police (AP) and Criminal Investigation Department (CID). The Service Orders stipulates a new police organizational structure, working units and operational ones. The Standing Orders are administrative orders for the general control, direction and information of the service envisaging to unite both police services under the command of the Inspector General of Police. The Service Orders stipulate that administrative functions of the service shall be exercised at the office of the Inspector General and delegated accordingly to the Kenya Police Service, the Administration Police Service and the Directorate of Criminal Investigations (DCI). Deputy Inspectors General will be in charge of AP and regular police services and the DCI. It outlines all the new police ranks and their functions, police stations and outposts and what is supposed to be done there. The draft also names all the new police units among others.⁹⁵ The Draft is awaiting validation by stakeholders before it is operationalized. This is a positive step towards the reform process of the police service.

⁹⁵ Draft Service Standing Orders, p.34

2.2.4.2 Community Policing Policy

The relationship between the police and the public has been shaped by the historical beginnings where the colonial government used the police to intimidate the civilian population. Before the new constitution and emergence of the new reforms momentum, the police was perceived as being coercive servicing the interests of the political and elite classes in the society. There was no cooperation between the police and the citizens thus the culture of lack of trust and cooperation. In Kenya, the citizens believed that cooperation with the police is a betrayal of their fellow citizens. However, this thinking has changed with time since the introduction of community policing in 2005. The Community Policing programme however has faced several challenges among them being lack of a national legal framework and guidelines on Community Policing, multiple complaints by the police and the communities being leveled against each other and low levels of trust and confidentiality. To address this problem, the government through the National Police Service Act, 2011 has mainstreamed Community Policing. Also, Community Policing Policy is in the process of being finalized that will guide the operation of the Community Policing. A pilot project was initiated in Kikuyu and Kajiado Police Station to demonstrate best practice in Community Policing following benchmarking and training to countries with best practices in community policing. Moreover, a Unit in the new Police training curriculum to equip all police recruits with basic skills and competencies in Community Policing during their basic and cadet training in Police Training Colleges has been introduced. This will go a long way in ensuring that the police officers understand the concept and how to deal with the members of the public.

2.2.4.3 National Police Service (Vetting) Regulations, 2011

The vetting of officers which can be used as a tool to clean up the police service that is heavily infected with corruption. The NPS Act Section 7(2) and (3) stipulates that all members of the

National Police Service need to undergo vetting to assess their suitability and competence and can only remain in the Service when they pass the vetting. The section stipulates that the National Police Service Commission (NPSC) is the institution tasked to carry out the vetting. There are two types of vetting, employment vetting and transitional vetting. Employment vetting is the vetting of nominees who are applying for a specific position. This is what happened when the Inspector General, Deputy Inspectors General and the Director of Criminal Investigations were being interviewed. Transitional vetting applies to all staff within an institution, in order to identify those that are to be retained, i.e. those that pass the vetting and considered suitable and competent for police work.

The main objectives behind the vetting of the police officers in Kenya are to build confidence and trust in the National Police Service and also to ensure that the Service complies with Chapter Six of the Constitution and the principles of public service as set out in Article 232 of the Constitution and in the Public Officer Ethics Act. The Act stipulates that all persons who were immediately before the commencement of the National Police Service (NPS) Act, officers or employees of the Kenya Police Force and the Administration Police Force, established under the Police Act Cap. 84 and the Administration Police Act Cap. 85 respectively, including officers working with the Criminal Investigations Department must undergo vetting that shall be conducted by the National Police Service Commission.⁹⁶

There has been outcry all over that the vetting of police officers needs to be conducted as a matter of urgency to ensure that the rot in the police service is removed. The Commission developed Vetting Regulations that would guide the process of vetting. The regulations stipulate clearly the purpose of the vetting process which is to build confidence and trust in the Service

⁹⁶ National Police Service Act, 2011 Section 7(2).

and to ensure that the Service complies with Chapter Six of the Constitution and the principles of public service.⁹⁷

2.3 Conclusion

The Police Service has undergone a metamorphosis owing to the reforms currently taking place. The colonial police was the most feared and the communities could not mingle with the police. This is because the police officers were used by the colonial administration as spies. This made the communicate fear them and also the citizens themselves felt that being seen with the police meant that you are a betrayer to the other members of the community.

The police should respect human rights and improve their public image. If professional standards and training are improved, the police services will achieve their objective of enhancing the safety and security for Kenyans. Police accountability is paramount and for this reason the creation of an oversight body will not only benefit the police themselves, but give the public confidence that their complaints are dealt with and that justice and fairness will prevail. There is a perception in some police quarters that an oversight body will create interference in their laid down disciplinary procedures but in all cases where oversight bodies have been created, in other jurisdictions, it has been found that the oversight bodies enhance the reputation of the police and remove what might be thought to be injustice arising from a closed disciplinary system.

The relationship between the police and the community has now improved owing to various reforms that have taken place. The new constitution came with new developments and gave birth to new laws that govern the police service. Various institutions were born out of the Constitution. These are the National Police Service, the office of the Inspector General and his two Deputies, National Police Service Commission and the Internal Affairs Unit. The new laws

⁹⁷ The National Police (Vetting) Regulations, 2013, part II

include the National Police Service Commission Act, 2011 and National Police Service Act, 2011.

The mandates of the institutions created are wide and thus much has not been achieved since the institutions have only been office for less than two years. However, reforms have started being visible in the police service with the two services being under one unified command of the Inspector General. Institutions that have not yet been operationalized include the County Policing Authority, Police Service Association and County Policing Forums and Committees.

Various policies and regulations are in the offing and will be finalized soon. Some of these include the Community Policing Policy, County Policing Authorities Policy, Service Standing Orders, Private Security Industry Regulation Bill, National Coroners Service Bill and many more. These will ensure there is coordination of the reform process among the various stakeholders.

CHAPTER THREE

THE NATIONAL POLICE SERVICE COMMISSION

3.1 Introduction

The National Police Service Commission is a body corporate under Article 246 of the Constitution and enacted through an Act of Parliament No.30 of 2011. The National Police Service Commission was borne out of the need to have an institution that is independent and that can foresee the human resource function of the police. The Ransley Taskforce observed that the lack of a Police Service Commission had contributed to the unsatisfactory recruitment practices, poor terms and conditions of service, lack of professionalism, poor morale, dismal performance by the police and other innumerable problems that faced the police service.

The National Police Service Commission has a wide mandate that was previously being handled by the Service and the Public Service Commission. There has not been any research carried out to assess the effectiveness of the National Police Service Commission as an institution that was born out of the need for reforms in the security sector. After this research, it will be possible to know whether the institution is living up to its mandate or whether there is need for other measures to be put in place to ensure that the police reforms envisaged are realized.

The researcher interviewed police officers of all ranks and members of staff of the National Police Service Commission. The researcher also studied several reports and laws that came into place as a result of the clamor for police reforms in Kenya. During the research, the researcher sought to find out whether the Commission has been effective in fulfilling its mandate and what challenges if any could it be facing.

3.2 Mandate of the Commission

The Commission derives its mandate from the Constitution, National Police Service Commission Act, 2011 and National Police Service Act, 2011. The mandate of the Commission as per these legislative instruments includes among others, recruitment, appointment, determining transfers and promotions, exercising disciplinary control over and removing persons holding or acting in offices within the service.

In addition, the Commission is mandated to keep under review all matters related to standards and qualifications required of the members of the Service, determining appropriate remuneration and benefits for the service, approving engagement by police officers in trade and other businesses, co-operating with other state agencies on matters that it considers necessary, developing fair and clear disciplinary procedures, hearing and determining appeals from members of the Service, developing policies and providing oversight over training in the Service, and approving training curriculum and overseeing their implementation. Section 7 of the National Police Service Act also confers the mandate of vetting police officers to the Commission.⁹⁸

The relationship between the Commission and the Service was viewed as straining due to the perceived wrangles that have been witnessed between the Commission and the Office of the Inspector General to do with the overriding mandates. Some police officers are not aware of who should be carrying out transfers, promotion and discipline of officers. Others felt that the Commission being a constitutional and independent office should assert its authority and be seen to work rather than engage in the battles between who should be doing what. The respondents, police officers, were not aware of any efforts by the Commission to ensure the officers

⁹⁸ The Constitution of Kenya Article 246, National Police Service Commission Act, 2011, National Police Service Act, 2011. Section 7

understand the reasons for the existence of the Commission and how they intend to work for them.

3.3 Effectiveness of NPSC on the Oversight of National Police Service

The Police Service Commission's mandate includes oversight among others on functions that can be delegated to the Inspector General of Police which includes recruitment, promotion and transfers. The work of the Commission is to ensure that the right procedures are followed when these functions are being carried out thus the role of oversight. In addition, the Commission is mandated to approve training curriculum and oversee its implementation. This means that the Commission has to ensure relevance in what is being taught in the training institutions and ensure that what is approved is actually what is taught.

Recruitment of officers into the National Police Service was the responsibility of the National Police Service itself before the Commission came into being. When the Commission came into effect, its first task was to recruit the Inspector General of the National Police Service, his two Deputies and the Director of Criminal Investigations. The exercise was professionally conducted with public vetting interviews being held at the Kenyatta International Conventional Centre. By the end of December 2012, the successful candidates were appointed after undergoing the normal vetting processes as provided by law. This led to the abolition of the post of Commissioner of Police to conform with the new Constitution and the National Legislation.⁹⁹

In addition, in its first year in office, the Commission oversaw the recruitment of seven thousand police officers which was carried out successfully though through delegation to the Sub County Recruitment Committees headed by Deputy County Commissioners. The Commission had to delegate this responsibility because it had not put structures in place for it to be able to recruit personally.

⁹⁹ National Police Service Commission Annual Report.

The entry level for recruitment of officers to the service as was proposed by the National Task Force on Police Reforms was a C plain, Diploma Holders and Graduates. This was the criteria that was used in the first recruitment. However, during the second recruitment, the Commission adjusted the entry requirement and lowered the grade to a D+. This as explained by the Commission was due to the fact that so many graduate officers were leaving the service and as such there was need to recruit officers who will be committed to the police work. Thus officers who attained lower grades were seen to be more committed to their work and had long service compared to those who enter with higher grades who end up looking for other greener pastures while still serving or for careers that are in tandem with their area of study.

Graduate officers should be recruited into the service as and when they are required. The opinions of the police officers are that that graduate officers should be recruited but only those from specific disciplines. These include criminology, public administration, political science, human resource management, police science, psychology, law, communication and public relations. The Commission should instead advocate for creation of various relevant departments within the police service and then adopt the recruitment of specialized officers like the military do. The respondents felt that other disciplines may not be useful in policing work. The Commission being the one in charge of advising on human resource issues within the police service has not been keen to look at the recruitment of specialized officers in the service as well as proper placement.

During recruitment exercises both in the past and even in the recent one, incidents of political interference, corruption, tribalism and nepotism are usually rampant. There are complaints that for an officer to join the service, they have to bribe their way in, are related to the recruiting officers, are politically connected or belong to a certain known family. This trend has made the police service be viewed as a service for the corrupt and well connected. The recent recruitment

exercise was conducted by officers of the National Police Service. Though the officers were briefed by the Commission on what should be done and were given recruitment guidelines, there was no supervision by the Commission to ensure the guidelines were followed, thus the Commission failed to oversee a free and fair recruitment exercise.

The Commission has not been effective in advising on placing or appointment of officers according to their areas of skills or specialization. This has made even the most learned officers in the service demoralized since their expertise is not being utilized.

The restructuring of the National Police Service ranks has not yet been implemented. This to some officers has made it difficult for the effective operation of the service since there are so many officers at the top without job description. The creation of other ranks apart from what is in the legislation has been a thorny issue within the service. For example, there is no rank of a County Commander in the ranking structure as it is in the NPS Act yet officers were appointed to that rank by the Inspector General. The Commission has not been keen to fast track the implementation of these ranks by the Service.

The mandate of the Commission as far as training of police officers is concerned is to develop policies and provide oversight over training, approve training curriculum and oversee their implementation. Following the advent of police reforms in Kenya, it was found necessary to review the training curriculum of the Service. The current training curriculum was developed by the Service in conjunction with the Kenya Institute of Curriculum Development, formerly Kenya Institute of Education. The new curriculum is a departure from the old police training curriculum in that it extends the period of training from 9 months to 15 months of basic training and introduced an additional 6 months cadet training for University graduate recruits. It also expands the content by introducing new training modules in the areas of human rights, gender, public relations, ICT, Community Policing and service delivery. The curriculum has also

introduced an internship program that allows trainees to go for practical exposure during the period of training. It is a standard curriculum that is being used by both services.

However, the Commission has not developed any policy on training nor has it examined the current training curriculum to see whether it meets the expectations of the current security situation in the Country. The police officers feel that the training curriculum compared to the earlier one is more inclusive of the new issues in the security sector but there is a feeling that it should be reviewed to make it compliant with the security challenges of the 21st Century.

Further, the Commission is mandated to determine transfers of police officers. This mandate has not been understood well by the police officers, the media as well as the public. The Inspector General is the person in charge of operations of the service thus responsible for deployment of police officers. The work of the Commission is to look at the proposals brought to the Commission Board by the Inspector General. The Commission ensures that the right procedures have been followed in transferring the officers and that facilitation in terms of transfer allowances is provided. The Commission then approves the transfers if no irregularities and then the Inspector General of Police effects the transfers. The officers feel that the Commission has not done enough to sensitize them on its mandate. Officers at times are transferred as a way of disciplining them.

There is little consideration to professionalism, skills and gender when carrying out transfers. This has seen skilled officers being deployed to offices or stations where their skills are not utilized while individuals lacking in such skills are entrusted with duties they are not trained in. The manner in which transfers are effected is in some cases disruptive and punitive. Junior officers reported that they were not allowed to work near their spouses while the same restriction did not apply to senior officers. At the same time, female officers married to civilians also complained of discrimination on request for transfer to join their spouses. In other cases, transfer

allowance was not paid and transport to new Stations was not provided. This according to them is a failure on the part of the Commission to ensure that transfers are carried out professionally.

The Commission has not yet finalized the policy on transfer of officers.

The ongoing police reforms are underpinned by initiatives that seek to address the welfare of police officers. One of the initiatives is to improve remuneration and benefits for police officers commensurate with the demands placed on them in provision of security in the country. So far, the Government has implemented 42% of the salary level recommended by the Ransely Task force. However, the recommended increases in police allowances are yet to be implemented. The Task Force recommendation was that the increases be implemented in two phases so as to maintain the value of the increases. The delay in implementation of these awards has demoralized and de-motivated police officers. This has impacted negatively on the pace of implementation of the reform agenda. The police officers feel that the Commission has not been aggressive enough to ensure they get well remunerated in terms of their salaries and other allowances. The officers feel that there is a wide gap between what they earn and what their senior officers earn thus the need for harmonization. The Commission however stated that they were engaging with the Salaries and Remuneration Commission on the issue of the salaries and allowances for the officers.

On insurance cover, the officers feel that the Commission should not only have negotiated for a insurance cover but the officers should also have a medical cover. This to them is more critical since they require to be medically fit including their families for them to serve the citizens. In case of injuries, the officers feel that the Commission should ensure they receive treatment in good hospitals.

The best way to ensure that police officers conduct themselves properly in the performance of their duties is to set reasonable policies and then establish effective procedures for internal

review and sanctions. The Commission is supposed to come up with various policies and regulations to guide its operations and those of the National Police Service. However, almost two years down the line, the only regulations gazetted by the Commission are those for vetting of police officers. Several policies and regulations are in their draft form. These are the recruitment, appointment, transfer, promotions, and discipline policies. Guidelines for the operations of the County Policing Authorities are awaiting stakeholder validation and forwarding to the Commission for the Implementation of the Constitution for their input.

However, officers felt that the Commission should first put these documents in place to ensure that the officers are aware of what is required of them in the performance of their duties. The officers felt that the Commission has been lax as far as formulation of policies and regulations is concerned. Senior Officers were of the opinion that the Commission should fully involve them when drafting the Policies and Regulations to ensure that there is acceptance from the beginning. Most Officers have remained in their current ranks for over ten years without promotion while there are other officers who have retired in the rank of constable. This has created frustration and despair amongst the police officers. This makes them to resort to all sorts of irregular and corrupt practices with a view to securing promotion. There are no set standards or yardsticks for promotion of officers. The Commission has drafted the Promotion Policy but it is still not finalized. Promotion of officers without subjecting them to promotional courses has led to low standards of service delivery and leadership in the Service. Officers cited cases of athletes who after excelling in their athletics competitions are just promoted to the next rank. This has caused discontent among officers who argue that these officers excellence in the field does not mean they can command or manage others.

The mandate of the Commission as far as discipline of officers is concerned is to develop fair and clear disciplinary procedures; and hear and determine appeals from members of the Service.

Officers feel that the Commission needs to have already put in place disciplinary procedures. This will ensure that officers know how indiscipline should be dealt with. Senior officers feel that the junior officers have opted to disregard the discipline given to them by the senior officers. Also officers are not aware of who is supposed to discipline them. They purport that it is only the Commission that can discipline them. The Commission has handled several disciplinary cases some of which have led to dismissal of officers. The police officers feel that they should be given an opportunity to present themselves before the Commission in cases of discipline. The Commission should not rely on information from the senior officers only or records which are at times not accurate. They say that at times they have been punished for offences which they did not commit and because no independent party listens to them, they are condemned without being heard.

The Commission has not handled appeal cases yet though there are about a thousand appeals currently with the Commission. This has been due to the lack of policy on how to handle these cases since some of them were already handled by the predecessor, the Public Service Commission and determined.

The Ransley Task Force recommended that all ranks in police service be subjected to a review against set criteria on professionalism, integrity, track record of performance and psychological fitness. The criterion was to be developed jointly by the Public Service Commission, the Kenya Anti Corruption Authority and the National Security Intelligence Service. The vetting process has also been provided for in the National Police service Act 2011.

In compliance with the Ransley Report, the vetting exercise was started in June 2011 and officers in the rank of Superintendent and above were subjected to the first stage of vetting through psychometric testing. The exercise was however put on hold to await the operationalization of the National Police Service Commission whose mandate includes vetting of police officers. The

NPS Act stipulates that all members of the National Police Service need to undergo vetting to assess their suitability and competence and can only remain in the Service when they pass the vetting.

Following the coming into office of the Commission, the preparations for vetting members of the Police Service began in March 2013 by drafting the broad policy guidelines and the vetting tool. This is as per Section 7(2) as read with section 124 of the National Police Service Act. To ensure participation of all stakeholders, the Commission held a two day retreat with the top Command of the Service to canvass their views and input. Subsequently, another retreat was held with development partners in the security sector. A wider stakeholder conference was to validate the vetting tool. This forum gathered views from members of the Service, Development Partners and civil society to ensure that democracy and people participation is achieved as envisaged in Article 10 (2) (a) of the Constitution.

The National Police Service (Vetting) Regulations 2013 sets out the principles that guides the vetting process, the nature of the proceedings, how conflict of interests will be resolved, and determination of suitability and competence of the officers. The Objectives and Purpose of vetting as stipulated in the Regulations are to build confidence and trust in the Service and ensure that the Service complies with Chapter Six of the Constitution and the principles of public service as set out in Article 232 of the Constitution and in the Public Officer Ethics Act.

With these in mind, the Commission came up with a criteria for determining the suitability and competence of an officer, which includes whether the officer meets the constitutional or other criteria required by law for recruitment and appointment, past record of an officer including conduct, discipline and diligence, integrity and financial probity of the officer; and human rights record of the officer.

Currently, among the 168 officers already vetted by August, 2014, 17 officers were found unsuitable. However, all the officers have requested for a review of the decision to the Commission and others have gone to court citing various reasons why they should not be retired. A Review Committee appointed by the Commission is currently hearing the appeals from the officers whose report will be ready in two months time.

The perceptions about vetting by the officers especially junior officers are that it is a step in the right direction and are in support of the process. This is because they feel that the senior officers some of whom are non performers due to their incompetence and lack of knowledge and skills have always hindered their upward mobility and that they do not have the requisite qualifications to command junior officers.

The delay in concluding the vetting exercise has caused considerable anxiety among police officers and it is impacting negatively on the implementation of the reforms and police performance in general. The officers feel that the Commission needs to expedite the vetting exercise.

Senior Officers at the Service are against the vetting exercise and they feel that the Commission should leave them maintain the status quo. This is due to the fact that they feel that the Commission is out to remove them since most may not have the required education and that as the police has been known, many have enriched themselves using corrupt means.

The Commission has had some engagements with various stakeholders. Some of these partners are the United Nations Office on Drug and Crime (UNODC) that provided expert advice on drafting of regulations like the Vetting Regulations, Communication Strategy and the Human Resource Strategy. Currently, they are offering assistance in terms of consultancy on Strategic Plan of the Commission. UNODC has also sponsored several workshops and forums that have

been validating these documents. Organizations like Police Reforms Working Group which is a conglomeration of organizations like Independent Medical Legal Unit (IMLU), Kenya Human Rights Commission (KHRC), International Commission for Jurists (ICJ), International Centre for Transitional Justice (ICTJ), Safer World and others have also been of assistance in organizing workshops and giving proposals on how the Commission can actualize its mandate.

The Commission has been collaborating with other state agencies like the Ethics and Anti Corruption Commission and also the Service itself especially in the fight against corruption. This was seen recently during the audit of the recruitment exercise which was according to media reports marred with corruption. However, there are other agencies that have not been working hand in hand with the Commission. An example is the Independent Policing Oversight Authority that has been fighting the Commission in the media and the recent one being in the court. According to the Commission, IPOA has not sought dialogue with the Commission on any issue but wants to be a big brother to the Commission which is not the case.

3.4 Challenges Undermining the Mandate of the National Police Service Commission

As discussed above, the National Police Service Commission has not been able to effectively carry out its mandate due to the varying challenges facing them. The Commission being a creation of the Constitution and the National Legislation is an independent office that requires support both from the political fraternity and the executive. It should not be viewed as being a tool to advance the interests of one group but instead should be given the space to carry out its mandate without any interference or influence whatsoever. It is only through this that the reforms in the security sector will be realized.

The culture of impunity and rampant corruption in the police service has been there for a long time due to the fact that the police have immense powers and there has not been an accountability mechanism. Impunity has infiltrated the reform process as there are members of

the service opposed to the police laws. As a result they are in support of the amendments to consolidate power of the Inspector General of Police. This has been seen to rid the Commission of its powers and the intent of the creation of the Commission is being watered down. As a result there is the resistance to change among some political powers as well as the police themselves wanting to maintain the status quo for their own selfish gain thus undermining and frustrating the efforts of the Commission to carry out its lawful duty.

There is great need for reforms to focus on restoration of integrity within the police service. This perception is compounded by the belief that the ruling class controls the police and this control contributes to their failure to address corruption. The main propellers of culture of corruption in the police service has been attributed to impunity in the service, poor remuneration and budgetary allocation, lack of a robust legal framework, and poor enforcement of the existing police and anti-corruption legal framework. The National Police Service Commission cannot alone fight the battle of removing the corrupt officers from the service through the vetting process. This fight can only succeed with the support of the public, the police officers themselves, the political class and the executive.

There is a high level of tribalism, nepotism and political patronage when it comes to recruitment, promotion, appointments, deployments and transfers. The Commission has not been able to streamline these processes due to the lack of enough information from the service as well as enough personnel to carry out an audit of the service. Until the Commission comes up with policies and regulations, these malpractices will continue to be seen.

Inadequate budget allocation has been the main hindrance in the operations of the Commission. Low budgetary allocations have made it impossible to acquire requisite personnel and tools of work. This has also made the vetting of police officers that had started almost nine months ago to stall. Inadequate human resource capacity at the Commission has made it impossible to carry

out its mandate like the recruitment of police officers and other mandates that require a pool of personnel. This to some extent is due to the current national budget constraints.

Lack of political goodwill and also goodwill from the police officers and the civil society organizations has made it impossible for the Commission to actualize its mandate. The police officers need to view the Commission as being its own new born baby meant to undo the wrong things that have been going on in the service before the Commission came into place. Instead, there is a resistance to change by senior officers thus undermining the work of the Commission without whose support there may not be much gain.

Moreover, there is lack of trust by the senior police officers. Instead they feel that Commission being a civilian output does not know anything to do with the policing work thus may not be competent enough to handle the responsibilities conferred to them. The officers feel that the Commission wants to remove them from their work especially through the vetting process.

3.5 Prospects for the Commission

According to the findings of the study, the National Police Service Commission is faced with various challenges that have undermined the realization of its mandate. Despite all these challenges, the Commission has forged ahead to achieve some of its mandate. For example, it has started lobbying various stakeholders to come on board and assist through expert advice and financial assistance. Some of the organizations that have been very supportive include the United Nations Office on Drugs and Crime and the Kenya Human Rights Commission that has sponsored several forums for the Commission to engage its stakeholders on the regulations it has developed.

Having come up with a Strategic Plan is a step in the right direction that is going to guide the Commission on what its priority areas are. The Commission is also lobbying both Parliament

and the National Treasury for increased finances for its day to day operations and other requirements.

There has also been some acceptance by the police officers of the role of the Commission in ensuring that the human resource functions are carried out professionally.

CHAPTER FOUR

SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

4.1 Introduction

This chapter contains the summary, key findings, conclusion of the findings and recommendations made. The recommendations were focused on addressing the purpose of the study which was to assess the effectiveness of the National Police Service Commission in delivering on its mandate as an oversight institution over the police service. The chapter will also analyze the hypothesis in line with the findings of the study.

4.2 Summary

The Police are the principal agency charged with the responsibility of maintaining internal peace and security of nations. This responsibility goes with enormous powers. Historically, the exercise of these powers by the Police has affected the freedom and rights of citizens. Consequently, mechanisms have been put in place all over the world to call police to account for their actions, policies and organization.

Although there are those who support and oppose civilian oversight of policing, it has been recognized all over the world that civilian oversight is a necessity for effective policing. However, the way it operates differs from country to country. Meanwhile, scholars have delineated the principles required to make civilian oversight bodies to be effective. These include independence, investigatory powers, mandatory police cooperation, adequate funding, hearings, community diversity, police recommendation, statistical analysis, separate offices and disciplinary role. Similarly, the factors that can help the work and effectiveness of civilian oversight of policing include political support, police co-operation, activist support, resources, management and leadership and public attitudes.

The fundamental challenge to police reform and oversight in Africa as a whole is the resistance of those in power to transform to the new legal and operational structures that have been entrenched in the Constitution and the national legislation. This to some extent is due to the fact that they depend more on coercive state power than on the consent of the citizens to govern. Despite this, many African countries including Kenya have come up with legislative, policy and institutional frameworks geared towards ensuring that the police services operates independently and there is oversight over them.

In Kenya, the police have been severely criticized for extra-judicial killing, rape, corruption, brutality, torture and hostility towards members of the public. However, there are several institutions in the police sector that are meant to ensure police accountability. These include the Ministry of Interior, the Independent Policing Oversight Authority, the Police Service Commission and National Police Service.

This study has identified that some of these institutions are at times seen to be weak, ineffective and uncoordinated. There is therefore the need to adopt strategies for effective oversight and police accountability. In the case of the National Police Service Commission, there is need to develop and sustain its capacity in terms of human, material, financial and managerial to ensure that it is able to actualize on its mandate. There is also need for the clarification and understanding of roles of the various institutions and agencies especially the roles and mandates of the National Police Service Commission and that of the Inspector General of Police which at times have been viewed as overriding. In addition, there is the need for the creation of a forum for all agencies with responsibility for police oversight and accountability to share ideas, learn from each other and co-ordinate their actions.

If these measures are put in place, then the National Police Service will be repositioned to provide security of life and property and contribute to the security and development of the country.

4.3 Summary of Key Findings

From the study, it is evident that the Commission is grappling with low funding from the National Treasury to enable it carry out its mandate including the day to day operations. It was also found that during recruitment exercises both in the past and even in the recent one, incidents of political interference, corruption, tribalism and nepotism are usually rampant. There are complaints that for an officer to join the service, they have to bribe their way in, are related to the recruiting officers, are politically connected or belong to a certain known family. This trend has made the police service be viewed as a service for the corrupt and well connected. The police officers feel that recruitment is not fairly carried out thus denying those with the calling, those without money to bribe and those who do not have god fathers to join the service. Entrenched corruption, tribalism and nepotism is a problem that needs to be dealt with by the Commission.

The Commission has not been effective in advising on placing of officers according to their areas of skills or specialization. This has made even the most learned officers in the service demoralized since their expertise is not being utilized. The restructuring of the National Police Service ranks has not yet been implemented. This has made it difficult for the effective operation of the service since there are so many officers at the top without job description.

The Commission has not been aggressive enough to ensure police officers get well remunerated in terms of their salaries and other allowances. There is a wide gap between what they earn and what their senior officers earn thus the need for harmonization. The Commission should not only have negotiated for a insurance cover but the officers should also have a medical cover. This to

them is more critical since they require to be medically fit including their families for them to offer effective service.

The Commission has been lax as far as formulation of policies and regulations is concerned. Senior Officers were of the opinion that the Commission should fully involve them when drafting the Policies and Regulations to ensure that there is acceptance from the beginning.

On promotion, most officers have remained in their current ranks for over ten years without promotion while there are other officers who have retired in the rank of constable. This has created frustration and despair amongst the police officers. This has brought about loss of morale and indiscipline in the Service. There are no set standards or yardsticks for promotion of officers.

The Commission, in addition, has not developed any policy on training nor has it examined the current training curriculum to see whether it meets the expectations of the current security situation in the Country. The police officers feel that the training curriculum compared to the earlier one is more inclusive of the new issues in the security sector but there is a feeling that it should be reviewed to make it compliant with the security challenges of the 21st Century.

Vetting of police officers is a step in the right direction and has the support of junior officers. This is because they feel that the senior officers some of whom are non performers due to their incompetence and lack of knowledge and skills have always hindered their upward mobility and that they do not have the requisite qualifications to command junior officers.

The delay in concluding the vetting exercise has caused considerable anxiety among police officers and it is impacting negatively on the implementation of the reforms and police performance in general. Senior Officers at the Service are against the vetting exercise and they feel that the Commission should leave them maintain the status quo. This is due to the fact that they feel that the Commission is out to remove them since most may not have the required

education and that as the police has been known, many have enriched themselves using corrupt means. The Commission has not been actively involved with other stakeholders like donors who can offer support to them in terms of expertise and other resources. There is also bad blood between the Commission and IPOA who are supposed to work hand in hand in delivering on their various mandates.

The Media fraternity has not been involved fully in the Commission activities. In addition, there has been negative reporting in most cases without at times looking at the positive things that the Commission has been able to do.

4.4 Recommendations

This research project set out to evaluate the legislative, policy and institutional frameworks in the reform of the Police Service in Kenya as well as examine the role and effectiveness of the National Police Service Commission and the challenges it faces in delivering on its mandate. Arising out of the findings of the study, it is evident that there are various legislative, policy and institutional frameworks that have been put in place to ensure that police reforms are actualized in Kenya. However, the legal instruments have at times been misinterpreted leading to overriding roles and mandates of various entities in the security sector. An example being the mandates of the Inspector General and that of the Commission. Thus the lack of goodwill from various stakeholders as far as the two institutions are concerned have made it impossible to achieve the required reforms within the service. In addition, the lack of resources allocated to the Commission in terms of human and financial resources has made it impossible to achieve its mandate as expected from all quarters of the society.

This study has proved that there is need for goodwill from all stakeholders as well as allocation of adequate resources for the Commission to be effective in its oversight role over the police service.

From the findings and conclusions, the study recommends the following:-

First, it is necessary that the Commission carries out sensitization workshops for the police officers of all ranks to ensure that they appreciate the mandate of the Commission as envisaged in the Constitution and the National Legislation. This will ensure that the officers know what the demarcation is between the functions of the Commission and that of the Inspector General.

There is need for co-operation between the Commission and the Police Service. It has been seen that hostility by police departments and police officers to civilian oversight is probably one of the most significant factors that helps explain the failures and underperformance that have afflicted oversight agencies. It is very clear that effective oversight requires a reasonable working relationship between the oversight agency and Police departments because the work of handling complaints, handling human resource management and broader policy issues cannot be done by oversight agencies without police co-operation and involvement. Thus the Commission should involve the police officers in its activities, and in coming up with the required policies and regulations.

The Draft Regulations on Recruitment states that the Commission shall be responsible for all recruitment into the Service and shall develop policies, regulations and procedures for the proper functioning of the process. However, the Commission may delegate the recruitment of constables to the Inspector General, in accordance with section 10(2) of the National Police Service Commission Act, which should be in writing and subject to the conditions as may be imposed by the Commission from time to time. This delegation however, should not divest the Commission

of the responsibility concerning the exercise of its powers or the performance of the duty delegated.

The Regulations also stipulate that transparency, accountability and public participation principles should be adhered to in the entire process. If these regulations are followed to the letter, then there will not be complaints concerning recruitment of officers in future. There is need for the Commission to fast track the operationalization of these regulations to ensure that future recruitments adhere to them.

The Commission should recruit graduates to the service as and when their services are required and only specific disciplines that are relevant to the policing work should be considered. These include Criminology, and Law Degrees especially for officers to be deployed in the Criminal Investigations Directorate. Others should be deployed in legal departments for those with Law Degree, communication department for those with Communication and Public Relations Degrees, Administration Department for those with Public Administration Degree and Human Resource Department for those with the Human Resource Degree. This will ensure that the graduate officers are useful and perform those duties that they are well trained about.

As a new Commission, the National Treasury should make deliberate effort to give adequate funds for the Commission to effectively take off. More funding that is guaranteed will ensure that the Commission fulfils its wide mandate. For example, lot of financial resources are required for logistics for continuing with the vetting exercise across the country and for compensating officers who will opt to exit the Service before vetting or are found not to be suitable to be retained in the Service. Thus, adequate resources need to be allocated to the Commission for this purpose.

On promotion, the National Police Service Commission should finalize the promotion policy and guidelines to be followed when carrying out promotions in the Service. This will ensure that promotions are carried out on merit and avoid favoritism, bribery or even political and executive interference in awarding of promotions. In addition, it should also introduce a reward scheme to recognize outstanding performance by police officers other than through promotions. This can be through cash rewards, incremental credits, awards and medals.

While it is true that every police officer is equipped with the basic knowledge to perform police duties, it is also worthwhile to take into account the professionalism and skills acquired through training and experience while transferring officers from one station to another or from one office to another. This will make them more efficient knowing that their skills are being recognized and well utilized.

A survey of the current training curriculum is of utmost importance to ensure that it is being used in the training institutions and its shortcomings if any to enable the Commission review it. An urgent instructor's re-orientation programme of instructors should be rolled out, a continuous instructor's improvement programme be institutionalized in the colleges, a Scheme of Service for Instructors should be developed by the Commission in order to provide for a career path for officers who choose to be Instructors in the police Training Colleges. Trainers should be drawn from the private sector who are qualified and experienced in their respective areas. University lecturers from other universities will offer the much needed experience and expertise.

There is need for the establishment of National Police Service Academy that can be used by both services for the Undergraduate and Post Graduate Courses. This will ensure that the police officers get knowledge and skills in areas relevant to policing. The Commission should thus initiate the process in consultation with the National Police Service.

The Commission should look for donor funding to supplement government funding in some of the activities or requirements of the Commission. Organizations like the UNDP, EU, German and US Embassy should be approached to give support to ensure the Police Reforms agenda is accomplished as is the wish of every stakeholder. The Commission has critical linkages with key stakeholders, which, if managed well, will play an important role in implementation of the Commission's mandate and the police reforms agenda in general.

The involvement of the media in the Commission activities is of paramount importance. The media has not been sensitive to disseminate the right information about the objectives of the vetting exercise. They at times have misreported that the officers have been sacked yet those found unsuitable were retired and will get all their benefits. Correct and positive reporting is necessary. Thus, the Commission should endeavor to have either monthly or quarterly briefings with the media to highlight what they have done, what they have not been able to do and the reasons why so that even the public are aware of the hardships that the Commission goes through.

The Commission should collaborate with other agencies like the Ethics and Anti-Corruption Commission which can play a major role in coming up with strategies for reducing corruption in the Service. Corruption perpetrated by police has often been cited as one of the reasons the public has no confidence in the Service. The cooperation of the members of the public will also be useful as corruption is usually sustained by willingness of those who offer bribes. Both those who offer bribes and those who receive should be prosecuted equally.

The Commission in consultation with the Salaries and Remuneration Commission should speed up the process of advising on the appropriate remuneration structure for the Service. The National Task Force on Police Reforms had recommended that the Police Officers salaries be improved as well as allowances. One of the initiatives to improve policing is improve the

remuneration and benefits for police officers commensurate with the demands placed on them in provision of security in the country.

A major handicap affecting service delivery in the Police Service is poor remuneration. Police officers perform demanding, difficult and risky jobs. They use low pay as an excuse to engage in unethical practices that compromise their standing in the eyes of the public. While better pay may not directly translate to lower levels of corruption, it would certainly raise the stakes high enough for the officers to feel worried about losing their jobs on account of misconduct or poor performance.

The work of policing requires support from citizens as well as human rights organizations who can play an important role in the development of the Commission. For instance, the Commission needs to engage also the civil society organizations in its formulation of policies and regulations as well being part of their activities so that they may support the Commission fully and also appreciate the problems that the Commission is going through in terms of funding and support. The Police Reforms Working Group should be in the forefront in supporting the Commission instead of criticizing it. Communicating well with community activists is also a very important endeavor.

Effective leadership is also important to securing the confidence of politicians, agencies, and the public in the work of the Commission. There is need for effective and efficient management and leadership at the top. This will ensure that the Commission follows due process and is able to handle its functions within the timeframes. For this to work, there is need for an organization structure that is well staffed and coordinated to ensure that work flow is efficient.

Priority should be given to development of various policies, regulations and procedures to ensure that the Commission is not challenged in court as has been the case in the recent past. Policies on

transfers, promotions, appointments, discipline and appeals are of utmost importance and their finalization needs to be fast tracked. This will ensure that the officers are aware of the role of the service and that of the Commission as far as these functions are concerned. It will also help them follow the right procedures in case of discipline or appeals.

Development of a Scheme of Service for the police service is long overdue. It is only the Police Service in the whole of the civil service that does not have a clear guideline on progression in the Service. With this in place, issues of promotions from one rank to the other will be through merit as well as officers are aware of the requirements for progression from one rank to the other. In addition, there is need for the Commission to exercise more control over discipline of officers to ensure that the service does not loose many officers on flimsy grounds. These officers can be a threat once out there. It is common knowledge that most of the officers that have been dismissed from the services end up becoming gang leaders or criminals. Thus the need to ensure that trained police officers are retained in the service and not all discipline cases should lead to dismissal. There are other ways of disciplining officers like demotion and fine.

Transfers of officers should not be used or imposed as a disciplinary sanction. Every transfer should be accompanied by a justification.

For any oversight entity to maintain its overall effectiveness and integrity within the system and in the community, it has to be viewed as truly independent in thought and action. Politics should be kept afar from the running of the Commission. Also, there is need for the executive to respect the independence of the Commission in delivering on its mandate. Instead of criticizing the Commission, they should ensure that it operates in a conducive environment free from any interference as is stipulated in the national legislation.

There is need for the creation of a forum for all agencies with responsibility for police oversight and accountability to share ideas, learn from each other and co-ordinate their actions. If these

measures are put in place, then the National Police Service will be repositioned to provide security of life and property and contribute to the security and development of the country.

The National Police Service Commission should prioritize the vetting process to ensure that investigation of members of the police about whom there is evidence of serious human rights violations do not remain, or are not placed in positions where they could repeat such violations. For any vetting to be meaningful, it is imperative that detailed plans are developed to address police officers who fail their vetting. This should include pursuing prosecutions where there are credible allegations of financial impropriety, gross misconduct or human rights violations. It is also important that the Commission prosecutes those organizations or individuals who give false information about officers. This will ensure credible reporting by all the stakeholders involved.

4.5 Conclusion

This study has assessed the role and the effectiveness of the National Police Service Commission and identified various challenges that have undermined its execution of the mandate as per the Constitution and the National Legislation.

There is need for further studies on the challenges facing the implementation of police reforms in Kenya. There is also need to look at other institutions like the Office of the Inspector General and the Independent Policing Oversight Authority to assess how effective they are in delivering on their mandates as well as their relationship with other agencies that are related to them.

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