

**REGIME CHANGE, POLICE REFORMS AND THEIR  
IMPLICATIONS ON HUMAN RIGHTS PRACTICE IN KENYA;  
1920-2014**

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REQUIREMENTS FOR THE AWARD OF THE DEGREE OF  
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**FEBRUARY, 2023**

## DECLARATION

I declare that this thesis is my original work and it has not been submitted in any other university for the award of a degree.

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## **DEDICATION**

To Lucy Mugweru, Kio Mugweru and Nyla Wagithi for their encouragement and the space accorded to me during the entire period of my study

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## ABSTRACT

Historically the police institution has been linked to human rights violations. With the political transformation taking place across the world to change the institutions of governance, reforms in the police institution have been considered in many countries. In Kenya a lot of efforts have been witnessed in an attempt to bring changes in the police institution from independence. However, studies have not adequately addressed the implications of regime change and police reforms on human rights practice in Kenya. This study explored the implications of regime change, police reforms on human rights practice in Kenya from independence. The study's specific objectives were to examine the emergence and the role of the police force in Kenya from 1920s to 1978, determine the implications of the reforms in the police force on human rights between 1979 and 2002, examine the police reforms during the Kibaki's administration and their implications on human rights practice up to 2009 and to interrogate the implications of the police reforms enshrined in the 2010 constitution on human rights practice in Kenya up to 2014. A historical design was chosen to guide the study with Lewin's theory of change, the protest theory and the predictive model chosen as the theoretical underpinning. The specific study groups consisted of the high-ranking serving and retired constabularies, human rights lawyers, members of the community policing, human rights activists and the judiciary, criminal law professors, county government administrators, retired provincial administrators, political detainees and political scientists and former and present politicians in Kenya. Purposive sampling was adopted to select 166 study participants. Data was collected through focused group discussions, document analysis and interview guide. The qualitative data was elaborately analyzed based on the thematic content analysis. The results suggested that successive governments instituted police reforms purposely to adequately equip the police officers to secure the political interest of the political elite. During the Kenyatta administration, several amendments such as the preventive detention act were made but the changes failed to meet the expectation of the Kenyans as acts of human rights violation remained profound. During the Moi administration, there were minimal changes in the police force but increased and unabated human rights violation. The political leadership used the police to consolidate and secure power by infringing on human rights. During the Kibaki administration, instrumental changes in the police force were initiated to bring changes to the police institution. In the 2010 constitutional dispensation new laws were enacted to strengthen the police reforms. However, police brutality, impunity, complicity, extrajudicial and arbitrary executions, corruption and a widening rift between the police officers and the civilians were largely the enduring features of the police institution. The study recommended that reforms should be directed to the legal, economic, electoral and political systems which impact the police operations if meaningful police reforms can be actualized.

## **OPERATIONAL DEFINITION OF TERMS**

**Bribery:** Soliciting financial favours by the police to influence the police to act partially when enforcing the rule of law at the givers' undue advantage

**Colonial dominance:** This involves the political and economic subjugation of the Africans by the British government.

**Colonial period:** This referred to the period of subjugation of the Africans by the colonial government within the Kenyan territory.

**Constitutional change:** This is a change in governance that is accompanied by formally changing the legal framework and governance structure.

**Corruption:** A situation where police officers forcefully solicit, extort or receive financial favours to subvert or circumvent the rule of law.

**Democratic transition:** This is a process involving establishing a political system committed to democracy by allowing the citizens to be involved in state governance.

**Evolution of the Police institution:** The general direction in which the fundamental operational and institutional framework of the police changes

**Human rights practice:** The act of protecting the civil liberties and freedoms including proscription of unpleasant, heartless or demeaning treatment of the citizens.

**Implementation of police reform:** This refers to actions taken to improve police service delivery which include systematic reformation of the service,

ensuring accountability, effective human resource management capacity as well as logistical, tooling and technological capacity.

**Police culture:** Behaviour, belief and formal standard operating procedures that police follow in their work.

**Police Division:** This is the structure of the police which comprises of police stations administered by an officers commanding Police Division.

**Police Officers:** These are individuals who have undergone training and sworn oath to ensure the rule of law is upheld and who are deployed in any of the departments in the police service

**Police Reforms:** These are measures taken to change the way the police operates with a view to making it more receptive in safeguarding civil liberties and to make the police officers proficient when discharging their mandated functions.

**Police Transformation:** This refers to the changes in the management, structure, personnel, and information systems to support community partnerships and proactive over a given period of time.

**Regime change:** This referred to the change of political governance in Kenya following a general election from the colonial period to 2014.

**Security sector reform:** This refers to the change in the state security management systems which cover organizational changes, policy framework and actors to ensure consistency with tenets of good governance and human rights practice.

**State power:** This is the capacity of a state to regulate behaviours of citizens and enforce order within its territory usually at the inconvenience of the governed.

## **ABBREVIATIONS**

<b>ACHPR:</b>	African Charter on Human and Peoples' Rights
<b>CCC:</b>	County Coordinating Commander
<b>CHRI:</b>	Commonwealth Human Rights Initiative
<b>CID:</b>	Criminal Investigation Department
<b>FGDs</b>	Focus Group Discussions
<b>GJLOS</b>	Governance, Justice, Law and Order Sector
<b>GSU:</b>	General Service Unit
<b>IAU</b>	Internal Affairs Unit
<b>IBEA:</b>	Imperial British East Africa
<b>IPOA</b>	Independent Policing Oversight Authority
<b>IT:</b>	Information Technology
<b>KANU:</b>	Kenya African National Union
<b>KNA:</b>	Kenya News Agency
<b>KNCHR</b>	Kenya National Commission on Human Rights
<b>KPR:</b>	Kenya Police Reserve
<b>KPS</b>	Kenya Police Service
<b>MTEF</b>	Medium Term Expenditure Framework
<b>NFD:</b>	Northern Frontier District
<b>NPM:</b>	New Public Management
<b>NPPPP:</b>	Northern Province People's Progressive Party
<b>NPS</b>	National Police Service
<b>NPSC</b>	National Police Service Commission
<b>OCPD</b>	Officer Commanding Police Division
<b>OP:</b>	Office of the President
<b>PRSC:</b>	Police Reforms Steering Committee
<b>USA:</b>	United States of America

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# **CHAPTER ONE**

## **INTRODUCTION**

### **1.0 Introduction**

This study examined regime change, police reforms and their implications on human rights practice in Kenya from 1920s to 2014. The present chapter provides the background of the study, the statement of the problem, the purpose of the study, objectives of the study, research questions, scope, limitations, significance and justification of the study, research premises, theoretical and empirical review and the research methodology.

### **1.1 Background to the Study**

The police play a critical part in the realization of national security world over. Therefore, it is essential that the police always conform to its goal of law enforcement. This need is informed by the fact that there are instances when the police often contravened its very goals of existence. In many countries in the world, there have been reforms in the police institution aimed at enhancing its effectiveness in undertaking security mandate. The overall goal of the reforms is to hold police officers accountable in discharging their duties.

It is in relation to the motive of reforms that countries have initiated structural, legal and institutional changes purposely to improve police effectiveness (Savage, 2007; Rauch & Elrena, 2011; Ghai, 1972; Furuzawa, 2011). Police reforms are pivotal as they engender the activities that are carried out to bring about changes in the way the police institution is

managed (Waller, 2012). In this regard, the changes initiated are intended to ensure public safety in accordance with the rule of law. In most democratic societies, police officers are the most conspicuously manifested agents of the government. To realize this goal, the security agents particularly the police, ought to operate in compliance with the stipulated state regulations (Ajulu, 2002).

Despite the pivotal position and enduring services provided by the police institution, its operation has been replete with excessive and disproportionate application of force and affliction on the innocent and sometimes unarmed citizens the institution is expected to (Savage, 2007). This has raised fundamental questions as to whether the much touted police reform initiatives and the subsequent policy, legal, institutional and constitutional changes had any significant impact on the way the police officers addressed security concerns and protected civil liberties. For instance, Lundman (2010) advocates the need for a friendly police service engendered on professionalism and willingness to safeguard the citizens and their property.

In most instances, the police have been unable to adapt to the evolving socio-political and economic contexts. This is despite the emergence of major organized crimes and ongoing community problems and conflicts around the world (Garland, 1996). The sociopolitical and economic considerations have made it difficult to realize meaningful changes in the

police institution as the police have become less involved in the welfare of the citizens they serve across the world (Rauch & Elrena, 2011). Globally, there have been unprecedented and persistent adjustments in global policing usually after persistent concerns about infringements on civil liberties. This has been evident in most countries that have made efforts to improve the way the police deal with emerging security challenges and human rights (Rauch & Elrena, 2011; Savage, 2007). This has occurred not only in the third world countries which are perceived to be behind in civil liberties but also in developed nations perceived to be bastions of human rights advocacy. For instance, in the United Kingdom, significant institutional changes in the police were initiated to engender innovative administration of internal state security in adherence to the enshrined civil liberties.

Moran (2005) conceptualized the critical motive for facilitating the legislative and legal changes in the police force as being to enhance the operational efficiency and effectiveness of the police institution in its endeavor to deliver services to the citizens. Owing to the original transformative changes in the police institution, the United Kingdom became the pioneer of the fundamental concept of good governance and public management that eventually transformed into a yardstick for evaluating the anticipated and implemented changes or reforms in police institutions around the world (Bislev, 2004). Consequently, the impetus for transformation spilled over to the United States of America (USA) where

the incessant occurrence of systemic crimes had significantly widened the gap between the citizens and the police with the police being vehemently accused of complicity by the marginalized populations and tribal minority groups in the USA (Skogan, 1993). This ignited strong criticisms, condemnation and subsequent agitation for a complete overhaul and transformation in the entire security sector not only in the USA but also in other countries such as the Northern Ireland (Skogan, 1993). In particular, the North Irish police institution was demilitarized and its focus shifted to a community-based and human rights-focused policing following a comprehensive plan to bring to book rouge police officers. To realize this, the reforms were anchored on clear accountability and oversight and a decentralized structure (Furuzawa, 2011).

Across African states, the deliberate pursuit of transforming police institutions was accelerated by the perceived ineptness, partiality and inefficiency exhibited by the police force during times of political turmoil and upheavals. In addition, reforms initiatives were informed by the existence of systemic state suppression of human freedom akin to the colonial dispensation (Waller, 2012). For instance, Bruce (2003) contended that in the post-apartheid South Africa, the restructuring efforts in the police institution enshrined the need to improve accessibility to security services. This was principally done based on the knowledge that for a long time black South Africans had endured discriminatory and tribal subjugation

perpetrated by the oppressive apartheid regime under the watch of a partisan policing system.

In Kenya, unprecedented efforts at reforming the police were influenced by the diminishing public trust vested in the police. For instance, incidences of violation of human rights were widespread mainly in the post-independent Kenya (Hahn, 2003) in the course of police service delivery. This study has underscored the fact that the colonial police force in Kenya adopted a reactionary approach in dealing with civilians.

Such an approach tended to subjugate any forms of rebellion. In this way, the police were used for selfish interests of resource exploitation and political control by the colonial masters rather than being a people's police (Alemika, 2007). As such, the outrageous pro-imperialist police intimidation predominantly shaped the character of Kenyan police (Hahn, 2003). Upon attainment of independence, transformation of the police institution became one of the critical intentions of good governance in Kenya especially with regard to excluding the colonial malpractices. This would make the police service Africanized and capable of protecting the entire population without bias. Gimode (2007) contended that the successful attempt to bring changes into the police institution remained elusive. This is because the police institution continued to be complicit in human rights violations.

In addition, concerted efforts to change the police were marred by widespread cases of unlawful and unwarranted detention without trial of

perceived political challengers. For instance, the administration of President Daniel Moi's witnessed a lot of human rights violation and intimidation of real and perceived dissents. In this regard, Moi's protracted and undemocratic rule transformed the police into a highly politicized instrument of oppression. The use of police in this way led to cronyism and tribalism which dictated the recruitment and promotion criteria of police officers (Harpham & Kwasi, 2014).

In 2002, the prevailing wave of democratic governance ensuing from the election of Kibaki administration heralded a new momentum for institutional and legal reforms. This was based on the perceived expectation that the human suffering that had turned out to be the most distinguishing feature of the police institution would be changed to the make the security system effective and subservient to aspirations of the citizens. It was on the basis of this reawakening that progressive steps were taken to make the police institution more responsive and subservient to civil liberties. Ruteere and Pommerolle (2003) opined that the civil liberties became a concern as the citizens collectively undertook initiatives to ensure that the police officers safeguarded the enshrined human rights and freedoms.

However, human rights violations continued despite the fact that Kenya had ascribed to the formidable ideals of the regional and international binding and elaborate human rights conventions and charters (Hartz, 2000). This presents a serious contradiction that jeopardizes the operations of the security sectors. Moreover, the global human rights instruments obliged

countries that had ratified them to protect their citizens and refrain from any inhuman acts perpetrated against the citizens (Hartz, 2000). Of note here is that these instruments clarified the restrictions and procedural standards that ought to be observed when applying force against civilians (Hartz, 2000).

Evidently, the continued agitation for changes in the police institution in Kenya engendered by the established constitutional bodies played a critical role in actualizing the anticipated adjustments in the whole system of security sector. Although the policies and legislations formulated to spearhead the implementation of the reforms complied with the international and regional non-discriminatory expectations of the police force, in most instances, the police were found culpable of human rights violations. For instance, the police officers were overtly blamed in the Alston Reports on extra-judicial killings for the unexplained deaths of young people (Alston, 2009; Gimode, 2007). Similarly, the report observed that loss of innocent lives emanated from indiscriminate misapplication of force during the politically motivated violence resulting from the disputed 2007 polls. During this tumultuous period, the security forces opted to let the violence escalate when they had the capacity to professionally contain it.

The analysis of the historical developments of the reforms in the police institution in Kenya is essential in understanding the impact of the change of administration and the reformation in the police institution. This particular study on police reforms focused on the history of policing in Kenya. Historically, the police institution emanated from the Imperial British East

Africa (IBEA) between 1887 and 1902 when Sir William McKinnon arranged for the security of his business interest along the coastline.

It is from this intention to protect personal interest that the urgency of starting a police force was birthed in Mombasa. During these early stages, the duties of the police force were not pronounced. However, the opportunity for development of the original police force in the entire country was propelled by the construction of the Kenya-Uganda Railway. Subsequently, some police units emerged in major towns such as Mombasa, Nairobi and Kisumu by 1902 to protect the railway line, to secure railway property and materials against intruders alongside the manpower hired to aid in the construction of the railway line.

From a historical perspective, tranquility, law and order were required to prevail throughout the period of building the railway line in order to speed up the process as most of the personnel hired lacked the requisite construction knowledge and skills. Moreover, laws adopted during this period were imported from India. This implied that all aspects of the colonial police operational procedures were foreign and Indian based.

In 1926 the Criminal Intelligence Unit was created to gather and store historical information about criminals and suspicious persons. In order to enhance its capacity, the core departments governed by the police institution including the fingerprint bureau and the criminal investigation (CID) were created. However, due to lack of trained manpower, there were few officers

drawn mainly from Britain and South Africa (Ruteere & Pommerolle, 2003). This is how the modern police force was started and subsequently, other police units such as the railway police unit sprung up to be specifically in charge of the railways line and stations.

The scope and mandate of police activities expanded with time and soon the police was involved in handling emergencies, traffic related problems and animal theft. Later on, new changes were witnessed in anticipation for the Second World War. Ruteere and Pommerolle (2003) observed that during this difficult time, more police recruits were deployed in the lawless frontier districts with the sole order to address the security threat in the region. Apart from active involvement in combats, the police served as guides and interpreters while also carrying out scouting missions in the territories of the enemy.

In 1946, the colonial administration incorporated the police institution in the office of the Attorney General. In order to be more effective, police officers were empowered to cope with new security challenges emanating from continued revolt against the white settlers. During this time there was little emphasis on human rights protection but on the safety of the colonialists. This compelled the government to create the Kenya police reserve (KPR) to enhance the provision of the security to the settler community. One of the most outstanding characteristics of this formation was its level of military sophistication during operations (Ruteere & Pommerolle, 2003).

The unit was deployed in trouble spots using armored cars. Furthermore, the creation of General Service Unit (GSU) and dog section followed in 1948 during emergency. This was created to improve the effectiveness of crime control especially in troubled areas. Moreover, the Police Air Wing was formed in 1949 and gradually transformed to enhance its capacity to carry out communication and evacuation exercises alongside the reconnaissance missions.

This was in cases where the sick personnel needed urgent medical attention and treatment. Ashimala (2014) observed that the formation was transformed into a permanent component of the police service in 1953. It is also instructive to point out that soon after the declaration of the state of emergency, the personnel were enlarged to deal with the mayhem caused by the insurgents and the ruthless *Mau Mau* insurgency. This brought the role of the colonial police to question forcing the colonial government to form a commission of enquiry in 1953 to review the effectiveness of the police force in thwarting the *Mau Mau* revolt. The question raised here, however, was whether this commission would help to alleviate the plight of *Mau Mau* fighters and protect the interest of the colonial government. Who would benefit from such an initiative if not Africans? What were the motives of the colonial government in forming this commission? The recommendations of the commission included building the police headquarters which was opened in 1957. With the escalation of the tension surrounding the *Mau Mau* activities, the safety concerns compelled the colonial government to expand

the police force. The police force was also reinforced in terms of equipment and it was on this basis that in 1958 the force was incorporated in the ministry of defense.

In retrospect, it is essential to note that before independence the police institution was predominantly charged with the preservation of the law and order for the colonial interest. Soon after independence in 1963, some changes in the administration of the police force were enforced (Ruteere & Pommerolle, 2003). These included replacing foreign officers in senior ranks with Africans to conform to the political emancipation and independence ideologies.

This was followed by enormous restructuring particularly Africanizing the police force. As a result, Kenya's independence led to changes and escalation of criminal activities. In addition, the police continued to address security threats which portended danger in the realization of human rights (Ashimala, 2014). In light of these changes, various specialized units were formed such as the Anti-Corruption Police Unit to reign in on the police to safeguard human rights.

The Kenya Police is comprised of different police units most of which are charged with different aspects of crimes. However, most of these formations do not deal directly with cases that violate human rights. Instead, they were formed to support the functions of the police and to ensure that different issues which may compromise security concerns are

separately handled. Ajulu (2002) observed that such restructuring underscored the role of the police in ensuring peaceful co-existence and tranquility in the society.

The complex interaction of the contextual, operational and political constraints usually compromised the quality of policing in many respect. For instance, political considerations often denied police officers the opportunity to operate fairly when handling the general public (Loveday, 2005). However, the provision of civic liberty was made worse by the fact that the magnitude and frequency of criminal activities had historically reached out of control. The police officers appeared to exert excess force in dealing with lawlessness. This dented the image and credibility of the police force especially when the rights of innocent people were trampled upon under the pretext of restoring order. Without repairing the dented image of the police in the public eye, policing would be difficult to be realized especially when there was a general perception that corruption had entrenched itself within the police force. Therefore, the question of protecting human rights remained a contestable and questionable issue given that the trends taken in reforming the police did not engender political transformations. An overriding question at this time was whether police reforms without corresponding political reforms would lead to the protection of civil liberties.

Though credited for championing human rights principles, some observers such as Elkins (2006), Alston (2009) and Loveday (2005) contended that human rights-compliant policing need to ensure public safety and wellbeing of all citizens. The studies cited in this background concurred that efforts to transform the police did not enhance the rule of law as the end result of the purported reforms appeared to be increased proliferation of human rights violation. To understand the dynamics involved in the police reforms, this study interrogated the reforms in the police institution in Kenya from the colonial period to 2014. An overriding question was whether reforms in the police force would necessarily translate to protection of human rights. This study achieved its objectives by tracing the reforms in the police force in Kenya from the colonial period. A historical analysis brought out the enduring features of the police force and its transformation from the colonial period to the present.

This study captured reforms in the police institution during the colonial and the post-colonial period cutting across various regimes. Also, the study explored the period of democratic and constitutional transition in Kenya. During these periods, the implications of the police reforms on human rights had been inadequately explored. However, the preliminary investigations revealed that the key enduring features of the police institution remained corruption, brutality, impunity and complicity.

## **1.2 Statement of the Problem**

The police institution is one of the key security establishments in any country. However, the police have been implicated in human rights violations in Kenya since colonial times. For instance, in 2018 alone, Kenyan human rights groups documented at least 267 cases of extrajudicial killings by police with 97 percent of the victims being Muslims. Thus, the character of the police institution is important especially in democratic societies. In this case police reforms are considered as part of democratic governance in societies that place emphasis on human rights. The transformation in the police institution is critical because police officers are some of the serious violators of human rights. It is based on this understanding that this work interrogated the various phases in the life of the police institutions in Kenya in relation to its evolution with respect to adherence to human rights dictates.

The determination to transform the Kenyan police institution saw the introduction of institutional, political and legal policies within the operation of the police institution. The reforms sought to control police malpractices and protect human rights. However, the history of the Kenyan policing is replete with instances of highly publicized changes that promised much but withered away without much impact (Kivoi & Mbae, 2013; Njuguna, 2013).

In this regard, the concerted efforts to change the police institution failed to result into the intended objectives as the instances of police exacerbated brutality remained widespread. As such, the police officers were frequently

implicated in human rights violations (Gimode, 2007). These events raised the question as to why malpractices remained commonplace in the police force in spite of the changes initiated to curb such unintended blatant violations.

Analysis of the research attention in this area is unanimous on the perceived obligations of the concerned parties. However, the orientation of these studies seemed to focus on the present state of affairs without empirically looking at the root causes of human rights violations in the police institution. Instead police abuse has remained high in Kenya from the colonial period with police brutality turning into a systemic problem that required a change in the police culture. However, it is difficult to change an established culture. This is because the hurdles in the police reforms were historical in nature. It is these states of affairs that inspired this study to take a more comprehensive and historical analysis of the reforms in the police force in Kenya and their implications on human rights from the colonial period to 2014.

### **1.3 Objectives of the Study**

The present study was guided by four objectives in an endeavor to realize the research aims. As such, the study sought:

- i. To examine the emergence and transformation of the police force in Kenya and their implications on human rights practice in the period 1920s-1978

- ii. To examine the changes in the police force and their implications on human rights practice in Kenya during Moi's administration from 1979 to 2002.
- iii. To analyze the efforts made by the Kibaki's administration in reforming the police and how this impacted on human rights practice in Kenya from 2003 to 2009
- iv. To interrogate the contribution of the 2010 constitution on police reforms and its implication on human rights practice in Kenya up to 2014.

#### **1.4 Research Questions**

The study was guided by the following research questions:

- i. What factors informed the emergence and transformation of the police force and its implications on human rights practice in Kenya in the period 1920s-1978?
- ii. How did the changes in the police institution during Moi's administration influence human rights practice in Kenya?
- iii. How did the reforms in the police force influence human rights practice in Kenya during Kibaki's administration from 2003 to 2009?
- iv. How did the contribution of the 2010 constitution on police reforms influence human rights practice in Kenya up to 2014?

### **1.5 Research Premises**

1. The Africanization of the Kenyan police did not translate to respect of natives' human rights
2. During the reign of President Moi, the police violated the rights of Kenyans.
3. President Kibaki's attempt to reform the police institution improved the relations between the citizens and the police force
4. The Kenyan police institution has seen considerable changes in the protection of human rights by the police

### **1.6 Significance and Justification of the Study**

In Kenya, a lot of research attention has been directed towards policing (Ruteere & Pommerolle, 2003; Gimode, 2007; Nyambura, 2012; Njuguna, Michuki & Wanjiru, 2013). These studies have accentuated the significant mandate of the police institution in promoting civil liberties. The scholars have also underscored the extent to which the colonial government created a repressive police force aimed at sustaining the colonial administration into power. For instance, Gimode (2007) noted that while the colonial policing aimed at containing dissent from Africans, the expectation was that the attainment of the internal self-rule would help change the police institution. It was expected that this was to be realized not only by Africanizing its leadership and operations but also making the police institution a partner in security provisioning. Ruteere and Pommerolle (2003), however, contended that the police continued to exert excessive force on the people with cases of

extrajudicial killings and torture reported. In particular, the Moi's administration did not do much to change the way in which police operated.

The provincial administration used administration police officers to silence dissidence. In doing this, the police continued to perpetrate gross human rights violations during Moi's administration. The human rights scholars and policy makers accused the police of perpetrating human rights violations. This according to Gimode (2007) informed the need for police reforms. Yet, while these studies have exposed the rot in the police force during earlier administrations, they have hardly analyzed the implications of police reforms towards human rights practice. The studies have largely been descriptive thus leaving out the pertinent information on how reforming the police may improve human rights protection.

While Kenya has made strides in reforming the police force, the need to protect human rights by the police continues to be an area of concern to scholars. The current study assessed the implications of police reforms on human rights practice in Kenya. The study covered the period from 1920s to 2014. The year 1920s was chosen because it was the year when the colonial government was entrenching its colonial rule in Kenya. This provided an opportunity to compare the colonial police force with that of the post-colonial regimes. For instance, at independence, the expectations of the population were high that indigenization of the police would automatically translate to improved human rights protection. Far from it, the police

continued to exert excess force on the people thus creating tensions with the citizens. The year 2014 was important because with the implementation of the 2010 constitution, a myriad of reform initiatives had been implemented. These included but not limited to NPSC and IPOA to supervise the police service. However, the police still continued to violate human rights through extrajudicial killings hence the need to rethink about police reforms. Nairobi City County was selected because it is a metropolitan county and the capital of Kenya. It is a highly populated city and friction between the civilians and the police are common. In addition, cases of human rights abuse are frequent making it a suitable study site.

The findings from this study are important to various scholars and policy makers. For policy makers in charge of policing and human rights protection in Kenya, the findings provided information on how best to formulate policies in policing. This would then advance both the interests of the police officers and the citizens across the country. The NPSC and the IPOA in particular, may find this study relevant as it would provide useful insights into the milestones achieved in reforming the police service.

This may help in evaluating and monitoring the police activities in relation to unjustified and deliberate human rights abuse. The government may adopt the study's outcome to strengthen the execution of proposed and legislated police reform programs. Finally, the results of the study are expected to stimulate further research in security studies in Kenya and around the world.

### **1.7 Scope and Limitations of the Study**

This work is situated in the large framework of conflict transformation where the police institution has been historically instrumental. However, their participation in conflict situation has been negative with far reaching implications on human rights. In this respect police reforms are seen as part of the strategies for conflict transformation and peace building. This work is therefore critical because regardless of the various initiatives to reform the police, cases of police brutality remain common especially in conflict situations. Therefore, this work explores police reforms with the hope of comprehending the nature of the police institution and the role of police officers in safeguarding civil liberties in Kenya. Given that a topic on the implications of police reforms on human rights is quite broad, the researcher only concentrated on police reforms within specified periods. Geographically, the study was confined to Nairobi City County. However, since most of the key informants who played a major role in designing various reforms had relocated, the researcher, as much as possible, followed them to the places they relocated to. The study examined the various regimes from the colonial period all through to 2014. This was significant as it sought to provide a good grounding on the changes in the police institution, its mandate and reformation within the context of the oppressive colonial administration. 2014 marked the end of the study period. However, the researcher also delved into the period after this in order to conceptualize new reforms in the police force and their implications on human rights. It is

notable that the concept of police reforms was adopted to imply the newly reconstituted National Police Service (NPS) with both the Kenya Police and the Administration Police subcategories. In the current regime dispensation, these formations had been consolidated under the office of the Inspector General of Police (IGP).

The researcher encountered some hurdles while conducting the research. For example, some respondents were hesitant to participate in the study owing to the sensitivity of the topic. In addition, information on the dynamics of the police reforms such as resistance and inherent culture of impunity was difficult to obtain. However, the researcher addressed these limitations by making prior arrangements and by guaranteeing confidentiality.

The researcher addressed this drawback by seeking relevant permission from all appropriate authorities before undertaking the study. The vastness of the study location also presented a limitation to the study. This is because the data was collected from informants from different parts of Nairobi County. The services of two research assistants were solicited to help in data collection.

## **1.8 Literature Review**

### **1.8.1 Introduction**

This section presents a synthetic review of related literature on the reforms in the police institution in different periods of governance or regime in Kenya. The reviewed works revolved around the emergence of the colonial

police, the formulation of police reforms and the implementation of the proposed changes in the police institution and how different governments exploited the police institution for economic, political and personal gains. While concentrating on the implications of the proposed reforms on human rights practice, the review explored the gaps in the scholarly works. The review is presented in a historical perspective covering various administrations in Kenya since the colonial period. The chapter has also reviewed the theories that guided the study.

### **1.8.2 The Emergence and Role of the Police Institution**

Scholars have reflected on different roles played by the police institution since colonial times. Historically, the police institution took on an important role in the overall governance of the country. This is because security has historically been regarded as a prerequisite condition for development (Ashimala, 2014). However, an important concern was to question whether the police force had been transformed in conformity with the shared common values, ideals and aspirations of Kenya as an independent state. As a result, the study interrogated why the police force continued to be used as an instrument of political subjugation and mobilization of state power by the political elite.

Scholarly works reviewed have focused on the reforms in the police institution and their role in fulfilling the enshrined policing mandate. Most of these scholars averred that the reforms in the police institution are in most

cases determined by political, sociological and organizational factors. Smith (2004) noted that political and sociological considerations such as subculture and administrative controls often shaped the evolutionary trends in the police institution across the world. World Bank (2015) pointed out that, in most cases, reforms in the police institution are least motivated by the desire to achieve effective law enforcement. Therefore, the prevailing operation and behaviour of the police officers often reflected the state's level of care and concern or lack of it towards the citizenry (Wood, Fleming & Marks, 2008).

Bayley (2006) undertook a study on security sector reforms and focused on the broader issues of reforms. He conceptualized these reforms as those that concentrated on the factors making the police institution dysfunctional. This includes overall discipline and the welfare of the officers. In the study, he observed that changes in the police institution needs to address the entire system including methods of incentives and rewards in the institution.

To make the system holistic, the reforms should uphold the overall integrity as a way of conserving the supposed integrity of the police. Furthermore, fairness, transparency and objectivity in recruitment should be key considerations. This is supported by Kimberly's (2010) study which revealed that institutional changes occur when the new operational structures are reviewed from time to time. However, a study by Rauch and

Elrena (2011) presented inexcusable proofs suggesting a close and intertwined link between the police and political dispensation.

Moreover, Rauch and Elrena (2011) asserted that police reforms in most democratic societies are widely viewed as a political endeavor pursued only after considering the extent to which it is laced with vested political interests. The reforms are particularly advanced by protagonists in the entire process of formulation and implementation (Cullen & McDonald, 2005).

There are also emerging studies such as Skogan (1993), Auerbach (2003) and Ha (2015) on institutional failures of the police. For instance, Skogan (1993) reported that the police institution has been unable to comply with the changes within the social contexts. Auerbach (2003) explored the financial constraints contributing to police ineffectiveness and lack of accountability. The study noted that in theory, the police developed a service-oriented philosophy, combined with positive attitudes. These requirements meant that the police shun repressive approaches and instead adopt a friendly engagement with the citizenry in fulfilling their fundamental mission. While offering rich background on police reforms, Ha (2015) comparatively analyzed the strategies adopted to deal with corruption in the police service and noted weakness in the adopted frameworks. Toch (2008) concurred that the police are sometimes compelled to use limited force depending on the circumstances. Such scenarios are likely to create conditions for violating human rights. This is supported by Jankowski

(1993) who argues that policing should be guided by community policing models based primarily on collaboration and partnership with the community for better results. Anderson and Killingray (1992) contend that human rights tenets should guide the operations of the police.

Cole (1999) examined how Argentina managed to eradicate corruption and extortion in the police force that had been characterized by serious human rights abuses, villainous violence and repression characterized by killings, disappearances and torture of the civilians. In spite of the tranquility that emerged upon the return of constitutional democracy, several attempted coups and continuous economic tribulations occurring intermittently saw the pace of police reforms take a slow and erratic pace in Argentina. Similar situations were observed in El Salvador where the UN's efforts to initiate police reforms bore insignificant fruits in spite of the urgency to transform the police force (Toch, 2008).

Pierson (2000) explored the structural changes in policing in Africa. He points out that political interests and corruption were instrumental enduring features in efforts to transform the police in Africa. Accordingly, Alemika (2007) concurs that in some countries, clear strategic decisions have been taken by governments to transform the police force. For example, in Cape Verde, police reforms have embraced non-coercive investigative techniques to protect human rights and guarantee the presumption of innocence to all persons (Cole, 1999).

In Mauritius, efforts have been put in place to nurture and safeguard the collective tenets of good governance, rule of law and civilian freedoms. In Chad, the most significant human rights problems are harsh prison conditions and limitations of freedom of expression and assembly (Albrecht & Jackson, 2009). In Nigeria, impunity and open bribery have undermined institutional reforms as the recruits are frequently coerced to pay bribes to secure admission in the police training colleges (Osse, 2012). In this case, it appears that the evolution of police force in African countries is undermined by endemic corruption, political manipulation and impunity that define African selfish political dispensation.

In her quest to find out Kenyan police observance of human rights, Mwende (2005) explored previous studies that examined how the police viewed human rights protection. She established that police view human rights protection as an obstacle to their work. However, in some of these studies it was evident that there was a new trend in which the police were increasingly embracing reforms especially in transforming the police institution into a friendly service.

This view is embedded in the broader concept of democratic governance which is guided by the subservience to the rule of law while being arbitrarily cognizant of human rights ideals. Similarly, Gimonde (2007) observed that the traditional objective of policing has incorporated the maintenance of the public order in the fight against crime. These observations support the special guidelines given to the police on the use of

force while upholding professionalism, accountability, transparency and public trust (Bayley, 2006). The reviewed works above have assessed the evolution of the police force. The review demonstrated that historical, political and environmental factors contributed immensely to the eventual formulation of reforms in the police force.

### **1.8.3 Human rights Practice and Policing**

The recognized international human rights instruments notably the Universal Declaration on Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) implore member states to observe and protect citizen's rights. These instruments not only specify the countries' duties to safeguard human rights but also offer guidance on interpersonal relationships.

Therefore, from a strictly historical standpoint, the violation of human rights occurred when the colonial governments failed to enact policies to protect human rights. In this regard, Alemika's (2007) work remains invaluable for this study because, in his view, the international treaties not only call upon governments to desist from directly disrespecting civil liberties, but also urgently take pragmatic steps to hold suspecting offenders and all those responsible for human rights violations to book; something which the colonial government could not do. This argument is

supported by Garland (1996) who highlighted the need to be practical in the approach adopted to transform the police.

In Kenya, the concept of human rights protection was not an issue of consideration during the colonial period. Some scholars have emphasized the extensive police violations of human rights during colonial period. Commenting on violation of human rights, Owen (2011) observed that those who rebelled against the colonial government were deprived of their civil liberties and the camp guards subjected the detainees to sexual abuse, forced labour and starvation. In thwarting the agitation for independence, the colonial police systematically and indiscriminately violated civil liberties by committed grave war crimes against the *Mau Mau* adherents. Gimode (2007) asserted that the motivation for self-emancipation was influenced by the brutal nature of the colonial police. Reflecting on John Locke's etiological conception of human rights, Armitage (2004) argues that men are by nature free and equal and have the right to life, liberty and property. Despite this observation, human rights were violated during colonial period in Kenya. In this regard, Casson (2011) succinctly illustrated the failure of the colonial government to utilize the police to protect civil liberties.

Crawshaw (2008)'s work is particularly relevance in this investigation given his argument that the colonial policing failed in its obligation to protect human rights. Although the expected positive relationship was

illustrated in the code of conduct shaping the framework of operational procedure, the colonial police had the alacrity to protect human rights but they were determined to abuse and violate those rights (Casson, 2011). This duality in essence was viewed as emanating from the responsibility of colonial government to enforce laws to regulate police operations. This raises the question as to whether the evolution of the police during the colonial period had any impact on human rights protection.

#### **1.8.4 Police Reforms and human rights Practice in Kenya; 1964-1978**

The changes in the police force at independence attracted a lot of scholarly studies. The cardinal theme emerging outrightly from these studies is the atrial deployment of the police in disproportionately maintaining the status quo. The independence government inherited the colonial police force with the goal and modus operandi remaining that of protecting the interest of those in power. Kivoi and Mbae (2013) concurred that this happened yet the independence constitution contained provisions for creating a neutral police institution. It was regrettable that the political leaders at independence turned the police institution into an instrument of political suppression and subjugation. Hannan (1991) argues that the independent administration retained the repressive colonial police system to defend their interests. This is because the police served as instruments of brutality. In this dispensation, policing was seen as part of the problem. This is informed by the fact that the approach adopted by the police at independence was military in nature. Wood, Fleming and Marks (2008)

concur that blackmail, affliction, killings, arbitrary arrest and mistreatment of detainees were common phenomenon during independence period in Kenya.

From independence onwards, Oloka-Onyango (1990) presented evidence for the continuity in the colonial philosophy of policing in the post independent Kenya. Reflecting on the Post 1990s incubation of Constitutional Reforms in Africa, Juma and Ogaro (2018) observed that the issues of constitutional changes were not considered as a priority at independence.

The works of Okoth-Ogendo (1991) further demonstrated how the police was deployed as an instrumental of supporting the ruling government from 1966 to 1992. This was done by beefing up the administrative capacity of the police to misuse the police through constitutional changes to create an imperial presidency. With the help of the constitutional changes, as most African presidents did, Okoth-Ogendo recounted how President Jomo Kenyatta created a non-magnanimous leadership profile which exercised enormous powers with almost zero tolerance to criticism.

The contribution of Hornberger (2011) was important in this study. According to Hornberger (2011), Jomo Kenyatta facilitated profound and rapid constitutional changes aimed at regulating major political activities in the state. As such, it was evident that emphasis on adherence to human rights was a peripheral or non-issue. Otiso and Kaguta (2016) emphasized

that the question of leadership and the structure of police intelligence became cardinal issues of concern before power was fully transferred at independence. It seemed that Jomo Kenyatta preferred to retain the colonial police structure rather than to surgically alter it. In this regard, no comprehensive reforms in the police force were undertaken to meet the aspirations at independence. Armitage (2004) confirms that incidents of police misconduct, mistreatment and violence reared its ugly head in Jomo Kenyatta's administration. This raised the question as to whether Kenya was really independent.

#### **1.8.5 The Police and the Consolidation of State Power**

Most scholars who have researched on police institution have reflected on the role played by police in consolidating state power during President Moi's era. On the overall capability of Moi to lead the country, Orwa (1994) contends that Moi began by exonerating political prisoners from diverse tribal divide, most of whom had been incarcerated for years. This signaled some departure from intolerance to tribalism, corruption and misuse of power that had already been deeply entrenched in Kenya during the Jomo Kenyatta's administration.

Moi's philosophy of Nyayoism was supposedly interpreted as sufficient evidence of the beginning of a new era. This is because it was envisaged that it was an era in which tenets of democracy, civil order and human rights were adhered to (Moi, 1986). However, it was regrettable that Moi

did not live up to the expectation encapsulated in Nyayoism. This is because Moi began to centralize and personalize power while taming opposition and dissent to his leadership. Subsequently, the issues of human rights fortification emerged as a distant concern in Moi's administration.

Haugerud (1995) argues Moi's style of leadership did not go down well with most people particularly the influential Kiambu Mafia. As a result, they launched an initiative to change the constitution to bar Moi from taking over the presidency. Despite the efforts by Kiambu mafia, Moi assumed the presidency upon the demise of Jomo Kenyatta. Upon ascension to power, Moi systematically entrenched an oppressive single party state. After managing to centralize power, Moi gradually sought to firmly entrench a dictatorial regime in which civil liberties were blatantly neglected (Haugerud, 1995). In examining the problem of sycophancy during Moi era, Hannan (1991) argues that Moi usurped the functions of major state organs and agencies. In doing this, it was difficult to hold any institution to account in the event of human rights violation. This made the principle of separation of powers fuzzy.

Maina (1996) deconstructed how the presidential directive resulted into the enactment of several amendments including the introduction of Section 2(A) in 1982. The amendments forcefully allowed only one party in the country. Maina's study is important because it highlights the introduction of detention laws. The detention laws allowed the police and the entire

provincial administration to control people and curtail their human rights. In this regard, it was the provincial administration that was transformed into focal points of influence. As can be observed from such constitutional changes and legal restructuring, issues of human rights were disregarded.

Steeves' (2007) study examined the presidential succession politics in Kenya. He noted that government officials who opposed the president or failed the loyalty test were often thrown out of government positions. For instance, Widner (1993) concurs that internal dissidents were denied freedom to contest elective positions while tribal welfare associations were banned. She further argues that organized groupings such as the GEMA, Luo Union, Abaluhya Union, the union of Civil Servants and the University Academic Staff Union were banned during Moi's administration. The above is a confirmation of widespread violation of human rights which resulted into moments of agony, loss of life and property.

In examining the electoral despotism in Kenya, Klopp (2001) reveals a common practice in which the tenure of state officers such as those serving in key positions in the judiciary was quashed. This was done to deny them a chance to provide direction on matters touching on civil liberties and electoral processes. Klopp (2001) argues that there was a deliberate attempt to purge the entire judicial system. This was to manipulate the functions of the judicial system at the behest of the presidency and protection from the police.

In his effort to manipulate the entire governance system, Moi extended his grip on power to the electoral processes where all elections were conducted through queuing system instead of secret ballot (Holmquist & Ford, 1998; Garland, 1996; Mutua, 1993; Thompson & Lee, 2004). Holmquist and Ford (1998) observe that preferred candidates were declared winners even before all voters had participated in the elections. According to Makinda (1992), electoral system encouraged rigging during Moi's era. In particular, he notes that presiding officers were mainly drawn from the provincial administration which was Moi's instrument of electoral rigging.

Garland (1996) concurred that human rights advocates were viewed as foreign sympathizers and unpatriotic, treacherous and thankless individuals working at the command of enemies of *nyayoism*. Subsequently, former and sitting MPs, university lecturers and student leaders who were perceived to be advocating for the introduction of multiparty politics or indulgence in unlawful political activities were arrested and detained (Mutua, 1993). These malpractices attracted different research interests.

The study by Thompson and Lee (2004) is particularly relevant to this study because the study looks at how police officers used excessive and arbitrary force during this period. The brutalities reported in this study took different forms such as killings which occurred frequently during Moi's era. Gary (2003) related police brutality with the segregative practices against the black and poor South Africans during the apartheid system.

During this period the black people suffered severe brutality from the police officers who protected the whites and the political elites. Gary's contention is particularly relevant due to the historical and socio-political similarities with the colonial dispensation in Kenya.

Mutunga (1990) addressed the contextual circumstances surrounding Moi's rule and considered police malpractices during arrests, custodial detention, arraignment and bail. However, the incessant incarceration of human rights agitators in squalid conditions has been addressed by Widner (1994). Mulei (1993) covered suppression of freedom which was extended to the press, civil societies and literary criticism. On his part, Ross (1992) reflection showed how the incarceration of civil rights groups was regularly protested.

The protest was seen when the church took the lead to express their dissatisfaction with the administration. For example, Sabar-Friedman (1997) points out how the Anglican Church emphasized the church's God given obligation to protest when civil liberties were senselessly subjugated. He argues that the state's uncontrolled appetite for retaining state power urged the police to arrest, assault and detain the dissenting critics who had sought asylum in the church compounds. Adar and Munyae (2001) recounted how journalists were assaulted by the police for exposing the government's deliberate disenfranchisement of voters in the run up to the 1997 polls.

Nasong'o and Murunga (1999) argued that people, especially those who had felt the wrath of Moi's tyranny, were incensed by the ceaseless violations of civil liberties and the government's ineptness in facilitating free expression of democratic rights. Hansen (2009) documents how Moi's government instigated tribal violence and cleansing in perceived opposition areas. This was done in order to depict multi-party as being inappropriate for Kenya. Additionally, Hansen (2009) has highlighted how the government sponsored militia groups and deployed them to disrupt opposition rallies particularly in the 1992 and 1997 elections campaigns in Kenya.

The foregoing discussion reveals that during Moi's reign, minimal changes were formulated in the police force. Accordingly, the level of human rights abuse increased in depth and severity. This left a despotic image of the police that contributed to human rights violations. From the foregoing discussion it is apparent that Moi was keen on suppressing the dissenters by jailing or even through assassination. Rather than implement institutional reforms, all the critical state institutions that the government perceived to be a threat to the presidential grip on power such as the police were deliberately weakened.

#### **1.8.6 Police reforms and human rights Practice; 2003-2009**

The Kenya's policing system was tremendously accelerated by the democratic transition in Kenya when Kibaki became the president in 2003.

As a result of this, scholars have scrutinized the democratic and constitutional transition and their perceived impact on police reforms in Kenya. For instance, Nyachoti and Kaguta (2016) noted that the Kibaki administration set the trend in formulating practical and progressive police reforms. However, the proposed reforms did not have the requisite legal framework for driving the changes in the police institution. Ogada (2016) looked at the policy implications of the deepening police reforms in the post-National Accord and maintained that the police institution continued to face a myriad of discernible hurdles that slowed down and impeded the realization and implementation of the proposed reforms. Ogada's finding is corroborated by Diphorn (2020) who analyzed various police reform initiatives in Kenya. Emanating from rigorous ethnographic fieldwork based in Nairobi, Diphorn (2020) established that there was clumsiness on the whole idea of reform. Diphorn's study is important because it considered reforms from a moral position thus encapsulating the inherent friction that may result from reform initiatives.

Omeje and Githigaro (2012) noted that the democratic transition in 2002 heralded anticipation in political, legal and constitutional reforms for the benefits of the citizens. In particular, it was expected that the institutional reforms in the police force would change the dismal paradigm of policing by entrenching a new paradigm of protection of civil liberties. In this sense, it was hoped that such as a paradigm shift would bring a new dispensation of people oriented policing. However, Omeje and Githigaro (2012)

regretted that the police force remained largely unchanged until the outbreak of the infamous post-election violence of 2007-2008. During the postelection violence, the police were singled out for being complicity in the violence. This incident overtly highlighted the underlying structural impediments and juggernauts in the implementation of the formulated reforms in the police institution. Kempe (2015) revealed the unprecedented unprofessional and unethical conduct of individual police officers in the 2007 post poll violence. This incidence was particularly outstanding in shaping the direction of the police reforms because it fueled the agitation for a democratic policing. Prior to this period and in the ensuing periods following the post poll violence, brutality, complicity and corruption remained persistent yet inconsistent with the rubrics of an egalitarian policing. Kagwanja and Southal (2009) conceptualized the 2007 post-poll crisis as the genesis of meaningful police reforms in Kenya. The disputed poll results disrupted the prevailing peace with the police officers being complicit in the loss of life and property. Ndung'u and Wepundi (2012) argued that the divisive nature of the national politics and the emergency of militias and gangs have denigrated the police's role of safeguarding civil liberties.

Sihanya (2006) scrutinized the innocuous challenges and prospects of the constitutional amendments and eventual implementation in Kenya. While casting aspersions on the efforts realized, Sihanya (2006) contended that the momentum for change originally initiated by the Kibaki's

administration was slowed down by the lost interest in fighting graft. Observers contended that the perceived elaborate operational guidelines buttressed by the executive commitment simply served as a public deception. However, Kanyinga and Okello (2010) argued that during Kibaki's administration, there was a renewed interest in reforming the police. This is seen in the extent of collaboration between the administrative and the representatives of the citizens in how public affairs are managed. Ransley (2009) revealed that the expansive presidential powers and immunity and the patrimonial governance structures that defined the constitutional, legislative and societal operations ought to be broadly altered. This might act as the impetus for the police's readiness to combat insecurity and emergencies without infringing on human rights. This has been observed by Kivoi and Mbae (2013) who regretted that the police continued to execute suspects without trial thus undermining the anticipated police reforms. Stian and Okwany (2020) identified the contextual variables that influenced the realized the fruits of the reforms in the police institution. The variables underscored the subversion of core intentions of good policing. However, such subversions continued to make the police institution more of an instrument for surveillance than for protecting the citizenry. This argument is supported by Gjelsvik (2020) who examined the jarring route from policy implementation to practice. Gjelsvik (2020) believed that the contextual factors such as the conflicting political interests, institutional dynamics, mismatch between theory and

practice and the fuzzy role and mandate of the police weighed down the process of reform implementation. This was evident in the early years of the jubilee administration although the score card on police reforms acknowledged abundance of positive outcomes. However, security threats continued to metamorphose thus giving rise to unprecedented human rights abuse by the police. Emanating from the foregoing ostentatious discussion, it can be construed that in spite of the elaborate legal framework, the police service has not managed to live up to the expectations of the citizens. The police still operate undemocratically and inequitably. The police also still appear to be biased as they tend to serve the unilateral wellbeing of those in power, often to the undesirable detriment of the human rights of the citizens.

#### **1.8.7 2010 Constitution, Police Reforms and Human Rights Practice**

Since the operationalization of the 2010 constitution, 12 years had elapsed after the prolific reform efforts were introduced in 2003 by the Kibaki administration. By the time of writing this thesis, the police reform agenda were being carried out by Jubilee Government. Within the current political and constitutional, the score card on police reforms, favourably, acknowledges abundance of positive outcomes in spite of a big mismatch between theory and practice.

The unprecedented security challenges seemed to have unrelentingly metamorphosed thus putting undue pressure and demand on the police while offering conduits for unprecedented violation of human rights. Therefore,

the pace of institutional reforms in the police institution ought to be frantically accelerated by isolating the critical reform bottlenecks which need to be reviewed to streamline the path of reforms (Kanyinga & Long, 2012). This will guarantee all citizens of their safety and protection.

To continue with the reform agenda, PRIC was established and mandated to coordinate and supervise the process of police reforms while also identifying the technical guidance required to actualize the reforms. PRIC's report was published in June 2012 detailing and availing progress report of the reform programmes already initiated. Prior to the declaration and presentation of the report, a group was established under the auspices of the UK in partnership with development partners and interested groups from UK, US, Sweden and the Netherlands to fast track police reforms in Kenya.

The group played a critical role of strategically supporting institutional reforms by working in collaboration with the government on the reforms. Interestingly, this was not the only foreign influence in the reform agenda as more funding arrangement and support was received from UNODC. Collectively, all these partners offered resources and expertise to ensure the support needed is available for effective execution of the proposed reforms. Moreover, in 2013 Police Reforms Steering Committee (PRSC) was established to provide mechanisms for synchronizing the ongoing police reforms with a view to ensuring sustainability of the reform plans (Maingi, 2011).

While these efforts created enormous impetus in the reform agenda, it was the new constitution which ushered in real legal instruments for major reforms. For instance, the new constitution established the NPS incorporating both the KP and AP. The objective for this establishment was to promote professionalism and accountability in the police. The independent command of the NPS is currently under the IG with the assistance of the two DIGs (The Constitution of Kenya, 2010).

Apart from the aforementioned common mandate of the police, the 2010 constitution empowered the police to investigate, gather intelligence, prevent crime by enforcing appropriate laws and regulations. In addition, the NPS Act of 2011 established the DCI whose functions included collection of criminal intelligence, coordinating the Interpol affairs and undertaking forensic analysis (The Constitution of Kenya, 2010). Accordingly, the IAU was created under the IG to deal with diverse complaints raised against police officers. This was also created to ensure that there was order in the service as pertaining to keeping records about the internally conducted investigations (The Constitution of Kenya, 2010). It should be clarified that through this act a conduit for supporting various government agencies became possible and the police became effective in providing security services as enshrined in the constitution (The Constitution of Kenya, 2010). Moreover, the act mandated the NPS to undertake recruitment practices and other activities associated with human resource management (The Constitution of Kenya, 2010). This implies that accountability was a key

objective of the NPS as the constitution created IPOA to bring sanity in the force or service (The Constitution of Kenya, 2010).

In spite of the elaborate legal framework, in many ways, the police service has not managed to live up to the expectations of the citizens. The police still operated undemocratically and inequitably often acting impartially with a high inclination to serve vested and selective political interest. Consequently, the public has largely remained under the control of the police which is prone to human rights abuse.

In most occasions, the police often use excessive force when enforcing laws. This presents a scenario of mistrust from the civilians. According to Rawal (2013), law enforcement is rarely consultative. This is because citizens are rarely involved in decision making on security concerns. In addition, there are no clearly discernible mechanisms to ensure culpability and democratic enforcement of laws. For instance, there have been complaints regarding cultural insensitivity when police officers are discharging their mandate. Although the law imposes a duty on the police officers to ensure diversity, the principle has not been implemented in the police service. This could present a dire threat to the smooth functioning of the police institution as a security organ.

It is important to point out that the constitution requires an elaborate parliamentary oversight and control mechanism to implement the security policy. However, the quality of policing depends on the extent to which the

legislature evaluates the functions of the security agencies (Rawal, 2013). These changes are envisioned to entrench professionalism, culpability and compliance with human rights as well as their fundamental liberties.

The legislations enacted ought to promote harmonious relationships with human rights agencies without considering them as a hindrance to their work. However, KNCHR in particular, has admitted that holding police officers to account is difficult. This is because the new constitution does not provide for thorough disciplinary mechanisms for police officers implicated adversely in human rights violations.

This has been observed by various task forces on police reforms that recommended vetting as a prerequisite to transforming the police. Emanating from this argument, it can be observed that although police reforms have been legally achieved as enshrined in the 2010 constitution, the pragmatism of the reform initiatives need to be addressed (The Constitution of Kenya, 2010). This is supported by Nyambura (2012) who opined that there has been slow progress made to reform the police force to make it professional, prevent corruption and promote transparency and accountability. Currently, several policy reforms have been successfully implemented with the aim of establishing an empowered and sustainable police service. These policies can be accelerated by digitizing the police services, restructuring the structure and enhancing the integration of police

officers with members of the public. Despite this, technical support has been identified as a concern of considerable and ameliorative attention.

I note that the most critical ingredients of the basic police skills are still required to enable the police to deal decisively with the citizens in delivering security services in adherent to the basic ethical standards of conduct. Any reform efforts targeting public safety are critical in building trust between police agencies and communities. These policies are expected to cure the inequities occurring as a result of bad policing such as extra-judicial killing, arbitrary arrests and detentions without trial. Given that these malpractices are still evident, policy and practice interaction needs to be emphasized. Besides policy developments, the quality of policing has not improved yet this is the critical issues of interest to the members of the police. Having recognized the urgency of different skills and capabilities within the police, institutional reforms have become essential issues to address human rights violation. It is evident that these reforms have focused on institutional adjustments without expressed emphasis on integrating civil liberties into the reform considerations.

However, appreciative relationship exists in the recurrent reference of human rights themes in the theoretical framework under which the police are meant to operate. Although the interaction implies a critical interdependence, the police should have a collective responsibility to protect civil liberties as enshrined in the regulations governing the behaviour and

conduct of police officers. This would minimize the risk of violation of civil liberties (Casson, 2011).

### **1.8.8 Summary and Gap**

This section has reviewed works by different scholars on reforms in the police force as an institution in Kenya. The studies reviewed have focused on legal, political, institutional and policy issues influencing the reforms in the police force. They have also emphasized the need to engender political reformation as part of institutional changes in the police force. In the sentiments of these scholars, there is need to question the use of the police force for personal interests by the political leaders. Whether the changes in the police force would transform the force into a service is dependent on the motive of the political players.

However, the relevance of some of these works was taken into consideration in enabling the study to achieve its intended objectives. Most of the studies fell short of deconstructing the evolution of the police force in Kenya. This particular study drew interest in how historically human rights abuse by the police has stimulated the need to transform the police institution. However, political interests and resistance undermined past administrations' commitment to full reforms in the police force. The study historically reviewed the police reforms and their implications on human rights in Kenya from the colonial period to 2014.

### **1.8.9 Theoretical Framework**

While various theories have been developed to explain police reforms from a historical perspective, this study used three theories that link trends in police reforms to human rights in Kenya. These theories are Kurt Lewin's theory of change, the protest theory and the predictive model.

The main theory guiding the study is Kurt Lewin's theory of change. According to Lewin (1947), change occurs at three phases referred to as Unfreeze, Change and Freeze or refreeze and each phase is characterized by driving and restraining forces. The unfreezing stage emphasized readiness for change by recognizing the need for change as it prepared the participants to move away from the current comfort zone. The urgency to reform is requires some level of motivation. This involves weighing up the merits and demerits of the envisioned change and aptly making a timely decision to change.

Therefore, the principle of unfreezing forms the basis of the Force Field Analysis (Lewin, 1947). The Force Field Analysis maintains that there are various factors or forces for and against making change that one needs to be significantly reviewed in the process of analysis. However, in the instances where the forces for change cannot override those against change, nearly no change becomes feasible. This is accompanied with the inner movement made in reaction to a change also called transition. Transition occurs in the process of making changes that are needed. Therefore, the freezing stage is

about establishing stability once the desired transformation or change has actually been made. This is followed by normalization and formation of new relationships and routines after the acceptance of the changes (Kotter, 1995).

In the context of police reforms, the journey towards police reforms has been characterized by conflict between the forces agitating for the retention of the status quo and those driving for change. The main driving forces include policies and regulations on training, welfare, vetting, promotion of officers (terms of services), improvement of operational resources, general welfare, among others (Ransley, 2009). However, these forces have been countered by restraining forces against change such as corruption, nepotism and complicity (KNCHR, 2008).

In case the restraining forces triumph, they provide a fertile ground for violation of human rights. A lot of efforts need to be put in place to ensure the restraining forces do not overcome the forces driving change. This is because in such an eventuality, the society is compelled to initiate self-policing a situation that can contribute to even more instances of human rights violations. Perhaps, this is the candid explanation for the emergence of *Nyumba Kumi* and community policing (Alston, 2009).

Nevertheless, the unfreezing stage will emerge in which the society will drift into a consideration of police reforms so as to overcome the negative consequences of self-policing. With increased motivation, proper measures and structures are established to jumpstart police reforms often viewed as a

movement towards the refreezing stage. When the society reaches this stage, the features of police reforms could be recommended to protect human rights during the implementation of the forces driving change.

This phenomenon can take a long time, thus providing a platform for historical analysis of the trends in police reforms and their implications on human rights in Kenya since independence. In reality, the realization of the reforms as postulated in the theory is based on motivation, involvement and commitment of the concerned people. In this regard, the theory cannot account for all the driving and restraining forces influencing police reforms.

The study also made use of the protest theory as a significant determinant of change. The protest theory is a combination of sub theories on human rights founded by Dembour, Douzinas and Baxi. According to Dembour, Douzinas and Baxi (2011), protest scholars firmly believe that human rights are moral, must be raised when they are not socially recognized, and should concern every human being, especially those who are forgotten. The protest theory further maintains that human rights have their origin in struggles, and they remain in a continual fight, because of their challenging messages and demands.

The theory is called protest because the proponents are not satisfied with the established legal and political practice pertaining to civil liberties. The idea of safeguarding civil liberties as a radical vision for the people can become positive if laws that ensure human freedoms are safeguarded. Despite

criticisms of the protest theory that it pays little attention to change which is an important impetus for change, the theory was considered relevant given the fact that it aptly emphasizes candidly on maintaining of a pluralist democratic dispensation that allows people to organize and feel committed to groups or collective identities, interest groups, cultures, traditions, religions and languages that promote change. In this context, police reforms are viewed as representing diverse imaginations and hopes among those who suffer police brutality.

Since the study aimed at predicting the impact of the police reforms on human rights practice, the predictive policing model was considered relevant in this study. In its critical conceptualization, the model is built on the pragmatic belief on the probability of addressing crime when the place and time of its occurrence can be predicted. This can be adequately achieved by using rather sophisticated information gathering equipment for crime (Stuart, 2012). Therefore, the predictive policing model can be construed as a policing strategy in which information is collected and analyzed to help with crime prevention (Loveday, 2005). The concept of predictive policing revolves around data withdrawal, geospatial prediction, statistical probability and social network analysis (McCue, 2006). This approach is adopted in this study because Kenya's criminal justice system is empirically supported and evidence-based. The predictive approach was embraced as the police services continue to undergo reforms.

To be able to use this approach, the research adopted the boiling pot model. In this regard, the study envisions a pot of reform factors sitting on a three stone fireplace acting as pillars firing the reforms. The pillars support the police and energize management, administration and the entire police structures (McCue, 2006). These pillars are capacity, legal environment, welfare and training equipment.

As hypothesized in the present study, the major result of the boiling pot is respect of human rights among other factors (Beck & McCue, 2009). The predictive model was chosen to guide the study given its innovative way of explaining police reforms. In Kenya, a lot still needs to be put into the boiling pot to facilitate police reforms. If the boiling heat goes down, expected results are delayed or not achieved at all.

Thus, police reforms initiatives have to factor in sociopolitical variables especially if they have to impact on human rights protection. To this end, it makes sense to note that making predictions is just but part of the issue with the other part being implementation of the interventions and responding to the predictions that are likely to minimize human rights violation. Hence, this theory together with Kurt Lewin's theory of change and the protest theory were adopted to explain the factors responsible police reforms in Kenya.

## **1.9 Research Methodology**

### **1.9.1 Introduction**

This section presents the methodology followed in conducting the study. These include research design, study variables, research site, target population, sampling techniques and sample size, data collection instruments, data analysis, presentation and ethical considerations.

### **1.9.2 Research Design**

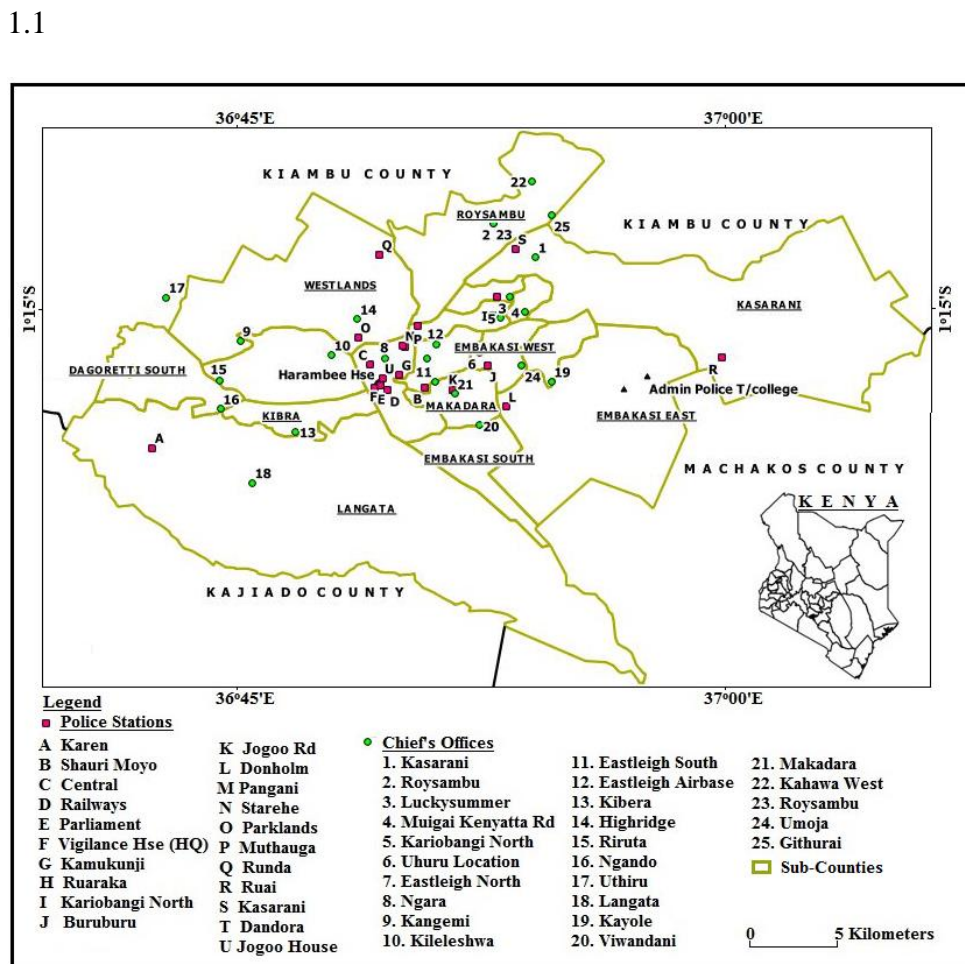
The study used the historical method to chronologically document, describe the changes in the police institution and to draw conclusions on the operations of the police from the colonial period up to 2014. The study adopted the qualitative research paradigms. The qualitative data provided the researcher with information about the respondents' beliefs and opinions about regime change, police reforms and their implications on human rights practice. The historical method was considered appropriate in collecting original data for purposes of describing the characteristics of the study parameters.

### **1.9.3 Study Variables**

The study assessed regime change, the police reforms and their implications on human rights practice from 1920 to 2014. The independent variable of the study was police reforms while the dependent variable was human rights practice. The study focused on the implications of police reforms on human rights practice between 1920s and 1978, 1978 and 2002, 2003 and 2009 and after the promulgation of the 2010 constitution up to 2014.

### 1.9.4 Research Site

This study was based in Nairobi County. Nairobi County is a metropolitan county and capital of Kenya. It is the centre of diverse business as well as political administration of the country. It is a highly populated city and about half of the residents live in slum areas. The residents constitute a large population coming from diverse geographical, cultural, political and socio-economic backgrounds. The map of Nairobi County is presented in figure 1.1



**Figure 1.1: Map of Nairobi County Showing the Location of Police Stations, Chief's Camps and Sub-County Boundaries**

**Source: Nairobi County Integrated Development Plan, 2018**

The rationale for conducting this study in Nairobi County was informed by the increasing cases of violation of human rights in spite of the existing and ongoing police reforms.

#### **1.9.5 Target Population**

The target population was both civilian and security providers in Kenya while the study population comprised of senior serving and retired police officers, members of the community policing, human rights activists and groups, human rights lawyers, members of the judiciary, criminal law professors, county government administrators, retired provincial administrators, former and present politicians, political detainees and political scientists in Kenya.

While most of the respondents were drawn from Nairobi County, snowballing drove the researcher to other counties in Kenya. In total the researcher targeted 1700 key informants but owing to the financial and time constraints the researcher ended up with 10% of the target population which gave him a total of 170 informants. Four of those identified for interviews did not, however, avail themselves for the same, leaving the researcher with 166. The researcher's interest in these groups was based on the fact that they were regularly involved in protection and advocacy for human rights.

#### **1.9.6 Sampling Techniques and Sample Size**

Purposive sampling technique was used to identify the informants for the study. The informants were carefully chosen based on their adept

knowledge, exposure and familiarity with the police reform initiatives and human rights practice during the period covered by the study. The selection of the informants was purposively done with the understanding of being knowledgeable regarding the study variables.

The criteria for inclusion in the study included participants' willingness to take part in the study and familiarity with police reforms and human rights practice in Kenya. Therefore, measures to ensure representativeness of the population and generalization of the results were not taken into consideration. The researcher sampled a total of 170 informants but only 166 availed themselves during the study. These were divided into 10 Focused Group Discussions (FGDs) with 10 members each, 52 oral interviews and 13 key informant interviews (KII) and one life history. This is captured in table 1.1.

**Table 1.1: Distribution of the Respondents by Method of Data collection**

<b>Method</b>	<b>Number of Participants</b>
Focus Group Discussions	100
Oral Interviews	52
Key informant Interviews	13
Life History	1
<b>Total</b>	<b>166</b>

### **1.9.7 Data Collection Instruments**

Various instruments were used to collect both primary and secondary data. This included use of interview schedules and focused-group discussion question guides. The interview schedule was prepared to assist the researcher and two research assistants organize for interviews with diverse categories of informants with knowledge in the area of policing and human rights. To conduct interviews with identified groups of people, the researcher utilized a well-designed FGD question guide which helped probe informants further when deemed necessary. To collect secondary data, the researcher visited various libraries in Nairobi including Kenyatta University, University of Nairobi, Strathmore and Mount Kenya university libraries. The libraries were rich with important information on the police and human rights in the region and globally.

### **1.9.8 Data Analysis and Presentation**

To analyze the collected data, the researcher coded and thematized the data collected for analysis and presentation. The recorded interviews were transcribed and translated based on the predetermined themes. The data was further categorized based on the research questions. Contextual analysis was also adopted to corroborate the primary and secondary data content.

Documentation as a source of secondary data was used to obtain data that helped answer the research questions. The key documents in this study included archives and government records such as ongoing records of the commission for human rights, government annual reports on police reforms,

policy manuals, and strategic plans for police service, syllabi for police training, journals and newspapers. The researcher selected the relevant parts and sections of the documents that addressed police reforms. Common themes were identified and described. The comprehensive review of documents was compiled for a comprehensive analysis.

### **1.9.9 Data Management and Ethical Considerations**

The ethical concerns in this study included confidentiality, anonymity, informed consent and respect for all study participants. The researcher obtained informed consent from the participants. All the participants were informed of the nature and purpose of the study, the procedures to be used, and the expected benefits of the study to them and or the society.

The researcher showed respect to all participants by assuring them that the information collected was to be used only for the purpose of the study. Confidentiality was strictly observed in the course of the study to prevent respondent's physical or psychological harm. The identity and privacy of the respondents were protected. The respondents were encouraged to participate in the study willingly. Data obtained from the respondents was treated with utmost confidentiality and destroyed after the study was completed.

Chapter one has generally introduced the study. It has highlighted the problem statement, research questions, research premises, significance and justification of the study, the scope and limitations of the study. A review of related literature has been undertaken with emphasis on research gaps. The

chapter has also examined the relevant theories that have a bearing on the study variables.

**CHAPTER TWO**  
**THE POLICE FORCE AND HUMAN RIGHTS PRACTICE IN**  
**KENYA; 1920s-1978**

**2.1 Introduction**

Chapter two traces the emergence of the police force during the colonial period. This is done in order to understand the nature and characteristics of the colonial police force and discern the genesis of the reforms in the police prior to independence. Going back to the colonial period was also significant because it elaborated the existing conditions during the colonial period that provided the impetus and justification for reforms in the police force. This chapter also connects policing to human rights noting that the colonial police was largely an extension of the colonial administration and therefore constantly violated the rights of the natives.

**2.2 The History of the Police Force and Colonial Dominance in Kenya**

The history of the colonial policing has been researched extensively (Gimode, 2007; The Kenya Police 1887-1960). This is because the way the colonial police force was conceived and organized gradually shaped the contemporary modes of law enforcement institutions in Kenya. The colonial administration was generally guided by the principle of indirect rule (Crowder, 1978). This implied that the Africans were indirectly recruited to provide policing services to the colonial government. This was an indirect way of exercising the dominion over Kenya. This study considered it worthwhile to scrutinize the issue of colonial dominance of the British rule in Kenya. It was perceived in this study that indirect rule imposed

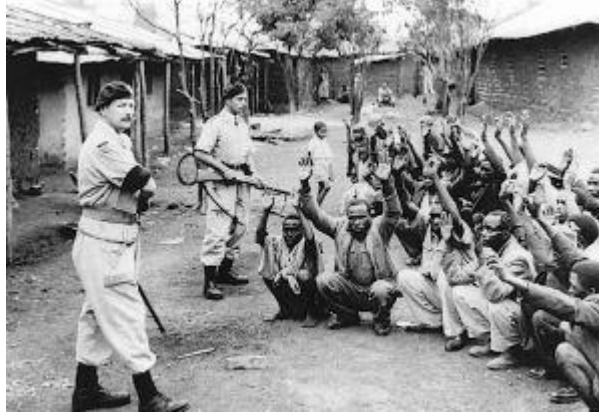
regulations to suit the British interests. Indeed, there was never a complete adoption of local ideologies in policing. Rather, the colonial government redefined the contribution of Kenyans in the provision of policing.

The history of colonialism depicted an alien imposition of non-native foreign interests accompanied by the use of the police to enforce those ideologies. This is further shown by the fact the native chiefs were controlled by subjecting them to the dependable tier of governance occasionally being accorded some respect if the foreign interests and economic goals of colonialism remained safe. In reality, there was a mixture of different laws taking care of the Africans and the British interests (Read, 1972). The native law was taken up in the colonial legal framework in the same way the African political authorities were incorporated within the overall structure of the British government. Customary law was essentially amalgamated with colonially imported law with the customary law appearing to be acceptable on the condition that it did not conflict with the basic principles of British law. Although it was purported to represent the legal principles of native Africa, the foreign law was often considered to be superior and given legal legitimacy over the African customary law (Read, 1972). Outrightly, this was a case of selective application of the rule of law to separate the black from the white. Interestingly, the British conceptualization of the native law was fundamentally a British invention, corrupted to probably have a sense of meaning in the mind rather than in reality. It was a way of cheating the

Africans to believe that they were being considered in the legal creation of the colonial rule. From this analysis it is evident that indirect rule was important in understanding how far from the consideration of the native interests the police could have actually operated when enforcing colonial laws.

Scholars have reviewed the roots of the colonial dominance in Kenya and traced it to the Berlin Conference in 1885, when East Africa was first partitioned into different territories with the influence by European powers. Mamdani (1996) placed the founding of the British protectorate in 1895 with the arrival of the white settlers in the fertile highlands. During this early colonial establishment the settlers were allowed a voice in government, while the natives were banned from direct involvement in political and government affairs. However, it was the Indians who were minimally involved owing to their role in the building of the railway line. Subsequently the Indians settled in Kenya and occupying the second tier citizenry subjecting the Africans further down the racial ladder. This subjugation presented challenges in the road to colonization in Kenya as the Indians progressively outnumbered the British compelling the British government to introduce hut tax in 1902 to contain the perceived Indian dominance in Kenya. Getting money to pay the tax was difficult for the Africans. The native Kenyans had to earn money which could only be achieved by working for the whites or Indians under harsh conditions to earn some wage to pay the tax. The punishment for not paying the tax was

forced labor. This acted as a source of chief labour for the British white settlers.



**Colonial police enforcing forced Labour**

**Source: <https://www.jstor.org/stable/23637268>**

The British were not satisfied with the provided labour and introduced poll tax. In addition, another rule requiring the natives to work for the British government for 60 days a year unless they were already employed by British settlers was enforced. The outcome of this unfriendly law was the creation of the native reservations situated far way in unproductive lands (Kilson, 1955). To retain the ownership of the land, the colonial government passed a land bill in 1913 giving the white settlers a 999 year lease on the land. The lease excluded the natives who were permanently placed in the land reserves. In 1919 the *Kipande* system was introduced to compel the native men to wear identity discs with restricted movement in the white settler highlands. As if this was not enough, the colonial government created three categories of employment namely the squatter, contract or casual in order to control the native labourers. The squatters

were generally placed at the lowest rank. However, their number increased and by the end of World War I, they had become over populated on European farms and plantations in Kenya. Kilson (1955) asserted that the Kikuyu squatters who had been deprived of their arable land and settlement dominated the colonial work force in both the agricultural and settler plantations. This compelled the colonial government to craft legislations and ordinances such as the Resident Native Labourers which progressively and severely curtailed their rights and freedoms. Obviously the police was used to enforce the restrictions. The outcome of these legislations was to eliminate the squatters' tenancy rights. It was regrettable that these laws permitted the settlers to exercise complete dominance over the squatters. It is evident from this argument that the colonial government subordinated the natives on their land and by extension used the police to assert their unpopular laws (Kilson, 1955). As was expected the laborers were frequently unjustifiably mistreated with the white settlers arguing that the grown up natives similar to children and deserved to be mistreated to tore the line. For instance, some servants were often flogged even for committing petty offences. The colonial police force could not do anything to change the state of affairs.

This study felt the need to examine the role of the colonial police in the context of colonial government in Kenya. In this context, even the native workers were never supported by the existing punitive labour laws and the discriminatory court system where the Africans who appeared there were

usually perceived to be guilty even before hearing commenced (Sorrenson, 1967). Most colonial magistrates appeared to be unconcerned about the human rights abuses committed against the natives (Wolff, 1974).

This investigation found it worthwhile to problematize on the issue of legal representations in the midst of segregative ideological orientation of the colonial administration. It is the feeling of this study that most of the principles guiding the reforms in the police force were anchored on repressive colonial rules. The implication is that police reforms can only be explained in the context of Kenya's colonial conquest.

However, British conquest in Kenya was responsible for human rights violations during the colonial period. It was notable that genocide and forced migrations of the natives was accompanied by the use of force from the colonial police. Based on empty platitude presented by the British indirect rule it was only the collaborative agents and porters who were recruited into leadership positions such as chiefs (Sorrenson, 1967). Moreover, these leaders reflected orders from Britain rather than the consensus of the natives. In this understanding it can be deduced that governance of the local native councils was simply a mockery of democracy as they were intended to continuously keep the natives subjugated. At the periphery, the councils were supervised by the colonial district officers who conspicuously acted as the legal and administrative advisors. Can subservience to foreign administration provide impetus for

police reforms? Would colonial district officers be in a position to advocate for changes in the police force to safeguard the interest of Africans? In deed the colonial district officers served only to advance the political expedience and imposition of administrative costs on Africans. Mamdani (1996) concur that the native law was maintained to serve the interest of the colonial regime. This was reflected in the executive and legislative policy dominance made in Nairobi and sanctioned or ratified in London where the natives were openly excluded en the policy recommendations. In the prevailing centralized, racialized and ethnised governance structure the natives were least involved in all the management of their own affairs.

Arguing in the same vein, Ndege (2008) concurred that principally the colonial governance was quite autocratic with the governance trajectory being determined purely by the socio-political and economic considerations. As has been empirically argued the colonial government was fundamentally alien to the underlying needs of the present demands of the natives. It is easy to appreciate the colonial police also operated in conformity with the political dominance of the colonial government in Kenya.

### **2.3 Colonial Interest and the Emergence of Kenya Police**

The colonial period presents one of the most elaborate case studies of colonial policing. Guided by the colonial interest, the colonial policing offers some remarkable insights into the changing nature of policing during

the colonial period in Kenya (Anderson, 2002; Throup 1992; Wolf 1973). Therefore, the question of the emergence of police force in Kenya has captured the attention of most scholars with Gimode (2007) tracing it to 1887. This was the time when IBEAC commenced operating in the region with the sole purpose of spreading globally the interests of the British government. In this commercial context, the original purpose of the colonial police was to keep off intruders from individual business premises and to offer protection to the settler families (Sorrenson, 1967). It was also meant to support the colonial government to extract raw materials, get cheap labour and impose taxations for their homeland industries.

Hence, the emergence of the colonial police is attributed to the initiative of Sir William McKinnon, the famous British administrator. Sir William McKinnon had vast personal and business interests in Kenya. The British through the IBEAC established and strategically stationed security agents to safeguard trade ventures, safeguard business interest, suppress opposition and provide social control by the assistance of the local leadership (Kamau, 2011). The Kenya-Uganda railways line was constructed to facilitate movement of goods particularly raw materials.

Security personnel were required to safeguard the construction materials and this also influenced the emergence of the police. The initial security officers were mainly males drawn from Indian race with few African *askaris* (Sorrenson, 1967). An archival source consulted revealed that the

reliance on the Indians for security purposes was based on the perceived superiority of the Indians over the Africans (KNA/bb/43/24). Thus, the administrators of IBEAC seemed to prefer to trust the former compared to the latter. Initially, the colonial police depended on the military wing of the government with recruits coming on board with the military background and consequently deployed to execute punitive policing missions against the natives.

#### **2.4 Police Reforms and Human Rights Practice; 1918-1945**

The colonial police force started in 1888 when shipping magnate William Mackinnon's East Africa Trading Company got the royal charter to administer territories that Britain acquired following the 1886 Berlin conference on the partition of Africa. The charter allowed the company, which later changed its name to Imperial British East Africa, to establish a police force. Machakos Fort, under Mr John Ainsworth was the first interior headquarters of the new company. From here, Ainsworth started recruiting *askaris* to guard the fort and trade caravans. With time, Machakos became a garrison with Kikuyu, Naivasha, Sotik and Mumias being the others that had been established by Mr FJ Jackson who was sent by Mackinnon to make trade and peace with local chiefs. Mackinnon's main empire was not in East Africa, but in Bombay where he had his own guards and police officers whom he shipped to Mombasa where he had leased the Sultan's coastal strip. To control his monopoly, he needed guards. IBEA askaris were ruthless. With its limited resources,

unpopularity and ambitions, IBEA went under and its charter was cancelled in 1895. Thousands of company guards and the unpaid administrators were put under the new protectorate. The term askari was reserved for locally recruited police. The first police station was opened in Mombasa in 1896 and brought in Indian officers who had previously been employed by the company to protect banks and storehouses. The building of the railway saw the arrival of British engineers who had been working on a similar project in India. They brought with them a contractor, AM Jevanjee, who had won the tender to supply labour, material and personnel. In 1900, the railway engineer established his own Uganda Railway Police to man Mombasa's Salisbury Bridge. This was independent of the protectorate police and its work was to deter pedestrians from crossing the railway-bridge and protect the harbour and stations. By 1902, the police service units were in Mombasa, Nairobi and Kisumu. The railway police also controlled the movement of travellers and operated as a police force. In 1926 a new Railway Police unit was established. The police became a tool for the settlers and administrators to enforce their will on Africans, concentrating on minor offences like vagrancy and payment of tax. Despite its motto *Salus Populi*, which translated to "Safety of the People", the force was seen as anti-people. It was due to this that it was later changed to *Utumishi kwa Wote* (Service to All). Perhaps this was the major reform in the colonial police during this period.

During the World War I, there was increased war waged against the colonial government. As such, the colonial police took over most of the duties from the tribal chiefs. The tribal police forces were controlled independently by the local chiefs. It was not easy to realize effective coordination and this was remedied by the passing of the Stock and Produce Theft Ordinance. This made it easy to sanction collective punishments in case where there was lack of coordination and corporation between the central and tribal police forces (Oloka-Onyango, 1990).

After World War II, the struggle for independence engendered more overt open civil disobedience owing to the intensified political consciousness fuelled by the World War II experiences. The failed promises previously given to the returning war veterans progressively catalyzed the decolonization process. Ogot (1974) observed that Africans began to build reassurance that the best way to fight the colonialists was to use their own tools notably western education and economic power and not crude weapons. After World War II there was a growing number of Africans who had benefited from western education and this group was instrumental in invigorating the pace of the struggle for independence. With a growing number of people moving into the urban areas, the emergence of a multi-tribal urban population complemented the struggle for independence especially with the formation of cross-tribal political movements.

While documenting on the post-World, Muthondeki (2009) observed that the colonial police had largely assumed the roles of the tribal police after World War II, and by then it comprised about 5000 officers most of whom were natives. However, the Asians and Africans could only be absorbed into the police force as subordinates. Muthondeki (2009) observed that the tri-racial (British, Asians and Africans) structure of the colonial police force reflected the deep divisions within the colony.

When the Second World War was evident, fresh recruits were deployed in the dreaded frontier districts where they were commanded to lay ambush and deal decisively with the evident threat from external invasion particularly from Somali and Ethiopia. Although police officers were not directly involved in the battle front, they mainly served as guides and interpreters. They were also mandated, in some circumstances, to secretly carry out surveillance to gather intelligence information.

During World War II, the colonial police was relocated to the office of the Attorney General with additional mandate to make it easy to deal with the war related challenges (Oloka-Onyango, 1990). However, war experiences fuelled the spirit of nationalism (Darwin, 1984) enhancing the already advancing rebellion against the colonial government. Accordingly, the operational capacity of the Kenya police was enhanced (Deflem, 1994). The government responded by forming the special branch to carry out patrol duties in urban areas. In addition, an emergency unit was put in place to address Labour unrest while the execution of traffic laws was enforced by

the traffic police. This implied that the world war experiences changed the perceptions of the police and the efforts to restructure the police might have had positive impact on human rights.

From the foregoing analysis, it is evident that the police institution came into effect in the 1920s. At this initial inception, the native officers were recruited to occupy lower ranks with the police stations mainly concentrated in the White highlands, urban centres and railway lines to safeguard the property of the white settlers. For the next 20 years attempts were sluggishly made implement civilian policing. While this was viewed as a good move, it was regrettable that the colonial administration's prioritization of the protection of European persons and their property made it difficult to equip officers to provide civilian policing.

In 1940, the number of police officers was increased in the Reserves and European officers were deployed in the reserves. In doing this, the police became agents of enforcing unpopular colonial administration policies and laws. The colonial officers were called in to enforce laws restricting movement of the poor natives who came to the urban areas looking for livelihood. Most of these people had been dispossessed of their native land and had nowhere to go to except the urban areas to look for a living (Sorrenson, 1967). The study ardently raised pertinent questions with regard to how the natives were appropriately represented on issues of governance when they did not have legally established political outfits. It

seems that this presented a major difference compared to the ancient periods when political representation was divine and actualized through the kings who ruled based on some kind of succession or inheritance.

It is evident that the colonial police force was structured around selective aspirations of the powerful elite. It is in this respect that the Vagrancy Act of 1949 came into force to blatantly restrict movement of the natives while also empowering the police to ruthlessly deport anyone considered a vagabond after failing to secure permanent job in the urban areas in Nairobi (Sorrenson, 1967). Obviously such a law simply did nothing but to empower the colonial police officers to indiscriminately arrest the natives who were out to look for some work to do.

According to Deflem (1994) this was a clear illustration that the colonial laws had no intention of protecting the rights of the natives but were meant to guarantee the safety of the white settlers and their property. Freedom of movement and association especially among different races was controlled. In reality the colonial police was at the forefront of controlling the movement of natives throughout the colonial territory. In this regard, it was obvious that the colonial policing provided a provocative governance dispensation presenting a thematic research inquiry of the issues of concern. The colonial authority already considered the natives as a security threat. Owing to this thinking, it was prudent to raise the question

pertaining to the possibility of providing security to the natives already perceived as enemies.

History confirms that in the colonial policing around the world, state governance was driven by partisan political considerations. A significant event that influenced the reforms in the colonial police force were initiated between 1950 and 1952 by Mr. M. S. O'Rorke whose picture is as shown below:



**Police Commissioner, M.S O'Rorke (1950-1952)**

**Source:** <https://www.kenyapolice.go.ke>

Generally, all colonial policing centered around safeguarding the business interest of the colonial administration and the initial small police force could not extend to the entire country. Of note is that the colonial police force lacked the intellectual and experiential capacity to provide security. The reformations pioneered by O'Rorke pragmatically aimed at improving the colonial policing standards and capacity to deal firmly with the emerging criminal challenges (Sorrenson, 1967). Over time, the special branch incorporated the well-trained British policemen and the district military intelligence officers.

Additionally, Mr O'Rorke facilitated the introduction of more sophisticated equipment such as patrol vehicles with radio communications and aircrafts for aerial surveillance (Foran, 1962). It is significant to note that these new developments did not change the formation of the colonial police force. This is because the latitude of vested colonial power displayed by the colonial police force on behalf of the colonial master was largely limited to preserving the interest of the colonial government.

### **2.5 The Administration Police (AP)**

In 1902, the administration police (AP) was established as a central body for coordinating security services in Kenya. On his part, Kamau (2011) concurs that the Administrative Police was established following the enactment of the Village Headmen Ordinance in 1902. The Village Headman Ordinance sought to progressively bring the natives into the money economy by making it easy for the colonial police force to enforce taxes, control the movement of livestock and to regulate different economic agriculture activities (Savage, 2007). All these were carried out at the behest of the colonial masters.

The village headmen often relied on the tough youths popularly referred to as the village warriors for protection. The warriors and youths aptly assumed the role of keeping watch over during the enforcement of the unpopular policies of the colonial government. They were also used to put in place enforceable mechanisms to deter resistance from the natives. This

study noted that due to resistance, the village warriors were required to provide protection to the village headmen when enforcing these unpopular government policies.

In 1929, the Tribal Police Ordinance No. 10 was enacted (The Kenya Police 1887-1960). The objective of the ordinance was to provide command, administrative powers, training, and armament to the native police, which was renamed the Tribal Police (TP). The act stipulated that it was the duty of the tribal police officers to assist the headmen in exercising the duties imposed by the ordinance. Hence, the act bestowed the tribal police with powers to detect and bring offenders to justice and to preserve the public peace by preventing the commission of offenses, obey and execute promptly all orders and warrants lawfully issued, take charge of all persons who may be committed to his custody by any court or native tribunal and to perform any duties as may be ordered by the district commissioner. As it is evident, the tribal police strictly adhered to the orders issued by the district commissioners who mostly paid lip service to the rights of the natives. To enhance the capacity of the tribal police, mandatory training on prosecution was conducted and the TP progressively underwent improvements in many aspects including the change of uniforms and capacity enhancement (Oloka-Onyango, 1990). The TP and the corresponding training were later taken up by the respective regional administrators (Oloka-Onyango, 1990). In 1958 the TP was transformed into the Administration Police with enhanced capacity through centralized

training on fitness, physical drills, instruction and basic prosecution to enable them prepare culprits in the native courts. The operational scope of the colonial police was strengthened and widened through the act and the mandate changed to completely make it distinct from the tribal police (Oloka-Onyango, 1990). Of paramount significance was that the new changes were comprehensively mirrored in the general structure and arrangement of the police force with the highest rank reaching the level of the sergeant major from the police constable.

The colonial police officers were frequently involved in enforcing petty offenses which escalating the hostility between the colonial police officers and the natives. It was the incessant hostility that compelled the colonial administration to expand the security force by launching many police stations especially along the railway line.

The analysis of the colonial policing left sour taste in the mouth. This is because the cardinal and overt role of the colonial police was to protect the life and property of colonial masters at the expense of protecting human rights. In addition, any forms of reforms or changes in the police served to empower the police to perform this noble goal. Documenting on the law enforcement in the British colonial Kenya, Deflem (1994) observes that the colonial dominance meant that the police continued to be partial in discharging their duties. The colonial police officers supported the wide latitude of powers enjoyed by the tribal chiefs because it was through this

avenue that it was easy to enforce the rule of law and collect taxes as well as perpetuating the racial segregationist system.

## **2.6 The Police Training School and Colonial Police**

As has been pointed out earlier, the colonial police officers were involved in protecting the business interest of the British. Most of the police officers were foreign with a few native officers. Moreover, the laws were foreign and the colonial government preferred the Indian law. This is because the Indian law was believed to be better when applied to control the natives (KNA/QC/NN). Since the personnel lacked adequate training, there was need to make some drastic changes such as empowerment of police officers. Originally, there was a thin line of demarcation with regard to both the police and military training. Baker (2009) noted that the colonial police was initially trained in military orientation characterized by combative approach. As a result, the colonial police officers were unpopular and they were highly feared. This is because the locals associated them with violence (KNA/bb/43/24).

The training was regarded as a significant aspect of improving the effectiveness of the police force. In this regard, a committee was formed in 1910 under Sir James Hayes Sadler, a British explorer, to review the existing training program and endorse the formation of a training school for police officers in Nairobi (Sommer, 2007). From the discussion on police training, it was apparent that the overall aim of the training school was to

strengthen the capacity of the police in terms of intelligence gathering and application of sophisticated equipment. Mutoro (2011) succinctly pointed out that increased training of the police proved successful in subduing criminal activities. As it has been observed, the training was bolted by the Africanization of the police which helped to improve the relations between the police and the public.

However, it was expected that the training would equip the police recruits with new skills in the provision of security. However, this seemed to have been ignored because towards the end of World War I, incessant infiltration of the white settlers into Kenya continued (KNA/PCICP/8/8/8). CHRI (2006) observes that the colonial government remained focused on safeguarding the interest of the white settlers. As a result, Africans were evicted from their lands to pave way for white settlers (Sommer, 2007).

This led to increased security threat from the natives. Therefore, it prompted the colonial government to enhance the capacity of the police officers to provide protection to the white settlers (Ruteere & Pommerolle, 2003). Thus, the mode of colonial police operation was typically discriminating, oppressing and violating the fundamental human rights of Kenyans. Interestingly, instances of police brutality during colonial period were never investigated.

It seems that the brutality exhibited by colonial police force was informed by the need for colonial dominance in Kenya. During the colonial regime,

the role of the police was to exclusively safeguard the colonial interest and all forms of training were to enhance the capacity of the force to do exactly this (Oloka-Onyango, 1990). The orientation of the training focused on how to deal with conflicts and major disorder and least on how to treat the civilians. It's unclear what impact the training had on their practice but what seems to be evident is that the colonial police was punitive in spite of the training.

### **2.7 Declaration of State of Emergency and Mau Mau Crackdown; 1952**

The declaration of the state of emergency in 1952 drastically transformed the structure of the colonial police as all police activities were redirected to the containment of the prevailing dreaded political activities orchestrated by the *Mau Mau* rebellion. In the assessment of Bogonko (1980) *Mau Mau* grew out of the frustration created by the racial discrimination, economic subjugation and intimidation meted on the natives in their own land. It was waged against the British colonial government owing to the increased brutality enforced by the colonial police. In response to the *Mau Mau* onslaught, the fighters were ruthlessly hunted down captured and killed in open day light to send a warning of intolerance to the natives. This is well captured in the picture below:



**Figure 1: King's African Rifles Troops hunting Mau Mau rebels**  
**Source: Kenya National Archives, KA/6/2/52**

In response to the infringement of human rights, it is important to also note that the political intelligence division of the police and the special branch division warned of the impending catastrophic menace to the British nationals and it is out of this warning that the fight against *Mau Mau* uprising continued to escalate (Mutoro, 2011). In this regard, the colonial police was compelled to adopt the paramilitary role in dealing with the insurgency. The results were catastrophic as the victims were senselessly clobbered and killed. Mutoro (2011) observes that *Mau Mau* rebellion grew in response to the growing demand for political emancipation, collective representation and liberty in Kenya.

Given this yearning it can be construed that the *Mau Mau* attacks were well planned and well organized except that the fighters lacked superior weapon. In this case, the attacks were restricted to night time when the fighters were able to ambush the colonial army or defense. This was a case

of guerrilla war fair launched under the cover of darkness using machetes, bows and arrows. Nevertheless, the retaliatory attacks were often fast and brutal. It was interesting to note that women formed a critical part of the resistance particularly by providing food, weapon, medical care and information to the guerrilla fighters. Based on the fact that *Mau Mau* operated under the fall of darkness, the British considered it as a decadent tribal cult guided by wild emotion rather than logic (Ogot, 1995; Sifuna, 1990). Consequently, it was imperative for the colonial government to declare a state of emergency to contain the revolt.

The British response to *Mau Mau* insurgence also involved undertaking a series of major punitive measures against the fighters. For instance, Africans were brutalized, their property destroyed and workers forced to work under police supervision in plantations. A senior retired police officer echoed the above sentiments by adding that “the police forced Africans to dig tunnels and those who refused were whipped and flogged as a way of warning others not to disrespect the law” (O.I Senior Retired police officer Nairobi, July, 2018).

The punitive approach was escalated by the prejudicial attitude the British had towards the black people. This was reflected in the coercive techniques such as harsh communal labour adopted to break *Mau Mau* rebellion. These ruthless measures compelled the *Mau Mau* agitators to escape in the forests from where the colonial police hunted them down.



**Police crossing a stream hunting for *Mau Mau* adherents**

*Source:* Kenya National Archives, KA/6/2/52

Based on the above photo image, it can be construed that the colonial police hunted down the *Mau Mau* fighters like animals and when caught they were butchered. To increase the police presence the number of police stations were quickly set up and the number of the police force quickly enlarged such that by December 1953, the size of the colonial police force had enlarged with 15,000 police officers. Acts of police brutality took the form of slicing off ears, flogging to death, drilling holes in the ear drums of the culprits, castrating victims, among other vices (Bennet, 2013).

On British brutality in their response to *Mau Mau* fighters, Curtis (2007) observes that the large number of deaths during the emergency was sufficient evidence that human rights violations were quite common. In addition, the legal process of punishing the victims of *Mau Mau* crackdown was rough, further revealing an appalling abuse of human rights. The

judges were racially biased and the accused had very little time to prepare defenses for the cases thus giving the police opportunity to abuse human rights (KNA, GO/3/2/73). Pertinent questions, however, emerged as to whether such legal contexts provided opportunity for fairness. In the process, torture was used to coerce victims to confess their allegiance to *Mau Mau* movement (CHRI, 2006).

## **2.8 Reforms in the Police force and Human Right Practice; 1963-1978**

This section explores the changes in the police institution during Jomo Kenyatta's administration. This was done in line with the socio-political reformations of the post-colonial Kenya. Focusing on the Jomo Kenyatta administration is significant. This is because it was the first administration that ushered in independence. As has been pointed out, before independence, the police force was deployed to subdue and oppress Africans at the behest of colonial masters. As a result, the police force was brutal and instances of human rights violations were rampant.

Therefore, with the attainment of independence, Kenyans expected a change from the old system to a new Kenya where the police would protect human rights. Since, independence meant self-rule, it was expected that the police would serve the interest of all and this implied that post-colonial police would be transformed to be of service of the people. The major question addressed in this section is whether the expected independence resulted into changes in the colonial police institution to reflect the realities and expectations that accompanied the attainment of independence.

In this case, the period between 1963 and 1978 is significant because it marked the end of colonial rule and the transition to independence. The previous colonial regime ended with widespread human rights violations with the colonial police force being complicit in these violations. A senior retired politician who was arrested by the Jomo Kenyatta's administration after independence pointed out that:

This was the happiest day in my life. I had spent days hiding from the police... the special branch were after me. Soon I knew I would not hide any more...they would catch up with me and kill me. I knew I would be no more..... but now there is hope...I would walk side by side with police officers.

The views of the above respondent are important in understanding how the cloud of hope had filled the air during independence. The significance, of such hope has to be emphasized. This was the case after the pronouncement that Kenya would be declared independent (Government of Kenya, Legal notice 135, May 29, 1964). However, the major reforms in the police force immediately after independence included the Africanization of the police force with the service men coming from Kenyan tribes. This was supported by a political activist who observed that prior to independence, the police force was swiftly Africanized by changing its entrenched tribal configurations which was traditionally unaccustomed to the tribal reality in the country.

This implied that the police force had gradually been transformed to reflect the anticipated independence. However, a critical question for this study

was whether there were any noticeable changes in the police institution. In the new governance structure, the police seemingly appeared to remain an instrument of protecting the political elite and supporters of President Jomo Kenyatta.

In the same vein, Mutoro (2011) and Deflem (1994) concur that the duties of the police institution were continued in the newly created state. This was evident in their remarkable focus on supporting the new government rather than protecting and safeguarding human rights. What this meant is that in postcolonial era, the police brutality episodes of the colonial administration continued. As such, the police continued to violate human rights in the new political dispensation.

Regrettably, instances of human rights violations continued. For instance, some political leaders periodically overstepped the bounds already established. In doing this, they blatantly used the police to promote violence, murder, frame other aspirants or neutralize opposition for political mileage (Gertzel, 1970). The character of the police in the early years following independence can be understood against the background of political processes that were taking place during that period. Notably, Jomo Kenyatta's government was increasingly becoming intolerant and repressive. Of note here is that the police force was instrumental in this regard in a manner similar to the colonial period. This was achieved through a series of constitutional amendments.

## **2.9 The 1964 Constitutional Amendment**

Scholars have scrutinized the role of the constitutional changes made by President Jomo Kenyatta. For instance, Amutabi (2009) observes that the constitutional amendments passed immediately after independence empowered the president to detain the civilians even without trial. This lends credence to the fact that it was basically a question of suppression and repression of civil disobedience.

In 1964, a constitutional amendment was crafted to neutralize the force's autonomy and independence by making it an appendage of the civil service (CHRI, 2006; Oloka-Onyango, 1990). The constitution was also changed to make Kenya republic by a polishing the senate and regions. The associated amendments transformed Kenya into a single party state with a complete dominance of the KANU as the only political party. The civilians were compelled to become members of KANU or remain partyless.

Before the 1964 constitutional amendment, the police service commission and the National Security Council had been created to oversee all the police operations. At independence, the role of the police service commission was to legally advise the president supposedly on who to appoint as the inspector general. As already alluded to the police became an extension of the civil service thus limiting its autonomy and its operations (Oloka-Onyango, 1990). Moreover, the president jettisoned police autonomy by retaining the paramilitary structure of the colonial police for selfish gain. Additionally,

the president employed the police to suppress political dissent and perceived enemies whether real or imaginary.

The above discussion implies that the constitution crafted at independence envisaged a neutral and professional police force (Ghai, 2002). Sanger and Nottingham (1964) contended that following the constitutional changes in 1964, the police force changed from that envisaged with autonomy and neutrality to one under the control of the president. This had ramifications on the rights of the citizens as the police became more of a tool in the hands of the president who had powers to use them when he deemed necessary.

### **2.10 Preventive Detention Act in 1966**

In 1966, the Preventive Detention Act was enacted to operationalize the preventive detention law that allowed the government to detain civilians when the home affairs minister deemed it to be appropriate under the pretext of preserving public security. This law deprived the citizens' civil liberty as it served as a precautionary measure to ensure that the administration of justice was not frustrated or obstructed prior to criminal conviction (Okoth-Ogendo, 1972). This implies that an incarcerated person under the new law would be detained in custody until a trial takes place. The decision to eschew the criminal justice system through unprecedented preventive detention violated civil liberties. The preventive detention law subjugated citizens to whims of the executive authority that often changed from time to time (Okoth-Ogendo, 1972).

Therefore, the violation of human rights by the police was amplified with the passage of this act. Ghai (1972) concurs that the role of police in this legal dispensation was to secure the government and to eliminate political disruptions. With this amendment, civil liberties and freedom of Kenyans remained at the behest of the president who now had the enshrined right to declare a state of emergency even without a corresponding urgency to do so. As a result, the president would consequently use the police to enforce curfew during the emergency.

### **2.11 The Preservation of Security Act Amendment of 1969**

In 1969, The Preservation of Security Amendment Act was passed. The act provided for the administrative and remedial measures to be executed whenever there was a perceived national danger or calamity. Some of the ascribed considerations were the infringements on the fundamental rights and freedoms, safety of citizens and property occurring due to a suspected mutiny, war, civil disorder and conspiracies to overthrow the government (Kagari, 2003). From the initial ideation, the act seemed to guarantee protection of human rights. However, the Act was drastically changed to delineate its scope and operational limit and to distinguish public from special security measures (Nzau & Guyo, 2018). In this delineation, the public security measure could be operationalized via a presidential declaration without requiring the expressed approval from the parliament. Accordingly, special public security was allowed to be enforceable by a presidential order (Nzau & Guyo, 2018).

In either case, the president could invoke all or some of the powers provided at will or when in his opinion such powers were necessary for the preservation of public security. This included the power to make subsidiary legislation curtailing movement of persons and any other freedoms previously enjoyed under the law (Okoth-Ogendo, 1972). According to Nzau and Guyo (2018), the speed with which the new laws were enforced and the political circumstances surrounding their enforcement raised a lot of concern. This is because the amendment only served to severe civil liberties at the prerogative of the government inter alia in the drastic concentration of security powers in the hands of the executive.

This led to a violation of electoral sovereignty and further violation of human rights (Okoth-Ogendo, 1972). Part of the concern was that the amendment gave no reassurance of the roadmap as to what would be done as a recourse in the event the application of the laws hampered civil liberties. In the words of a retired senior police officer who served as a PPO, the amendment bestowed detention-without-trial powers to the president (retired senior police officer, KII, 2018).

Ross (1992) observes that the law gave the president powers to violate human rights in the pretext of protecting government's positions, security and status. A politician who served as Member of Parliament (MP) during Jomo Kenyatta's administration noted that the provisions of the law gave the police as the agents of the president unconstrained powers of arrest and

detention; consequently, the police used the powers to harass and oppress anybody they regarded as a criminal (former politician and MP, KII, 2018).

### **2.12 The *De Facto* One-Party State**

Through the 1964 Constitutional Amendment, Preventive Detention Act and The Preservation of Security Amendment Act, Kenyatta succeeded in consolidating powers around the presidency. This included the capacity to suspend or dissolve parliament. Consequently, Kenya became a *de facto* single party state often with ulterior motives of ensuring that there was no political competition to challenge the government excesses (Nzau & Guyo, 2018). Akech (2011) noted that the absence of political competition enabled the president to control the appointment of key government officials such as the presiding officer or the speaker from among the people he considered loyal.

In parliament, this strategy enabled the president to control the agenda deliberated within the house. However, the president's acts blatantly violated the right of expression. Accordingly, the representatives could not articulate the issues affecting the electorate (Amutabi, 2009). This opened a window for the police to infringe on human rights. This is in tandem with the perception that Kenyatta was sensitive to any form of opposition or criticisms especially from those who blamed his government for the economic or social challenges facing the citizens (Odinga, 1995). In an oral interview, a politician who was active during independence noted that

contrary to the expectation of Kenyans, Kenyatta turned to the use of patronage. In doing this, Kenyatta took full control of the state tools such as full control of the police force (a politician who served during independence, O.I, 2018).

Gimode (2007) concurred that Jomo Kenyatta did not live up to his words as he perfected a reward system. He also adopted the divide and rule policies borrowed from the colonial system mainly to control the police force (Chege, 2009). However, major changes took place in the police force especially in regard to the provision of communication equipment, planning and strategy execution (Nzau & Guyo, 2018).

The training curriculum was reviewed to incorporate the internationally recognized standards of egalitarian policing with a bias on human rights protection, professionalism and accountability. In 1967, the centralized Administration Police Training School was transferred to Embakasi in Nairobi. In 1978, more changes took place in the AP hierarchy when the rank of the police inspector came into force. This preceded remarkable milestones notably the formation of specialized units, modern equipment, efficient communication system, and recruitment of female officers.

### **2.13 The Shifta War and the Administration Police**

The crackdown on the Shifta insurgents in the Northern Kenya in the 1960's portrayed the Administration Police in negative light (Lewis, 1963). The Shifta War which was active from 1963 to 1967 was basically a

secessionist conflict by the Somali community in the Northern Frontier District (NFD) whose outstanding agitation was to secede from Kenya. In response, the police unleashed terror on individuals who were arrested without warrant and detained without trial during the *shifita* war. During the *shifita* war, Whittaker (2008) observes that the security forces arrested and detained civilians without warrant for 28 days. Hence, the *shifita* war came with various forms of violence. For instance, the bandits were executed for agitating for social change in the North Eastern province in the period 1963-1967 (Lewis, 1963). The residents of this region desperately sought to unite with Somalia but the government blatantly declined to allow the same from happening. The mission of the *shifita* revolt was to consolidate and return the affected districts to Somalia. According to Lewis (1963) the discontent had grown beyond repair as a result of the political activities in the Horn of Africa and the incessant secession demand from the local leaders. Motivated by a large number of youth from the six districts taken for military training, The Northern Province People's Progressive Party (NPPPP) escalated the agitation for the secession. These young people trained in military skills voluntarily joined the movement to provide backing for the demand for secession. The secessionist movement opted for a guerilla war against the government's failure to listen their request to secede.

The plight of the movement was made worse by the refusal of Britain to support them insisting that the government ought to have been supported.

However, the movement remained ruthless often causing deaths of government supporters in the region (Lewis, 1963). This heightened tension compelling the government to alienate the pro-secessionist leaders especially when the chiefs and political leaders chose to boycott elections. The threat from this movement became apparent and a real threat forcing the British government to undertake a military operation in the area. The Kenyan government also responded by declaring a state of emergency in the area and deployed the military to crush the secessionist soldiers (bandits). The mayhem created forced the military to adopt diverse strategies including the search and destroy approach in which the troops specifically hunted down the rebels and their sympathizers in areas and killing them indiscriminately. While the intention was to secure the region from seceding, the ruthlessness with which the police force operated grossly violated human rights. For instance, the routine use of the automatic rifles was replaced by explosives such as mortars, grenades and landmines. Although the administration police performed their assigned duties with agility and distinction, indeed they were rightly accused of serious violation of human rights as the aftermath of the insurgency caused the loss of more than 10,000 lives.

#### **2.14 Appointment and Sacking of Government Officials**

Wanton violations of human rights were observed in the appointment and sacking of the cabinet, top civil servants and the provincial administration. The president also reigned over the bureaucracy and determined judicial

tenure and the parliamentary calendar (Nasong'o & Murunga, 1999). All these made him to be perceived as a no-nonsense person who controlled the country by simply putting in place a domineering network of loyal adherents.

Loyalists were appointed to top positions in lucrative public institutions including major parastatals (Nasong'o & Murunga, 1999). For political survival, the provincial administrators and the police were compelled to comply with the presidential direction or inclinations rather than to uphold the law. Bagaka (2011) observed that such *modus operandi* negated public accountability and bred human rights violations, corruption and impunity. Anderson (2005) concurred that Kenyatta proceeded to reward his loyalists with land, money and power.

In doing this, Kenyatta ensured that legitimate heroes were isolated while critics were met with fury and intolerance. For example, Hon. J. M. Kariuki, a socialist politician, was assassinated under suspicious and unclear circumstances supposedly for questioning government corruption, including injustices in land redistribution. Apart from J.M. Kariuki, other political leaders such as Oginga Odinga, Tom Mboya, Ronald Ngala, Kung'u Karumba, Bruce MacKenzie, Pio Gama Pinto and Argwings Kodhek were detained without trial (Kanyinga, 1994). This presents clear evidence that individual freedoms were curtailed and critics lost their life and freedom in the process. There is no doubt that the police was part of the scheme to

undermine human rights. Just like during the colonial period, the special branch amplified its brutality and violence on the political opponents of Jomo Kenyatta especially during one party state.

According to Amutabi (2009) Jomo Kenyatta preferred to isolate and frustrate his opponents by silencing dissident voices. These violations of human rights reveal an intolerance attitude toward political dynamism. By disallowing space for political freedom, Jomo Kenyatta epitomizes partisan policing responsible for gross violation of human rights. As such, his approach was not different from that of the colonial police orientation. In the words of a retired senior police officer interviewed in Kayole, the government depended largely on the British security personnel for security management and operation (retired senior police officer, KII, 2018).

This is corroborated by Branch and Cheeseman (2006). They observed that most of the British officers who had experienced the *Mau Mau* insurgency and served in countering opposition in the colonial period continued to offer services in the Kenyan police. Anderson (2014) observes that Jomo Kenyatta retained most of the colonial state structure especially the law-and-order aspects deliberately to suit his own political ambitions. The point is that, the manner in which Kenyatta's police cadre was constituted did not significantly depart from colonialism.

This is because he retained the top unit of the colonial police force. It is, however, important to question if there were qualified Africans with

requisite training, skills and capacity to offer elite presidential security. Indeed, in most public service sectors including the judiciary, and even the executive, colonial personnel were retained. The most important issue is whether the orientation of police force changed from maintaining status quo or service to the people.

Successive post-independence leaders maintained the culture of utilizing the police for personal gains. For instance, Jomo Kenyatta adeptly used the police force to suppress and silence dissenting voices and government critics. The widely reported police insensitive abuse of power occurred in 1969 when the police fired into a crowd protesting the president's visit in the area. It was reported that this act of highhandedness resulted into the loss of 11 lives and hundreds of injuries. Branch (2011) contends that the provincial administration remained unchanged such that by the sunset of 1960s, there were over one thousand British personnel serving in the police and civil service in Kenya.

This prompted Jaramogi Odinga (1995) to point out that there was still no independence (*Not Yet Uhuru*). The phrase *Not Yet Uhuru* is captured in Odinga's autobiography written in the 1980s while under house arrest. *Not Yet Uhuru* gives a vivid and authoritative account of the history of Kenya. From the perspective of a man who was at the centre of the liberation struggle and the making of a new nation, it is apparent that not much really changed. Similar sentiments were echoed by Kwame Nkuruma who saw

the events folding after independence as a demonstration of neo-colonialism in which African countries continued to be controlled by former colonialists through indirect means such as retaining the colonial police structure.

Jaramogi Oginga Odinga deconstructed the fallacious and sloppy historical narratives peddled by the government propagandists, which are deliberately tailored to vilify the true national heroes and exalt villains. Jaramogi lays bare his frustration with Kenyatta's turn against fellow freedom fighters into his primary casualties and enemies. In *Not Yet Uhuru*, Jaramogi accuses Kenyatta of being an imperial master stooge who renegades on the spirit of nationalism, vision, and mission for the new Kenya.

Jaramogi considered Jomo Kenyatta a true betrayer of the liberation struggles. He noted that Jomo Kenyatta was mistakenly considered a champion of democracy with the appetite to tolerate opposing views, but as evidence eventually revealed in the post-*Not Yet Uhuru* Kenya, Jomo Kenyatta's government paralyzed the existence of opposition politics in independent Kenya and allowed fear to reign in the country. Although *Not Yet Uhuru* did not make direct reference to the police, the critics were harassed and savagely tormented by the police.

In this regard, Kenya had basically gained flag independence but the mode of rule and operation remained akin to that of the colonial master with the black elites suppressing their fellow black minorities. In relation to this, a

retired provincial commissioner during Jomo Kenyatta era concurred that Jomo Kenyatta's administration used the police institution to suppress political opposition in order to get power (retired provincial commissioner, K.I.I. 2018). As a result, human rights concerns during Jomo Kenyatta's administration, just like in the colonial period, were less considered and the police was the major instrument of suppression.

### **2.15 The Composition of the Police Force (1971-1978)**

When Kenyatta initiated the new changes in the police force, there was a deliberate determination to ensure the tribal representation across most important cadres of the police force (Hornsby, 2012). However, the main factor determining who was recruited into the service was tribal loyalty. It is on this basis that Jomo Kenyatta appointed Bernard Hinga to the position of the police commissioner in 1964 obviously to take care of personal interests (KNA, KA/4/3).

Similarly, the first three post independent police commissioners hailed from the same tribe. This is not because there were no qualified police officers from others tribes who could serve as police commissioners but the decision was influenced by patronage and personal interests. Consequently, all the key branches and departments of the police force were led by officers drawn from the Kikuyu community (Kanyinga, 1994). This violated the rights of other competent officers from other tribal groups by denying them a chance to serve in these positions. Because Kenyatta relied on the GSU, a paramilitary wing of the Police to deal with internal threats, it was necessary

for him to ensure that the composition of the GSU hailed mainly from the Kikuyu tribe.

Merit was rarely considered as the appointments were clearly politically motivated even when it was necessary to consider seniority as a criterion for promotions (N'Diaye, 2002). In addition, police officers from the president's tribality who seemingly portrayed worse behaviour after independence appeared less likely to be dismissed but more like candidates for promotion.

This implied continuous marginalization of other communities. This was based on notion that a community whose son was in power benefited most from the state resources including the apparatus of violence (Throup, 1993). According to Gimode (2007) Jomo Kenyatta orchestrated the state violence through the appointment of his loyalists in critical and vital dockets such as security.

Hornsby (2013) observes that Kenyatta's private security unit was formally conscripted into the police force led by an *ex-Mau Mau* fighter, Wainyoike Thungu. In as much as the British continued to nominally lead the presidential private unit, senior police officers from the Kikuyu community appeared to have the upper hand. In a key informant interview with a political detainee during Kenyatta's administration, it was evident that the security force was tribally biased in favor of the kikuyus. The Kikuyus held

senior ranks and continued to lead the force until 1978 when Kenyatta died (political detainee during Jomo Kenyatta, KII, 2018).

These remarks concur with Odhiambo (2004) who observed that the civilian security officials were tribally biased in favour of the Kikuyu community. In addition, Munene (2012) observed that the kikuyu military officials built close working relationships with powerful individuals to straddle the police force, civil service and the legal network for their own political and selfish gains.

Although most of the senior police officers came from the kikuyu community, not the entire Kikuyu community benefitted from state goodies and favours. A human rights activist during Kenyatta era noted that only those who were friendly and supported Kenyatta enjoyed his power. Those who opposed him whether kikuyus or not were killed in cold blood (human rights activist, KII, 2018). The activist also stated that Jomo Kenyatta's close friends who found their way into power did all they could to ensure that government critics were silenced (Kariuki, 1996). These acts of human rights violations were usually orchestrated by the state security resources with the police as major instruments of human rights violation. Ajulu (2002) argues that under Kenyatta tenure, not only was the police force ethicized but was used to protect and maintain the administration's inner stability. This is supported by the perceived contention that the structure and operations of the police remained significantly the same in the midst of significant reforms. This is because the police was biased and existed to

serve the interest of the political elite rather than protecting the welfare and safety of all citizens. On how Kenyatta consolidated power, it was evident in the analysis of the life history that:

To me this was the start of power hunger and real dictatorship .... Jomo Kenyatta seemed to fear imaginary threat to his rule. You know I was detained and nobody cared to tell me my mistake. People who were happy started saying that the Kenyatta after independent was a different person. You know power corrupts. He did not allow people to express their freedoms (Life history)

The observation above underscored the need for changes in the police force. The changes were significant as they would influence the perception that the general public had towards the police institution. Efforts to change the negative perception influenced a shift in the type of uniforms that the policemen wore.

In a key informant interview with a retired senior police officer who served during Jomo Kenyatta presidency, it emerged that in terms of dressing after 1963, the police felt more of men when they stopped wearing shorts (Retired senior police officer, KII, 2018). This change led to the fading away of the colonial mentality as far as the force was concerned. However, this did not stop human rights violations. Instead, the police were more invigorated in the relentless violation of human rights.

Moreover, a focused group discussion with human rights activists during the Jomo Kenyatta administration revealed that the wearing of trousers transformed the mentality of the officers but did not subdue their oppressive mentality. The change of police uniforms was part of the efforts

to portray to the public that the Kenya police force had changed and that Kenya was truly independent. It was an outward sign that Kenya had thrown away the colonial yoke (Kyle, 1999). However, the level of education of those who were joining the police still remained very low. A political activist during Kenyatta era noted that most of the people who joined the force had no idea about human rights (political scientist during Jomo Kenyatta administration, KII, 2018). Consequently, most of them took advantage of their training and power to oppress the citizenry from whom they wanted the king's favour (Chege, 2009). Generally, during this period, there was apprehensive kind of relationship between the public and the police. This provided an impetus for human rights violations.

## **2.16 Conclusion**

This chapter has traced the origin of the colonial police force in Kenya. It has been argued that the colonial police force emerged from the dominance of the British colonial rule in Kenya. The colonial administration followed the basic principle of indirect rule. The colonial police force was deployed to enforce colonial rules and to suppress dissidence at the behest of the colonial master. It was established that the colonial police force was harsher, more unpredictable and more violent. In particular, the colonial police committed heinous acts to make Africans confess their guilt.

Significantly, the colonial police force was never comprehensively transformed but remained complicit in the atrocities committed by the

colonial government. In fact, police brutality was so common, particularly during the emergency period. It appeared that the colonial police was formed with the mentality to intimidate Africans and force them into submission. Although there were remarkable attempts at changing the nature of the colonial police force, the main goal of the colonial police was to entrench colonial rule, enforce tax laws, labor laws, execute death sentences and protect the colonial masters. All of these had severe consequences on human rights violation in Kenya. Some of the changes in the police force included enhanced drill and discipline, introduction of new uniforms, setting up of a Fingerprint Bureau and the appointment of more inspectors. Nevertheless, the senior ranks were occupied foreign officers assisted by the Asians with the lower ranks comprising entirely of Africans.

The colonial government also deployed the police to thwart active and passive resistance and rebellion from the local communities. This was enhanced by expanding the security forces by launching new police stations along the railway line. However, all these new developments focused only on empowering the police force to protect the colonial interest instead of promoting human rights. In deed the colonial administration did not intend to allow the police force to serve the interest of the common Kenyan. Rather their intention, purpose and objective was to serve the interest of the colonial master, bring the Africans to the money economy through cheap and free labour and to keep the Africans out of the white settlement, consequently infringing on their rights and freedoms.

The chapter has also examined the reforms in the police institution in Kenya during the Jomo Kenyatta's administration. During this period, the number of personnel in the police force and the capacity of the force strengthened through advanced formal training. The force was also gradually Africanized as the number of trained Africans serving in senior ranks increased. The uniform was changed from the use of shorts to wearing trousers. Albeit these changes, Jomo Kenyatta retained most of the enduring features of the colonial police to deliberately serve his personal political interest. In addition, the constitutional amendments (Preventive Detention Act and the Preservation of Security Act) empowered the president to deploy the police to scuttle human rights. Through the amendments, the autonomy of the police force was removed and the president retained the power to subject people to detention without trial. Consequently, the security forces continued to harass dissidents and in many instances the police officers were complicit in murders of prominent personalities deemed as threats to Jomo Kenyatta's administration.

Moreover, the tribal biases in the police force existed and senior police officers from the president's tribal background occupied senior police ranks at the expense of other tribal groups. As a result, opposition to the government was easily silenced. Hence, Jomo Kenyatta's administration was marked by violence and intimidation leading to human rights violations. The police force was reduced to a state apparatus for protecting just a few at the expense of promoting the rights of all Kenyans. Just like

the colonial period, not much changed in the post-independent period as the defining features of the colonial policing were carried over into the independence period. In this post independent period, the police continued to serve the interests of those in power who would influence their promotion. Jaramogi Odinga's *Not yet Uhuru* and Kwame Nkuruma's *Neocolonialism* aptly describes the state of policing during Jomo Kenyatta administration. Even with the political reforms taking place across the world, threatening dictatorial regimes, the police was used for the purpose of maintaining power through torture, maiming and killing just like during the colonial period.

**CHAPTER THREE**  
**CONSOLIDATION OF STATE POWER, POLICE FORCE AND**  
**HUMAN RIGHTS PRACTICE IN KENYA; 1979-2002**

**3.1 Introduction**

This chapter interrogates the implications of police reforms on human rights practice during the reign of President Moi. Upon the demise of Jomo Kenyatta, Daniel Arap Moi took over after having served as the vice-president from 1966-1978. There was much anticipated hope that Moi's leadership would be different especially with regard to the deployment of police officers to safeguard human rights. The chapter highlights the legislative changes that are perceived to have influenced the operation of the police force and how Moi's administration deployed the police force to consolidate state power.

The chapter argues that Moi maintained Jomo Kenyatta's modus operandi and the consequence of this was the emergence of an authoritarian system of governance intolerant to criticism and which used the police to consolidate state power. It is captured here that Moi perfected the art of political patronage; rewarding loyalists and using the police to punish dissenting voices. It is noted that Moi centralized all the powers under the executive in order to gain full control of all the arms of the government. Through the repeal of several sections and acts of the constitution such as the Public Order Act the police acquired enormous power to curtail freedom of speech, association and assembly. The chapter concludes by

looking at how Moi's administration was marked by incessant instances of civilian arrest without warrant, detention without trial, torture and politically motivated assassinations.

### **3.2 Police Reforms and Human Rights Practice during Moi Era**

Daniel Arap Moi became the home affairs minister in 1964 and then the Vice-President in 1967. Both the prisons and the police departments were domiciled in the ministry of home affairs until 1966 when the police department was transferred to the Office of the President. In 1978, Jomo Kenyatta died in Mombasa statehouse and Moi took over the leadership in an acting capacity before fresh elections were held (Ng'weno, 1978). Being the only candidate, no elections were held on the 8<sup>th</sup> of November, 1978. However, Moi received unwavering support particularly by Kenyans who had become dissatisfied and weary with Jomo Kenyatta's favouritism, nepotism, tribalism and misrule. Being an outsider, Moi was regarded as the best replacement to champion for nationalism. Buoyed by a promise to eradicate tribalism, corruption and nepotism and expand freedoms in the pre-election campaigns, Moi secured unopposed presidential bid and an eventual unanimous election. Immediately after elections, 26 political prisoners were released, cracked down drunkards and spoke determinately against human rights infringements, tribalism, corruption and smuggling and Kenyans were convinced he was going to deliver on his campaign promises and manifesto (Adar & Munyae, 2001).

Therefore, Moi ascended to the presidency portraying himself as a statesman with benevolent qualities, whose speeches were frequently filled with constant allusions to the need for national unity. These pronouncements resonated with the ordinary *mwananchi* who considered him to be the right candidate to steer the country in the right direction. Kenyans also interpreted these actions as an indication of the dawn of a new era, a conducive environment for adherence to democracy and respect of human rights.

### **3.3 Re-Uniting the Country through the Nyayo Philosophy; 1979-1982**

Upon ascending to power, Moi began on a high note appearing to accommodate political leaders previously denounced by Jomo Kenyatta's administration. He tried to create an impression of an administration that valued human rights and that was ready to address the problem of tribalism, corruption and oppression that had already entrenched itself in the country (Godia, 1984). There were dramatic political reforms that included presidential pardon for political prisoners detained during Jomo Kenyatta era. These included three former members of Parliament, Thiongo, renowned novelist and Wasonga Sijeyo, a pro-Soviet leader from the Luo tribe. A retired senior police officer who worked during Moi era noted that in addition to the release of the political detainees, the president took up quick actions against perceived corrupt civil servants leading to the resignation of some civil servants including the police commissioner, Bernard Hinga (retired senior police officer, KII, 2018). This has been

supported by Adar and Munyae (2001) who noted that these moves initially endeared Moi to the public because they portrayed him as a nationalist who meant well for all. Moi also pledged to follow the footsteps of Mzee Jomo Kenyatta. This led to the birth of the Nyayo philosophy which he promoted throughout his leadership. Nyayo is a Swahili word that means footsteps or footprints. Mburu (2003) postulates that Nyayoism meant continuation and appreciation of the leadership of the former president and that most of the policies would be followed to the later. In his early speeches, there was a constant allusion to the need for national unity as enshrined in the Nyayo philosophy of peace, love and unity. Thus, Nyayoism was a spirit of nationalism which identified the different diversities and championed for the integration of the interdependent parts to stimulate development and cohesion within the state (Maxon, 1994). Since the country was struggling with post-colonial problems of inequality in terms of resources, state jobs and access to education, the ideology of following the footsteps of the colonial fighters was core in Moi's manifesto. Based on the three pillars of love, peace and unity, the slogan was expected to unite Kenyans and promote national development (Widner, 1992). In a focus group discussion with professors in political science versed with political development during Moi era, it emerged that Moi adopted the Nyayo slogan to control the state, consolidate more powers and legitimize his leadership. It appears that the underlying motive of Nyayoism was not benevolent.

According to Throup and Hornsby (1998) Moi embraced the Nyayo philosophy for personal interests. Nyayo philosophy was mainly geared towards accumulation of political power and legitimizing his leadership. Mburu (2003) postulated that Nyayoism was a camouflage mechanism for Moi to capitalize on the injustices and failures of the previous leadership to secure the psychological support of the people. For the masses to be moved, Abimutabi and Were (2000) postulated that a charismatic leadership had to assume a ransom approach to win all and manipulate them for his or her ends. Therefore, there was insignificant attention directed to the protection of civilian rights during Moi's tenure. The intended peace, love and unity had transformed into a political gimmick and bait for political subjugation (Bayley, 1991).

### **3.4 Moi's Response to Opposition and Political Criticism**

From the beginning, Moi's political opponents considered him as a passing cloud who would not rule for long. This was motivated by the thinking that his presidency was going to be temporary before the real rulers re-grouped or emerged. The critics underestimated Moi because he appeared to lack the capacity for independent judgment and seemed to be overawed by power (Maxon, 1994). In addition, Moi was basically unrecognized by President Kenyatta's close allies despite being loyal and having served as vice-president from 1966-1978. Therefore, Moi faced a strong antagonism mainly the Kiambu Mafia and close political elite. This group felt that someone else from their backyard would have succeeded Jomo Kenyatta as

was evident in their attempt to alter the constitution to deny the vice-president a chance to inherit the presidency in the event the president died. However, a host of leading politicians denounced such a change fearing it might destabilize the country. The failure to change the constitution safeguarded Moi's position as the heir apparent.

However, the unfolding political realities implied that Moi found it difficult to discard the post independent governance structure pioneered by Jomo Kenyatta. In several fronts Moi was compelled to inherit the predominantly dictatorial powers vested in the office of the president. Gradually, Moi began to turn his eyes on the very promises for good leadership and became more interested in centralizing state power and neutralizing opposition to his leadership (Maxon, 1994). It was easy to do so owing to the fact that he had interacted and secured the loyalty of the police institution during his tenure as the vice president and minister for home affairs. This view is echoed by Amutabi (2002) who noted that 14 years of interaction with the police force not only gave Moi a chance to establish a strong influence in the government but also an opportunity to develop a wide base of knowledge that he later manipulated for personal gain. With the police under his arm, Moi set up an autocratic rule worse than Jomo Kenyatta's authoritarianism. He gradually established a patronage system that undermined the rule of law and respect for human rights. Eventually, the president recalled the delegated responsibilities and

became personally involved in entirely every aspect of governance (Adar & Munyae, 2003).

Part of his strategy to control the police was to systematically usurp the functions of the police by ensuring that all the police departments were headed by his loyalists. This was the same strategy adopted by Jomo Kenyatta. Moi responded to insecurity and instability with high handedness and considered criticisms as personal vengeance and affront. He used the police to curtail civic liberty through repression. This undermined professionalism in the police institution because it discouraged the police officers from engaging in the best practices that safeguards human rights. Moi considered the police as an intrinsic part of the state oppressive apparatus whose officers recklessly perpetuated widespread human rights violations (Amutabi, 2002).

Moi also managed to maintain de jure state by using the police to harass and disrupt civil liberties thus infringing on fundamental freedoms. This suggests that human rights abuse worsened during Moi era. This is contrary to the initial benevolent qualities Moi demonstrated when he ascended to power. Instead Moi allowed corruption, tribalism and human rights abuse to rear their ugly heads in his government and preferred to consolidate power and broaden his political base and support at the expense of human rights (Maxon, 1994). This was a continuation of the systematic institutionalization of authoritarian and oppressive one-man state rule that

gradually turned out to be the chief perpetrator of innumerable human suffering. For instance, Anyona's attempt to register a political outfit party in 1982 infuriated Moi who struck back hard by imposing a blanket ban on political parties except KANU while also criminalizing all forms of competitive political activities (Widner, 1994). The goal was to outlaw multipartism. As a result, members of the legislative assembly and the interests they represented surrendered their constitutional rights to the executive as they were denied legitimacy of representation in Kenya's legislature. This forced allegiance to the president as an obligatory prerequisite for political survival (Korwa & Munyae, 2001). Moi continued to suppress dissidence by insisting that it was the responsibility of the government to preserve public security even if it meant eliminating a few people who questioned his rule. Consequently, efforts to advocate for human rights seemed to run against Moi's rule and the police continued to violate civil and individual liberties. Moi's pattern of rule, political ideologies, the urge to usurp all the delegated power especially to the judiciary and parliament only worsened agitation for civil liberties. Although publicly acknowledging peace, love and unity, he persistently remained adamant and refused to respect the sanctity of human rights, hardly ever fulfilling his obligation to the citizens. Human rights violations accelerated after the attempted coup of 1982 (Maxon, 1994).

### **3.5 The 1982 Attempted Coup and Police Brutality**

The coup attempt of 1982 significantly marked a turning point in the political history of Kenya (Maxon, 1994). In 1982, a small group of soldiers emanating from the Kenya air force animatedly tried to oust the government. However, their attempt was thwarted with the help of the GSU and later the regular police.

The coup was influenced by the dissatisfaction that had grown within the first four years of Moi's presidency. As elaborated in a key informant interview with a politician who served as a member of parliament in Nairobi in 1982, the attempted coup was the second in which part of the security forces sought to overthrow the government (former Member of Parliament, KII, 2018). Widner (1992) recollected the accusations leveled against the government particularly coercing every become a member of only one party, censoring the media, violating human rights, ruthlessly clobbering dissent reminiscent of the colonial days. A gang of local tyrants with the protection of the government emerged terrorizing and intimidating the civilians. Also rampant exploitation and dishonesty had made life almost intolerable. The crackdown was on dissenting voices to KANU's misrule (Godia, 1984).

However, Moi applied all the means available to counter the coup (Gleick, 1998). A retired provincial administrator during the Moi administration interviewed in Roysambu, Nairobi outlined how the coup was met with the highest level of human aggression and vengeance with the administration police placed at the forefront for unleashing terror (retired provincial

administrator, KII, 2018). During the crackdown, anybody found without a national identity card were put in a truck and taken to the Tsavo National Park where they were killed and their bodies dumped there. Gimode (2007) observes that the 1982 attempted coup was marked by rape, innocent killings, torture of innocent individual and arrests without detention. This was the peak of gross violation of human rights during Moi's leadership. Moreover, a senior retired senior police officer who served during Moi's era, noted that there was massive violation of human rights by the police to such an extent that within the three days that the attempted coup lasted many women were sexually harassed and killed (senior retired police, KII, 2018).

Mutinga (2012) recollected how over 100 soldiers and 200 civilians lost their lives during the coup. The casualties comprised of two German nationals, an English woman as well as a tourist from Japan. In addition, two Asian women committed suicide after being raped. Also, about 300 air force personnel were detained. Many more lives were lost as the hospitals accounted for many people treated with gunshot wound. Air bone movement was disrupted as the airport remained closed with civilian traffic and that flights to western countries rerouted to Saudi Arabia. Moi also imposed an indefinite dusk to dawn curfew. In the ensuing confusion, looters smashed windows of automobile showrooms and stole cars while stores were broken into and boxes of groceries, electrical appliances and furniture looted.

### **3.6 Reconsolidation of the Powers; 1982-1991**

After the attempted coup of 1982, Moi instigated a series of constitutional amendments that saw him reconsolidate more powers including taking charge of the entire government. These amendments provided the police with a legal justification to oppress, intimidate and harass the citizens (Adar & Munyae, 2001). In 1986 several laws were passed to dictate the tenure of the perceived autonomous government agencies such the judiciary, the attorney general, state house controller, auditor general and senior judges. In addition, section 72(3) of the constitution was enacted in 1988 to enable the police to detain an arrested person even upon unjustifiable suspicion for engagement in treasonable offence. With such powers, Moi used his position to further stamp his authority over all arms of the government. Given that Moi was directly in control of the armed forces, it was easy to deploy the police force to propagate his ideologies and intimidate political critics.

Samora (2014) concurred that Moi exercised his full grip on power by disbanding the Air Force and reconstituting the secret security apparatus under the office of the president. In the major police formations, new recruits were resourced mainly from the loyal tribal groups (majorly from the Rift valley). In an interview with a county commissioner who worked during Moi era, the reconstitution of security departments granted the police the power to detain KANU critics for 14 days while forcing them into submission (County Commission, KII, 2018). It is in this view that Samora

(2014) noted that a powerful elite police force emerged to thrash any suspicion and threat to the governance. Plain clothed cops listened to and acted on whispers in the wind and anyone suspected of expressing opposition was detained in the Nyayo chambers at Nyayo house without trial. Schmitz (2001) considered the Nyayo torture chambers as a place of nightmare and dread to those who found themselves there. A retired senior police officer who served during Moi's era noted that torture was meted out to the Nyayo House detainees due to their political stands and were often coerced to submit to the activities of the administration in power.

The analysis of the life history revealed that:

In 1985 Nyayo Houses where Nyayo chambers were situated were constructed in Nairobi with the help of the British and the United States. Here political dissidents were detained in uncouth conditions and tortured while being interrogated. The form of torture included the use of electric shocks, water bonding, rope torture and starvation. This was done to force the victims to provide information they knew about the government enemies. The worst form of mistreated included dismemberment and disfigurement. This was a terrible ordeal that reasonable human being can subject another under any condition" (Life History)

These sentiments supported the perception that the infamous Nyayo chambers were transformed in torture chambers where political opponents were mistreated. Moreover, a focus group discussion with senior serving police officers in Nairobi confirmed that detention, torture and arbitrary arrest were common during Moi administration especially after the coup. It

was the infamous Nyayo chambers that acted as the secluded area for perpetrating the heinous acts against the dissenting voices.

Samora (2014) and Widner (1992) agree that Moi used the police to scuttle and suppress freedom of expression. In particular, the dreaded special branch infiltrated opposition groups under the camouflage of civilian attires forcing members into exile. This was contrary to the constitutional provisions that barred the police from arbitrary arrest and detention without trial and interfering with civil liberties (Githiga, 2001; Adar & Munyae, 2001).

### **3.7 Crackdown on *Mwakenya* Movement, 1982-1990**

Moi strengthened the fidelity of the police officers by generously purchasing their loyalty (Widner, 1992). This was evident during the crackdown on Mwakenya (*Muungano wa Wazalendo wa Kenya/Union of Patriotic Kenyans*). The Mwakenya movement which was basically an underground movement operated secretly between 1982 and 1990. The motive of its formation was to champion for the introduction of multi-party democracy. Its leaders were indiscriminately arrested and imprisoned without formal charges (Bayley, 1991). Initially, the movement openly and publicly carried out its civil duties and activities of advocating for opening up of democratic space in Kenya. The movement often highlighted misgivings in the country's political landscape. This did not go down well with the government and the special branch hunted down members forcing them to shift to underground activities. Plain clothes police officers moved

into the lecture halls to monitor the content of the courses where suspicious content was taught the lecturers were arrested and their lecture materials confiscated. The police administered serious torture on the culprits most of whom were coerced into submission of being members of *Mwakenya* members. Many adherents of the group were detained including Maina Kanyatti, Ngotho Kariuki and Katama Mkangi. Others were leading historian Atieno Odhiambo, Mukaru Ng'ang'a and Wanderi Muthigani as well as the fierce lawyers notably Mirugi Kariuki, Paddy Onyango and Wanyiri Kihoro (Widner, 1992).

What was regrettable about the crackdown on *Mwakenya* was that the purported culprits were presented with prepared statements and forced to unconditionally sign implicating themselves for being members of the group. Failure to append one's signature resulted into torture and incarceration while those who signed under duress were jailed for admitting crimes they did not commit (Nyarota, 2001). Without doubt these were instances of gross subversion of freedoms by the police as harassment continued even after the victims had been released from prison. Why would the police continue to follow citizens who had completed serving their custodial sentences? In particular, those who had been wrongfully incarcerated were denied passports and prevented from travelling overseas or restricted from holding any employment position in the government (Widner, 1992). Moreover, gross violation of civil liberties and inhuman treatment occurred from the time of arrest and presentation in courts of law.

In some situations the families were unable to trace the whereabouts of the detainees.

### **3.8 Clampdown on the Clergy, the Media and Civil Liberties**

In early 1990s, the level of police brutality had become so intense in Kenya under the command of Moi. However, a wave of political agitation for democracy swept across the country owing to both internal and external pressure on Moi administration to open up political space and give room for multiparty politics (Brown, 2001). A politician who was a victim of Moi excesses interviewed in Nairobi noted that many of the pioneers of democratic movement such as Jaramogi Oginga Odinga, Kenneth Matiba and Paul Muite severely suffered in the hands of the police.

Political meetings organized to agitate for democracy were violently disrupted and conveners arrested and detained without trial. It is in this context that Widner (1992) observed that despite marching towards multiparty democracy in the early 1990s, the deployment of the police to clamp down thwart the activities of multiparty activities was widespread. Adar and Munyae (2001) noted that during this period in its history, Kenya witnessed one of the episodes of human rights violations characterized by political subversion and detaining critics without trial under inhuman conditions. The clergy and the press were not spared during the crackdown. This implied that even the voice of the church was ignored by the police. This raised the question as to whether the police felt obligated to protect freedoms of worship. For instance, Reverend Timothy Njoya, a retired

church minister, a theologian and human rights crusader was ruthlessly clobbered by the police for agitating for political pluralism and human rights. Alexander Muge, another clergy, was killed in a suspicious car crash for being a critic of Daniel arap Moi and advocate for civil rights in Kenya. Similarly, David Mukuba Gitari, an Anglican archbishop of Kenya was harassed by the police for delivering sermons the government considered to be provocative and treasonous. Sabar-Friedman (1997) and Githiga (2001) observed that although the church was regarded as the voice of the voiceless, the clergy who advocated for democratic space found themselves at loggerheads with the police.

As far as the media was concerned, Adar and Munyae (2001) averred that suppression of civil liberties was extended to the press and nongovernmental organizations. If it was through the media that the citizens would be informed why the police should control the freedom to information? This was followed by a ban of some nongovernmental organizations, journals, texts and plays that were interpreted as being critical of Moi's administration. The leadership of KHRC occasionally turned into victims of deadly assaults. The alternative news media was frustrated with journalists incarcerated on suspicion of spreading propaganda. Public morality, order and national security became the excuses of clamping down the media. Consequently many publications were banned with their and their editors jailed or forced into exile effectively denying the citizens the right to information.

In a reflection in April 2015 Ngugi Wa Thiong'o noted that after the production of the play "*Ngaahika Ndeenda* (I will marry when I want)," the police raided his house and arrested him and banned its production (Ngugi Wa Thiong'o, Speech, 2015). Moi also sensationally proscribed the production *Animal Farm*, novel by of George Orwell because it was regarded as spreading subversive ideas against the post-independence African leadership. Moreover, many cases were not reported due to fear of reprisal but in February 1997 the crudest form of police excesses involved an assault on a photographer by an AP officer for unearthing the government's deliberate and intentional postponement the issuance of identity cards purposely to deny people a chance to register as voters in a state's orchestrated disenfranchising plan (AI, 1998). Regrettably the officer involved continued to serve without any disciplinary measures taken against him. This is a clear indication that there was no media freedom and the public was not entitled to information.

Nyarota (2001) and Osse (2012) observe that misuse of the police was a common phenomenon often seen in selective frustration of human rights. Peaceful demonstrations were routinely thwarted. Restricting peaceful demonstration and allowing the police to use force against the citizens could not be justified within the law. Nevertheless, Moi justified the violent suppression of demonstrations on the grounds that the protesters lacked proper authorization. However, some times the police disrupted the rallies even after initially allowing the rallies to be held (Osse, 2012). In this

context the police erroneously insisted that the rights crusaders needed permission for the rally in addition to police notification. Although the legality of both permission and notification is debatable, the beatings that followed almost certainly contravened known standards on dispersal of public gatherings. In severe instances, the police clobbered the protesters with rifle butts and indiscriminately fired in the demonstrators to disperse the crowd without provocation leading to loss of life (Nyarota, 2001).

The discrimination and selective application of the law was often seen when government-backed rallies proceeded without restrictions and often holding public gathering without notification from the police (Nyarota, 2001). These instances of gross violation of human rights implied that the police was frequently misused to rein terror not only in Kenya when Moi was Kenya's president.

### **3.9 Multiparty Politics and the Role of the Police Force, 1992-2002**

The role of the police in advancing multiparty politics portrayed Moi's rule in bad light. During the agitation for multiparty politics, none of the strategic reforms in the police force changed the fundamental principles of policing. Throughout Moi's administration, Kenyans regarded the police as biased and level of public trust was low. The police often worked alongside the state mandarins to rein terror on the people. For example, government supported groups such as the Youth for KANU 1992 (comprising especially enterprising young business people eager to accumulate wealth and political power through the state) and *Jeshi la Mzee* (the old man's army or gang)

became the main avenue through which the state disbursed patronage and discharged violence against opposition politicians in the watch of the police.

The police was also widely accused of being complicit in orchestrating violence during the struggle for multiparty democracy. The transition to multiparty system was not entirely smooth as the government continued to harass opponents (Throup & Hornsby, 1998). The police also covered up the politically motivated tribal killings. From as early as 1992, the government fueled violence in many parts of the country in preparation for national elections. The violence was meant to create hostility among communities in order to split their political inclinations and loyalty, frighten others to flee or coerce others to vote for the ruling party with the prospects of guaranteeing their security.

The government often used the police as surrogate agents to indirectly support the clashes (Widner, 1992). In the ensuing government sponsored turmoil many people dies while many more were displaced. A similar trend occurred in the run-up to the 1997 elections with more killings and displaced of people taking place mainly in the pro-opposition strongholds. The government blamed the violence to multi-party politics describing it as tribally motivated and erupted spontaneously (Peters, 2009). However, there was no evidence that the government had not taken any adequate steps to prevent the violence from spiraling out of control or ring to book the organizers despite having claimed over 4,000 lives and displacing 600,000 others from 1991 to 2001 (Throup & Hornsby, 1998). A retired

provincial administrator who had worked closely with the KANU administration noted that the violence was politically instigated and the state had a hand in it with GSU and the police being implicated (Adar & Munyae, 2001). In addition, the violence was organized to eliminate opposition in KANU strongholds. Moreover, Sabar-Friedman (1997) concurred that the state was complicit in the 1997 violations of human rights that involved widespread tribal purge in the Rift Valley using the police and the GSU. This violence saw the massive killing of the enemies of the administration with majority being flushed out from many parts of the rift valley region. The police witnessed the raids by armed militias but did nothing to stop it. Instead, the police ostensibly watched while the civilians were being assaulted. For many human rights advocates, the police ought to discharge their duties without bias, only acting in a non-partisan manner, without fear or favour, or under instructions from certain quarters with vested interests.

In standard practice, the police are required to act impartially, not to discriminate against the citizens on the basis of their political affiliations (Adar & Munyae, 2001). However, the reality was that in many volatile African states, the police was the immediate instrument for meeting political ends. For example, in Angola, the police have often been used to disperse demonstrations by the opposition and to curtail political freedoms (Nyarota, 2001). Despite attempts in peace accords to redefine the apolitical nature and role of the police, many Angolans have faced the

wrath of the police under the instructions of the executive. With the expanded political space in the country, it has not been perceived why the state should fail to protect the international human rights standards by denying anyone the right to enjoy their freedoms, including freely holding and expressing personal opinion on political matters (Osse, 2012). In addition, the code of police disallows officers to align themselves to any political outfit in a public manner and discourages them to act in a partisan manner when maintaining order. These acts of police negligence have also been witnessed in Zimbabwe under the watch of Mugabe (Nyarota, 2001).

In an interview with a human rights activist, it emerged that during the multiparty era not even the media was spared from police brutality. The journalist noted that the freedom of the media was curtailed as the police harassed journalists for reporting stories condemning president Moi (human rights activist during Moi era, KII, 2018). Basically, the journalists were apprehended and mistreated by the police for reporting some incidents that the government was not comfortable with. With this, the news were censored and skewed in favor of the Moi administration (Adar & Munyae, 2001).

Apart from the politically motivated violence, the crackdown on multiparty crusaders continued and the role of police was evident during the unlawful arrest of opposition leaders gathered at the Kamukunji grounds for the *Saba Saba* rally. *Saba Saba* was the first serious organized challenge to repression through defiance and the struggle for people-centred democracy

in Kenya (Ochieng, 2008). The rally was mainly led by political activists to press for greater democratic space and to end human rights abuses. Although the government banned the rally, many people did not fear for their lives and marched in defiance to a previously unchallenged regime to throng the *Kamukunji* grounds in the spirit of *Saba Saba* movement. The government responded by ruthlessly crushing the demonstrations and killing civilians. The open defiance was attributed to the accumulation of bitterness caused by beastly political events preceding the *Saba Saba* riots including the murder of Robert Ouko and other political nonconformists. The incarceration of agitators of democracy amid public outcry and international condemnation presented a strong case against Kenya as it attracted the fury and rage of international human rights groups. In addition, Kenya appeared in the world map for orchestrating crimes against her own citizens. These phenomena attracted huge international condemnation and pressure on Moi to allow multi-party democracy.

These events were happening post-cold war and the entire world was witnessing economic stagnation caused by skyrocketing oil and food prices (Ochieng, 2008). Moi was compelled to give in and opened the political space mainly due to external and internal pressures. According to Adar and Munyae (2001) America and allied nations, concerned with human suffrage and corruption, approved new regulations on foreign relations to compel Kenya and other countries known for subversion of civil liberties to review their domestic and socioeconomic policies first before renewing economic

and military aid. The exclusion of Kenya by development partners propelled Moi to allow multiparty politics in Kenya. Holmquist (2002) concurs that prior to this Kenya usually received much foreign aid because of the perception that Moi was supporting USA ideals particularly with regard to human rights. However, development partners were becoming increasingly perturbed by the increasing amount of political intolerance, torture and subjugation of political detainees particularly at the notorious Nyayo torture chambers (Adar, 1999). In early 1990s, the president was now being increasingly regarded as a despot and foreign aid was suspended unless the government complied with economic and political reforms particularly with regard to human rights records. Levitsky and Way (2005) argue that among the key requirements enforced on Moi by the USA through Smith Hempstone, the no-nonsense and fiery USA ambassador to Kenya, was the ultimate reinstatement of multi-party democracy. However, this was not Moi's desire because he regarded multiparty politics as a threat to his leadership. In an interview with a key informant who was present at Nyayo stadium when Moi gave in to multiparty democracy in 1991 noted that Moi indirectly threatened the delegates but eventually rescinded the restriction in section 2A of the constitution to permit political pluralism to prevail. This was an important political development in Kenya that laid a strong foundation for democracy.

Moving forward, the new political dispensation turned out to be a nightmare for KANU with increased open condemnation and satirical depiction of the

president from scores of dissatisfied politicians and academicians all over the country. The political momentum built over time culminated in the formation of FORD (Forum for Restoration of Democracy) as a political outfit to dislodge KANU from leadership (Adar, 1999). However, Moi's moles, personal and tribal differences played out in the formation of FORD leading to the split of the political outfit further fragmenting the strength of the opposition movement (Kagwanja, 1992; Throup & Hornsby, 1992; Hills, 2009). The divisions within the political divide provided opportunity for the government to continue to use the police to violate human rights.

Adar and Munyae (2001) further harangued that after the reinstatement of the multi-party politics, human rights crusaders anticipated a favourable environment for free exercise of freedoms and constitutionally guaranteed rights. However, human rights violations continued unabated as evident in arbitrary arrests and detentions as had been the norm in the early 1990s under the watch of a powerless judiciary and domineering control of the executive.

### **3.10 The 1997 Constitutional Amendments**

It is significant to note that in November 1997 some constitutional amendments were made after previously rescinding the inhibition of security restriction. In particular, the notable reforms following the annulment of the public security restrictions and related constitutional changes included the changes in the chief's authority, the administration police and civil society's

acts. AI (1998) confirmed that foreign pressure compelled the government to operationalize some these reforms in 1997.

The restriction on public security law contained repugnant and offending sections that attracted harsh seditious and treasonous penalties. These laws were used to justify breach of human rights and freedoms in Kenya with the police being the major tool for propagating such violations. With the repeal of these laws it was anticipated that the police brutality and general violation of human rights would reduce or even come to an end. However, as explained by a retired human rights activist, the police continued to contravene the constitution. Moreover, a politician interviewed in Nairobi noted that in 1998 picketing against unfair electoral processes were brutally beaten by police officers.

The AI (2011) also concurred that the proposed reforms existed in writing but were pragmatically non-existent as the police still found unjustifiable reasons to contravene the expression of the provisions of these reform proposals. In addition, a human rights activist interviewed in Karen, Nairobi noted that the public security preservation act limited the extent of the expression of the freedom of assembly as it required the organizers to notify the police about the impending public gathering (human rights activist during Moi's era, KII, 2018). The activist also noted that this provision gave the police more powers to curtail the freedom of assembly, speech and association as voiced in the following verbatim:

The police now had even the power to prevent or outlaw meetings if there was another request for a meeting by another real or imaginary group.....eventually the police used this power to stop a meeting considered to undermine the authority of the ruling party, which in this case was KANU (human right activist, KII, 2018).

The AI Report (1998) further revealed that the Public Order Act of 1997 gave police power to decide who would hold a public meeting. Given that the police were working for the administration in power, meetings that were regarded as a threat to the Moi administration were either deliberately denied a chance to take place or were violently disrupted once they had commenced. For instance, in a meeting convened by opposition leaders in 1998 in Kwanza, Rift valley, the police declared the meeting illegal and senselessly clobbered politicians without sparing the journalists covering the events and members of the public including the passersby purposely to prevent the rally from taking place (TI, 1998). In 1999 during a by-election in Kitui District, the police officers emerged with wooden clubs and batons and begun clobbering everyone to disperse a crowd resisting announcement of a narrow victory in favour of a KANU candidate outside the voting hall (Moi era politician, KII, 2018). The police also entered the hall and beat up the opposition leaders.

Profiling the human rights violation in Kenya, Adar and Munyae (2001) concurred that the police disrupted a political meeting held by opposition leaders in Kwanza in a violent way that saw politicians, journalists and the general public beaten. As already highlighted, the use of the police to harass

and intimidate the media was an unfortunate common malpractice in many countries. In most of these countries, journalists have been cruelly mishandled and subjected to dehumanizing mistreatment including unlawful searches and seizures of their notes and files in retaliation for publishing offensive articles critical of governments. Although the Chief Authority Act was repealed to allow free movement of people, the local administration still practiced the power to arrest and detain. The entire period of 1999-2001 was marked by regular use of tear gas and police dogs to attack and disperse public rallies called by leaders who wanted to discuss the issues facing their local communities. There was a common trend in which benevolent and peaceful demonstration were violently dispersed by the security forces for calling for a change in governance.

### **3.11 Conclusion**

This chapter has explored the deployment of the police force in the consolidation of state power in Kenya in the period 1978-2002 during the regime of president Moi. It has been pointed out that Moi began on a noble ground but changed upon ascension to power. As the president, he exploited his previous connections with the senior police ranks to consolidate state power. Moi also endeared himself to the legislature and the judiciary for complete control of the government. However, there were no meaningful reforms in the police institution during Moi's presidency. In addition, Moi's administration revoked some of the laws that had denied the president powers to control the police. Owing to these revocations the

administration was marked by police brutality, arrests without warrants, detention without trial, torture and killing of civilians. The police used force to contain the incarcerated offenders. Shoot to kill orders were issued to disarm and neutralize errand offenders. This undermined and infringed on human rights. The administration was also marked by curtailed freedom of association, assembly, speech and expression with the police being used to undermine these freedoms. The media freedom was not spared as journalists were arrested or beaten up for covering stories that were regarded as being critical of KANU administration. The church was also not spared as the clergy became victims of police brutality.

Moreover, the police officers especially from the GSU were implicated in the violation of human rights and often remained complicit on human rights violations especially during the general elections. The police officers often watched as the criminals looted the civilian property. In containing political unrests, the police officers often responded impartially with high-handedness, extrajudicial killings and politically instigated killings that characterized the 24 years of Moi's rule. It is evident that Moi administration marked the heightened human rights violation with the police being used to infringe on human rights.



**CHAPTER FOUR**  
**IMPLICATIONS OF POLICE REFORMS ON HUMAN RIGHTS**  
**PRACTICE DURING THE DEMOCRATIC TRANSITION IN**  
**KENYA, 2003-2009**

**4.1 Introduction**

This chapter examines the implications of police reforms on human rights practice during the Kibaki's administration. The chapter explores some of the police reforms that were initiated by the Kibaki's administration and their implications on human rights. It is argued that Kibaki displayed a low key hands-off leading-by-delegation leadership style which saw him delegate the pursuit for police reforms to various initiatives, commissions and task forces.

**4.2 Political Transition, Governance and Human Rights Practice in Kenya**

In Kenya, the process of political transition has witnessed a struggle on how to share the political power. This is because the sharing of resources has been perceived to be inequitable. This has generated conflicts since only the tribal groups lead by the most influential opinion leaders aligned to the ruling government are perceived to have benefitted immensely from the major projects and employment opportunities. In view of the fact that the government resources are the product of the revenue collected from all taxpayers this unfortunate practice has been viewed as an unfortunate state of affairs. Successive governments have not honored the promise of change in spite of being propelled into leadership on the promise for real and long

lasting change. In part, though not really so, this has been accused as being the manifestation of bankrupt good governance ideals or philosophies (Kagwanja, 1992). Despite the efforts to eliminate bad leadership and address the critical reform areas for purposes of ensuring equity in national resource allocation regrettable opposition has persisted. Many observers believe that the restoration of multiparty politics in 1991 came as a consequence of reform efforts. This was evident when a paradigm shift was proposed to eliminate the single party ideology. By allowing political pluralism, political parties have become commonplace with almost no agenda to bring meaningful development.

Tribal clashes have been witnessed in almost every general election since the 1992 elections with the 2002 elections being the only exceptional poll period (Andreassen, 2008). Troubled multi-tribal interaction and exchange arising from years of political repression, poor economic management and inequality has emerged as an issue undermining civil liberties especially when it places weight on the institutions of governance. The weakness appears to lie squarely on the leaders who preach equity yet continue to be guided by tribal considerations when distributing appointments (Barasa, 2007). It seems that the greatest fear for these leaders is losing background support. Consequently, impunity has emerged as one of the serious human rights violations. The police find it difficult to serve the interest of the population. This has been observed in the context of containing dissent in

which the police are involved in massive extrajudicial and arbitrary executions.

In Kenya, state control and power has traditionally been shared separated into the executive, the legislature and the judiciary. As an arbiter whenever human rights are violated, regrettably the judiciary has not functioned independently as enshrined in the concept of separation of power. In order to protect citizens' rights and property, the judiciary needs to be independent so that it can be able to operate without the undue influence form the executive and the legislature. I concur that radical judicial reforms are needed to tame the heightened instances of extra-judicial killings and impunity in the police service.

Barasa (2007) also expressed his concern that the liberal democratic system is under threat from the presidential system of governance and political patronage. A critical view of Kenya's electoral process presents a scenario where tribality and the tribal card are particularly evident in determining election outcomes. Since independence, Kenya has been governed by a very strong presidency. For instance, Kenya has been ruled in a neo-patrimonial or clientelistic manner in which human rights suppression notably denial of freedom of speech, limited political space, impunity, disregard of the rule of law and tribalization of domestic politics are particularly present.

In this arrangement, the legislative power vested in the national assembly is not restrictive because the assembly requires the presidency for survival. A

similar scenario epitomizes the judiciary whose independence is subject to the extent to which the electorate participates in free, fair and legitimate polls. However, this is never the case as instances of voter bribery and intimidation are widespread during elections. However, all is not lost as the legislature has undergone quite a lot of changes and gradual reforms seeking to empower it to provide genuine oversight function over the government. What is critical is that the persons sent into these legislative offices allow themselves to be compromised and in most instances they cannot raise their voices loud enough to condemn police malpractices.

The governance structure also consisted of the Provincial Administration (PA) whose main functions were to control, coordinate and mobilize the public for governance and development purposes in order to provide essential services to the citizens. However, past administrations considerably expanded the PA in terms of personnel and equipment to help crackdown rebellion and contain growing political opposition (Getzel, 1970; Kuria, 1973; Hyden, 1970). Due to its bad image and relentless human rights abuse the proposal to scrap out the provincial administration has been most welcome.

Apart from the PA, constituencies are also units of development where the government sends funds directly for development and service delivery (Mapesa & Kibua, 2006). The funds have made positive impact by improving service delivery and provision of essential services such as

education and financial support for the needy families (Oyugi, Riechi & Anupi, 2008). However, the CDF faces a number of challenges including lack of accountability, wastage, inadequate funds, limited participation of other stakeholders and political interference. Although MPs ought to be directly involved in the management and oversight of the CDF, there is a genuine perception that they are often quite dominant and they or through their proxies remain partisan in the distribution of funds.

In spite of a well-organized governance structure, continued violations of human rights were reported. For instance, the police reservists, the Anti-Stock Theft Unit (ASTU), the secret spying, the NIS and the counterterrorism police were involved in violation of human rights particularly with regard to arresting and detaining suspects without any legal mandate. According to Human Rights Watch (2011) the GSU and KPR used to beat and arrest alleged suspects while concealing their identity during unlawful operations. In many instances, they carried out the arrests or searches without donning uniforms and identification insignia as required by law. In some cases, arresting officers donned masks and refused to identify themselves thus making it difficult for families to trace their kin. In many cases, the officers would blindfold people arrested making it difficult to know the arresting officers or their whereabouts. The arrests were often physically brutal and violated standard procedures established in law. Human Rights Watch (2011) reported that these outfits often decided the manner of treatment or the form of punishment to be meted against the

detainees. In addition, Human Rights Watch (2015) has unearthed many cases of deaths of persons last seen with security officers. These cases raised serious concerns about human rights abuse thus prompting a need for reforms in the security sector.

#### **4.3 Reforms in the Security Sector in Kenya; 2003-2012**

In examining the police reforms during the democratic transition in Kenya, it is important to scrutinize the efforts made to streamline the police institution between 2003 and 2012. This is anchored on the premise that real reforms in the police institution involves changing the norms governing the operations of the police force, and bringing the police under public scrutiny and aligning their operations to approved international best practices (Auerbach, 2004). Hence, the successful implementation of the reforms in the police force ideally depends on the extent to which the government is committed to ensuring that the police as an institution does not violate human rights.

Consequently, apt practice on police reform commenced in 2003 when the National Rainbow Coalition (NARC) government under president Kibaki ascended to power. Many observers noted that the new government heralded a different and better political dispensation that promised to guarantee equity, equality and fairness. The NARC government was premised on a better future characterized by accelerated economic growth and intolerance to corruption, ineptness and complicity (Ashimala, 2014). The excitement

for economic and institutional transformation was also captured in the police institution as noted by the police spokesperson at the time:

"We in the police also are hopeful that police officers, guided by our Motto '*Utumushi Kwa Wote*' shall individually try to uphold the rule of law and learn to always carry their responsibility with the required professional fairness, while ensuring that rights of the civilians are respected. We promise to act professionally, compassionately and courteously in the enforcement of all laws and regulations with respect to human rights, cultural, religious and political diversity (*International Federation for Human Rights, Workshop on the Role of the Police in the Administration of Justice: 2-6 April 2001, Nairobi*).

In support of these assertions, Hornby (2013) averred that Kibaki's ascension to power revived the long lost hope for good governance and security that had taken a back banner since independence (Auerbach, 2004). As opposed to the previous Moi's administration that had for a long time suffocated and wrecked the plans for robust reforms in the police force, NARC government received a lot of good will both locally and internationally. Mbote and Aketch (2011) observed that Kibaki's government ushered in a new era of good governance which made it easy to accommodate proposed reforms. For the police officers, there was a renewed hope for enhanced service delivery and fairness in discharging police duties. Mutoro (2011) pointed out that the NARC administration breathed a new lease of life in the democratic and constitutional transition in Kenya since independence.

Therefore, police reform programs became more profound in Kenya during Kibaki's era with the aim of addressing security challenges and concerns in the country. Essential timelines, principles and amendments to existing laws were identified as a panacea for strengthening the reform agenda (Ogada, 2010). Thus, the first police reform programs such as Governance, Justice, Law and Order Sector (GJLOS and community policing were introduced in 2003 to seek to professionalize the police force.

#### **4.4 The Governance, Justice, Law, and Order Sector Reform Program**

GJLOS was a comprehensive and inclusive reform programme originally launched by the government with the generous support from development partners to help end the perceived endemic corruption and poor governance in Kenya. Weak governance institutions and structures particularly the police institution and the associated security agencies, the incessant deteriorating standards of service delivery, rampant corruption and the frequent denigration of legal representatives influenced the formation of GJLOS. Hence, GJLOS was initiated to strengthen the entire system of administration of justice. In particular, the issue of wanton and open soliciting of bribes from the public by police officers was identified as a major issue concern undermining the rule of law in Kenya. According to Ball (2010) GJLOS considered police reforms as vital since police officers were always recognized as the pivotal state institution which played key roles in the criminal justice. GJLOS recommended key police reforms including reviewing code of conduct, establishing control mechanisms and

improving transparency and accessibility to police stations (Ball, 2010). The GJLOS recommendations provided impetus for salary review in the police service in order to ensure that promotions and recruitment in the police was done only on merits. Mbote and Aketch (2011) pointed out that the recommendations by the GJLOS led to the review of salary scales to ensure that promotions in the police service were based on merits. To ensure public access to police stations, the government reviewed the distribution of police stations in the country as recommended by GJLOS and enhanced the establishment of a special desk for special and vulnerable groups in the society (CHRI, 2006).

The critical analysis of this development reveals that GJLOS came up with key police reform recommendations that were pivotal in addressing corruption and transparency in the police service. The recommendations were very essential because they provided the road map to prevention and rapid response against corruption. This concurs with Mbote and Aketch (2011) who ascertained that GJLOS influenced the introduction of an anti-corruption sensitization program to minimize police corruption. It also led to the introduction of appropriate prevention and rapid response equipment for dealing with corrupt practices in the police force. GJLOS also influenced the decentralization of operations of the anti-corruption unit in Kenya. These recommendations were instrumental in the formulation of police reforms during this period.

Consequently, an important agenda of the GJLOS reform included among other things the progressive transformation of the way institutions discharged their mandate in their endeavor to deliver services to the citizens (GJLOS, 2006). The institutions singled out for reform within the framework of GJLOS were generally those perceived to be adamant and resistant to change. In particular, the police institution was viewed as being guided by an outmoded culture of complicity and impunity that had predominantly remained subservient to change. In this regard, the police institution had failed to deliver security services resulting into increased security threat. The reform program highlighted persistent institutional neglect, inadequate capacity in terms of advanced knowledge and technical skills, accompanied by unattractive conditions of service as well as inadequate training and lack of sophisticated operational equipment as the major factors behind the present state of affairs (GJLOS, 2006). In the absence of these variables the institution was persistently characterized by endemic unprofessionalism, ineffective supervision and lack of accountability and oversight mechanisms as well as endemic corruption and malpractices. This presented a wide gap between the expected service delivery and the actual operational efficiency. GJLOS Reform Programme was commissioned to transform the police institution into a world class police service purposely by making compliant with human rights practices or dictates (GJLOS, 2006). This could only be achieved through advanced and regular capacity building training to systemically change the

entrenched institutional culture of impunity. From the vigorous analysis of available documents, it was evident that the police institution was guided by deep-rooted biased assumptions pertaining to the operation of the police. Conspicuously missing in the entire command structure of the force were internal democracy, respect for seniors, strict discipline, fairness and public appreciation of the work of the police (GJLOS, 2006). It was difficult for the police to receive support from the public because the relationship was strained and suspicious. From a review of the responses from the field, an outstanding inept culture bureaucratic in nature and crisis-driven vehemently pervaded the police institution. This called for a drastic cultural transformation with a new philosophy guided by democratic operational assumptions. It was noted that this required political good will, new training and sensitization (GJLOS, 2006). This was also be accompanied by an alteration of the occupational features which were perceived to be fuelling the existing status quo (Kaufmann, 2006). This concern is summarized in the sentiments of a senior serving police officer who noted that:

A drastic but sustainable approach to holistic culture transformation should urgently be adopted because low morale of officers will result into lawlessness. As it is now the public prefers to pay bribes instead of being taken to court. In some cases the courts also forgiving some offenders, accusing the police of inadequate investigation. You can see the problem does not lie entirely with the police but with the judicial system.

#### **4.5 Community Policing and *Nyumba Kumi* Initiative**

Ruteere (2003) observed that community policing remerged under the beacon of transformation in the police institution within the tenets of Kibaki's economic recovery and wealth creation strategy. Hyped as possibly the best way to guarantee public safety, community policing was considered as a noble idea engendered on the idea that a police service supported by the community is more dependable especially in addressing security challenges in Kenya. When it was conceived, the concept of community policing is meant to strengthen the relationship between the police and the citizens which drastically worsened over the years. The philosophy behind this initiative was the need to involve everyone in the provision of national security. The concern, however, was whether such an initiative would translate into protection of human rights. This concern is particularly relevant given the longstanding suspicion characterizing the police and the public. Involving the citizens in their own policing can have a far-reaching and long lasting civil order and overall human rights protection (Kivoi & Mbae, 2013). Working together in partnership with the police would easily address security concerns in the community.

Therefore, major component of police reform would be to promote the relation between the community and the police through community policing initiative (Kivoi & Mbae, 2013; Murray, 2005; Lawday, 2000). This was particularly important because police officers had caused fear among citizens in the previous administrations. The philosophy and principles of

community policing focuses on how the community fits within the wider communal conflict management strategy while taking steps to forge a collaborating liaison between the police and the public (Kivoi & Mbae, 2013). The community policing philosophy is built on the belief that the public could expect to obtain better services from the police if members of the public or citizens also made input in public policing. Cordone (2004) observed that community policing strategy complements the police efforts to improving security through the creation of local crime alertness programs and outreach activities which seek to establish closer relations between police and the community.

The community policing programme had the objective of bringing all community policing activities under one framework, including *Nyumba Kumi*. *Nyumba Kumi* initiative is a system that brings security to the level of the 'household' by creating clusters of 10 houses that consist of local residents and stakeholders. The idea is that these clusters meet regularly, share information with each other, and, when needed, provide this information to relevant levels of the national administration (Brankamp, 2020; Kioko, 2018). Initially, *Nyumba Kumi* operated through the colonial system of the provincial administration, that is, the chiefs and sub-chiefs. It thus acted as a parallel structure to the police, and many police officers shared feelings of resentment towards the scheme. *Nyumba Kumi* exists in lower-income neighborhoods and poor urban settlements that face high-terror-related incidents.

Since inception, community policing has been seen as a pillar of democratic policing and key vehicle to enhance relationships between the state police and the community, to improve state legitimacy, and to essentially reduce crime and, more recently, combat terrorism. Globally, community policing is considered as part of a wider public sector reform movement that champion for the collaborations between different sectors of the society (Wisler, 2009). Although community policing focuses on local-based initiatives, it is also directly related to higher-level accountability mechanisms such as civilian police watchdog agencies such as Neighbourhood Watch (Wisler, 2009; Lawday, 2000). For community policing to be effective, Kempa (2007) recommends that the police must have the willingness and capacity to confer authority to the community particularly those community members with the required knowledge and skills to promote social justice (Goldsmith & Lewis, 2000; Brogden & Nijhar, 2005). In return, the community must share the responsibility for addressing crime and disorder by performing a wider range of prevention functions in collaboration with other agencies (Murray, 2005). However, the success of community policing initiatives in Kenya has been very limited due to diversity, representation and ownership.

The foregoing analysis has presented the context in which the Kenyan community policing and *Nyumba Kumi* initiatives were comprehended with regard to the underlying ideological practice and the emerging challenges. It is apparent that the foundations of these initiatives were complaints of

human rights infringements. *Nyumba Kumi* basically was an attempt to address the challenges of insecurity but with time its rationalization became narrow and faulty in implementation. The perception that the security of the state assumes precedence over human security has limited the strategic latitude with which policy makers designed *Nyumba Kumi* Initiative and community policing interventions programs. For instance, the daring organizations like Al Shabaab, Baghdad Boys, Chinkororo and Sabaot Land Defense Force had continued to escalate. Critics of these initiatives contended that they lacked an ideological backup that would have endeared them to the population and the implementers. The critics felt that the *Nyumba Kumi* initiative had hijacked security and surveillance roles at neighborhood level and the state and the public did not adequately comprehend its long-term role (Gumbihi, 2014). However, the state justified the initiative as a way of encouraging the exchange of information between residents and security agencies because the state lamented that some people with knowledge of criminals were not coming forth for fear of victimization or for thinking security was the obligation of the government (Gumbihi, 2014). These critics emerged owing to lack of collaboration between the police, chiefs and members of the public (Ouma, 2016). The *Nyumba Kumi* initiative required a rethink that would inform its redesign. From a human security perspective, the initiative can be effective if it is anchored in the community rather than the Kenya Police Service structures. In such a scenario, the community residents can be allowed to own the

initiative and play a leading role in its leadership so as to help address the peculiar security issues that confronted them.

#### **4.6 Police Strategic Plan; 2003-2007**

The formulation of the police strategic plan was one of the major developments in the police reform agenda in the early years of Kibaki administration. The strategic plan provided an operational framework for actualizing the reform agenda in the police force. The strategic plan envisioned a police institution that was committed to safeguarding the fundamental rights of all citizens and promoting positive relations with the broader society. According to Kivoi (2003) the strategic plan recommended a raft of changes including the expansion and upgrading the capacity of security agencies to ensure that all citizens and their property were safeguarded. In addition, it recommended improving the conditions of service for police officers and supporting community policing to enhance the capacity of the police through community partnerships.

The strategic plan set the stage for accelerated police accountability through the creation of the internal affairs unit, vetting of police officers and operational and institutional framework to strengthen the police service in general. However, institutional changes required political goodwill, commitment by all officers and adequate resources. According to Kagari (2003) the plan required a pragmatic effort and political good will to implement the recommendation. In this regard, the police service was

expected to put in place specific strategies needed to promote the rule of law. However, the prevailing state of the service could not pass the integrity test because the strategic plan was created unilaterally without involving the public. Moreover, there was no effort to solicit for more resources and this delayed the implementation of the recommendations. In addition, the strategic plan could not guarantee full compliance with human rights standards despite having identified the strengths and opportunities in the force and the weaknesses and threats which faced the service. Marx (2012) revealed that the strategic plan identified the challenges the police faced such as low public confidence, inadequate resources and deep rooted corruption. Marx (2012) revealed that the strategic plan recommended adequate allocation of resources to enable the service obtain better equipment to increase intelligence led investigation of crimes and insecurity.

#### **4.7 The Post-Election Violence and Police Reform Task Force**

The Kibaki administration initiated the preliminary inclusive task force focusing on police reforms in 2002. The membership of the task force was diverse and incorporated representatives from institutions that played a critical role in enhancing national security and monitoring the excesses of the security agencies such as the Kenya Human Rights Commission (KHRC) and civil society groups. However, the suspicion on the motive of the task force owing to lack of transparency delayed the release of the report thus slowing the reform momentum. It was during the post-poll violence of 2007 that the momentum for institutional police reform was

revived and place in the appropriate context. During this difficult and atrocious period, the police received widespread condemnation for gross human rights violations. The government imposed a blanket ban on public demonstrations which threatened civil liberties as the police hovered around denying the citizens freedom of association, speech and expression. According to Bayne (2008) the ban was not only illegal and unwarranted but also contravened the international standards of good governance and professionalism. Although the ban was viewed as necessary to prevent violence and further destruction of property and loss of life, it turned out that those enforcing the ban contributed to incessant violation of human rights. For instance, the police officers enforcing the ban responded indiscriminately and often used excessive force, claiming hundreds of lives even in circumstances without the justifiable use of lethal force. Bayne (2008) recounted how the police officers used live ammunition to disperse demonstrations and riots only to end up killing innocent civilians including children and mothers. In an interview, a human rights activist observed that:

The police acted violently and recklessly by shooting unarmed protesters and bystanders as well as women and children, without even first attempting to use the required non-lethal force.

This position has been supported by Prunier (2008) who recounted how live ammunition was used to disperse protesters in Nairobi. This is similar to India where the state also relies on the police for the maintenance of law and order, sometimes using limited force in selected circumstances that do

not violate human rights. However, Bayne (2008) contended that unofficial *shoot-to-kill* policy was issued as no officers were held culpable. This raised the question as to why the police officers failed to exercise their profession discretion in deciding to use firearms. It was apparent that the police officers were ordered to use live ammunition. A senior serving police officer in Nairobi explained:

Ideally, we were acting on order to do some bad things. It was not easy to think that the people were shooting were our brothers and sisters. You know that we act on orders and for us order has to be obeyed. As of now shoot to kill is not allowed unless things get out of your hands (Senior serving Police Officers).

Although the police officers were overwhelmed, the officers could have responded to the difficult circumstances in starkly professional manner. For the police officers who empathized with the situation, it was difficult to act impartially because of political influence. This raised questions about political interference in policing especially in a politically charged environment. For example, more evidence of use of lethal force in the opposition occurred in the slums of Nairobi and Kisumu and the police officers acted even in circumstances where their lives were in danger. To demonstrate further the problem of political interference, police officers failed to intervene to protect the civilians in areas where the government had no vested political interest. This was a clear manifestation of biasness in the application of force. A similar scenario has been evident in Haiti where political stalemate allowed corruption, political influence and police

misconduct to seep into the national police (Bayley, 2008). This needs to be investigated because the police are required to be impartial. The magnitude of police shooting was huge as scores of deaths were reported when the protests turned violent. For instance, human rights investigators reported loss of several lives not only in Nairobi and Kisumu but in all parts of the country.

Although acts of police brutality provoked outrage in the media and among the human rights community, it did not change the way the police continued to operate in addressing the problem of human rights violation. This is unlike the USA where the policing approach is more oriented towards problem solving and community policing. In other European countries such as France, policing is guided by community police models which are based primarily on collaboration and partnership with the community for better results (Jankowski, 1993). Instead of adhering to the best practice, the police justified the use of force to break the protests and looters that had turned chaotic with pockets of looting and burning shops (Human Rights Watch, 2011). It appears that the police tried but failed to disperse the looters through non-lethal means thus resorting to the use of force and live ammunition to disperse the looters. Human rights Watch (2008) observed that the provincial police boss admitted to have given orders to shoot when things got out of hand. Perhaps this was plausible evidence that the police were acting on orders making it difficult to hold them individually accountable for human rights violation (Human Rights Watch, 2008).

However, it seemed incomprehensible how majority of the victims succumbed to their injuries in the residential slum areas in Kisumu far from the city centre (Human Rights Watch, 2008). While it was necessary to push demonstrators to prevent further destruction, driving the protesters into the slums and opening fire directly and without warning painted a picture of unprofessional police institution. Human Rights Watch (2008) recounted how people were shot and left lying on the road bleeding profusely from the head. From far, it appeared that the police officers were firing in the air only to realize later that their targets were unarmed protesters.

It seemed the police officers were deployed to prevent crowds assembling, but turned to indiscriminate firing on the pretext that they were overwhelmed. It was easy to conclude that the police officers were shooting to kill from the pattern of the gunshots and the systemic nature of the response. While the events in Kisumu displayed lack of concern for the citizens and a clear illustration of the excessive use of force by police, the scenarios in Nairobi outrightly presented a unique nerve shivering case. Police in Nairobi also shot demonstrators under circumstances that were clearly unjustified. From the beginning of the disturbances, the police strategy seemed to contain the protesters in the slum areas of Mathare, Kibera, Dandora, Kariobangi, and others. However, protesters were unable to leave the slums because police interventions were often brutal and fatal.

Generally Kibera and Mathare are some of the most densely populated slums in the where the use of live bullets was highly irresponsible. In these

areas it was unfathomable how the police could use live ammunition when it was evident that this could cause death and injury to many innocent people. Usually slum dwellings are made of flammable and easily pierceable materials. With the full knowledge of the potential consequences of their actions, the question raised here was why the irresponsible policemen were not held accountable for their actions.

It was conceivable that these incidences and malpractices could only be remedied by comprehensive constitutional, legal, policy and institutional reforms to prepare the police to deal professionally with similar and related eventualities in the future. In his report on the Extrajudicial, Summary or Arbitrary Executions, Alston (2009) recommended the suspension of the police death squads, criminal prosecution of perpetrators of torture and unlawful killings by the police and prosecutions of those responsible for the post-election violence. Alston (2009) also recommended the dismissal of the Police Commissioner, investigation on extrajudicial killings and the subsequent arrest and prosecution of the police involved.

In the Task Force *Report* of The National Task Force on Police Reforms, Ransley (2009) noted that the police force required restructuring and observed that the presidential power to appoint the police commissioner failed to provide any competitive selection opportunity and transparency mechanisms for checks and balances in the police force. The report further observed that the president would appoint or dismiss police commissioners

at will and without providing justification for his or her actions. This had far-reaching consequences in the performance of the police. As a result, the police was generally viewed as the pro-government police, dedicated ultimately to the preservation of the government in power and the protection of vested political interests. Furthermore, once appointed the commissioner wielded absolute powers to manage and control the entire police force (TI, 2012). This implied that for a long time the administration of the police was characterized by a highly centralized command structure.

While the police continued to operate under generally poorly equipped conditions, there was increasing sophistication of crime implying that the police could hardly detect and thwart criminal plans. Even if they did, the police lacked basic equipment such as vehicles and modern crime-fighting technologies. As a result the police was generally ill-equipped to do their work making it difficult to deal with criminals who had access to more lethal weapons. Apart from inability to counter sophisticated crime, a major issue of concern was lack of public trust in police accountability. Lack of public awareness and external oversight were blamed for continued violation of human rights (Auerbach, 2004).

With respect to the recruitment, the report observed that the main requirements for entry into the police service needed to change from completion of primary education and physical fitness to high school qualification. Further, the process of recruitment and promotion had been

riddled with non-professional considerations such as corruption and tribalism. The report proposed reforms to create a professional police service that would attract recruits from different cadres in order to win public trust (Ikerd & Walker, 2010). A senior serving police officer in Nairobi noted that:

As an officer, I can ascertain that the police reform task force that was established in 2008 was very crucial in improving some of the aspects in the police force..... to enable us to improve security provision.....through implementation of community policing, get new equipment, resources and infrastructures and improving the police image in the public so as to improve the confidence the public had towards the police officers (senior serving police officer, O.I, 2018).

These remarks concur with The Kenya Police Crime Report (2010) which observed that Ransley task force recommended reforms related to police accountability, crime prevention and capacity building.

An oral interview with a senior serving police officer in Embakasi observed that:

I think the task force raised important issues which could enhance changes in the police service (Senior Serving Police officer, O.I, 2018).

The World Bank (2009) also noted that the task force introduced accountability and infrastructural mechanisms that would promote harmony and partnership with the public particularly civic engagement and confidence building and development of communication pathways. These measures were considered significant in promoting police accountability and human rights.

The Ransley report was adopted by the Cabinet in 2009 and the adoption paved way for the appointment of Police Reforms Implementation Committee (PRIC) to coordinate the implementation of the policy recommendations in the roadmap to reform actualization. This was guided by the thinking that blending the membership from diverse security sector was tenable. PRIC was chaired by Kenya Airways Chief Executive Titus Naikuni. The Joint secretaries were Mr. Victor Okioma and Mr. Musyimi Muneeno. PRIC was mandated to review, identify quick wins, and prioritize recommendations on police reforms, mobilize resources from national and international sources for implementation of the reforms and develop a communication strategy to enhance support, engagement, and participation of stakeholders (The Kenya Gazette, 2010). Owing the sensitivity of the security issues wide consultation was required so that the

diverse components of the reforms could be supported by appropriate legislative and administrative policies for ensuring that the reforms complied with the constitutional requirements. Nyambura (2012) contended that PRIC elaborately engaged in the formulation of drastic changes in the police institution under the guidelines that progressively involved public participation and the wider constitutional review processes.

#### **4.8 The Politics of Reforming the Police: The Police Reform Task Force**

The Ransley's report observed that the presidential power to appoint the police commissioner presented non-competitive and non-transparent selection criteria as it was replete with inadequate checks and balances (Auerbach, 2004; Hills, 2007). This means that the president would appoint or dismiss government officials on political or personal considerations without providing any justification for the appointments or removal from the office. This had quite far-reaching consequences in the performance of the police institution. As a result the police was generally viewed as a pro-government instrument, dedicated to the preservation of the government in power and protecting the vested political interests (Auerbach, 2004).

Furthermore, once appointed the commissioner had absolute powers to manage personnel and command of the entire police force. In addition, the commissioner had the sole prerogative of issuing administrative orders that became the force standing orders for the running of the police force (TI, 2012). This implied that for a long time the administration of the police had been characterized by a highly centralized command structure. This

contributed to low motivation and lack of creativity at the lower levels of police operations. While the police officers continued to operate under generally poorly equipped working conditions, there was increasing sophistication of crime implying that the police could hardly detect and thwart criminal plans. Even if they could, the police lacked basic equipment such as vehicles, modern crime-fighting technologies and investigation equipment. In addition they were often ill-prepared for their work making it difficult to deal with criminals who had access to more lethal weapons. Apart from incapacity to counter sophisticated crime, a major issue of concern to the public had been lack of accountability mechanism. Although there is a comprehensive internal mechanism for dealing with complaints from the public against the police, there is still little impact because of many people are unaware of the procedure to be adopted in accessing complaints mechanism. Consequently, lack awareness on the part of the public and lack of external oversight that would enforce and report to the public, has been blamed for continued violation of human rights. While it is inconceivable for the police to refer any complaints of misconduct for external investigation, the law requires the same police to deal with the reporting and investigation of their own misconduct and this is the genesis of absurdity of the entire internal complaints mechanism (Auerbach, 2004). This has resulted into impartial or total ignorance of the complaints raised against the police.

With respect to the recruitment, completion of primary education and physical fitness has been the main requirements for entry into the police service. However, this has gradually changed to high school qualification, especially for the lower cadres of staff. Nevertheless, security experts are critical of such low entry level as this has simply led to a perception that police service is a preserve for the academic failures and those who could not find jobs elsewhere. This has made the police a despised profession justifying the generally poor conditions and terms of service for the officers. This tendency also explains why it is difficult to retain quality professionals in the police service. Further, the process of recruitment and promotion was riddled with non-professional considerations such as corruption and tribalism. However, with the proposed reforms, the need to create a professional police service that attracts recruits from different cadres in order to win public trust has increasingly become an important issue of concern in the entire recruitment process (Ikerd & Walker, 2010).

Moreover, the post-election violence of 2007 that the subsequent power sharing government arrangement provided a consensus on reforms that had previously been resisted. During the violence the police were accused of murder and rape. In order to deal comprehensively with many of the issues related to police performance and relations with the public, the task force was mandated to undertake a comprehensive evaluation of the police and to recommend new reorganization (GoK, 2011). The task force recommended a set of comprehensive frameworks for creating a professional and

accountable police force. These included the restructuring of the police, entrenching professionalism, enhancing logistical and operational preparedness and creating community policing and partnerships to enhancing national security. Moreover, Alston (2009) recommended the investigation of torture and killings by the police during the post-election violence and prosecuting the police officers involved. In this regard, the Ransley's commission was able to advance police reforms in a coordinated manner. The report championed community policing as a way of effectively utilizing the limited resources to protect life and property rather than perceived loss of life and other vices, commissions and omissions that the police were accused of. Waki (2008) reported that the security forces were powerless against the violence.

A senior retired police officer in Nairobi revealed that the police reform task force was set up one month after the publication of the police strategic plan. The respondent further revealed that the task force was a fifteen member body whose focus was to take forward the police reforms as well as to coordinate other reforms that were on going in the sector (A senior retired police officer, O.I, 2018). Thus, with regard to police reforms the aim of the task force was to ensure that the suggested police reforms as well as the strategic plan were implemented. This concurs with The Kenya Police Crime Report (2010) which noted that the mandate of the task force was based on the Kenya police strategic plan and other recommendations for the policy and institutional reforms.

In addition, Ikerd and Walker (2010) pointed out that some of the recommendations that the task force was supposed to take forward included the need for internal recruitment of the police, ensuring terms and conditions of the services were followed, coming up with complaints procedures by introducing suggestion boxes in police stations where the public would be able to give their suggestions and complaints. These were meant to complement police effort in improving security. Bayley (2006) further revealed that other recommendations that the task force was supposed to take forward included strengthening the regulatory framework through review of the laws, establishment of monitoring and evaluation process and a civilian oversight that would ensure public access to the police, thus improving security. The development and implementation of performance standards was to ensure that the code of conduct was being followed. A senior police officer in Nairobi noted that:

As a senior serving police officer in this country I can ascertain that the police reform task force that was established in 2008 was very crucial in improving some of the aspects in the police force to enable us to improve security provision in the country. For instance, through implementation of community policing, improving equipment, resources and infrastructures and improving the police image in the public so as to improve the confidence the public had towards the police officers (senior police officer, O.I, 2018).

These remarks concur with The Kenya Police Crime Report (2010) which observed that other areas focused on by the task force included the reforms related to police accountability such as improvement of the police public image so as to enhance the confidence level the public had towards the

police. The report further postulated that changes in crime prevention and management were required through capacity building programs in relation to resource allocation and infrastructural development.

In addition, Bayley (2006) revealed that the task force also focused on auxiliary security support programs such as community policing and enhanced capacity building in the police force. Thus all these reforms were meant to strengthen the entire police system by enhancing effectiveness and efficiency of the police. An oral interview with a police officer in Embakasi revealed that the task force tried to enhance some of the recommendations of the strategic plan and other reforms that were ongoing in other sectors of governance and security (Senior Serving Police officer, O.I, 2018). The World Bank (2009) also noted that the task force introduced accountability and the infrastructural mechanisms that would promote harmony and good partnership with the public particularly civic engagement and confidence building and development of communication pathways. KNCHR (2008) further revealed that the goal of these reforms included provision of police welfare services like housing and improved remuneration, local policing and rapid deployment to crime scenes.

#### **4.9 Police reforms: the National Accord and Reconciliation Agreement**

According to Waki (2008) the most justified call for reforms in the police institution occurred after the infamous post-election violence of 2007 which resulted into casualties of immense proportion never seen before in Kenya. In responses to the accusations levied against the police, the National

Accord and Reconciliation agreement was formed to address the weaknesses witnessed during the violence (KHRC, 2008).

An oral interview with a senior serving police officer in Dagoretti, pointed out that NARA was an act of parliament which established the office of the prime minister and also enhanced reconciliation among Kenyans (Senior Serving police officer, K.I.I, 2018). This was a ceasefire agreement signed following a 41-day mediation process brokered initially by African union sponsored mediation team headed by Ghanaian president John Kofour and which was subsequently backed by a team of distinguished personalities from Africa under the leadership of the late Kofi Anan, the former UN Secretary General (Kagwanja & Southall, 2009). Similar but contrasting efforts were observed in El Salvador where the UN's efforts to initiate police reforms bore insignificant fruits in spite of the urgency to transform the police force originally trained for war into an institution required to treat people with respect ever since the San Jose Peace Accords of 1991 (Toch, 2008).

In NARA agenda four, captured the expressed obligations to change the police institution as well as the broader security sector (Republic of Kenya, 2009). The Accord had four main agendas which collectively prevailed upon stakeholders to act swiftly to bring to an end the violence and restore civil order, while also taking immediate action to address the prevailing humanitarian crisis, promote reconciliation and healing in order to make it easy to overcome the political crisis, and in retrospect address the long term

contentious sociopolitical issues and eventually propose solutions to the political crisis. This was akin to the situation in Haiti where human rights experts helped design the curriculum for the police training and ensured that human rights practice appeared in all subjects. It emerged that there was a need to change the institutional structures by proposing pragmatic mechanisms of facilitating land reform, poverty reduction, the perceived inequity and wanton unemployment problems particularly among the vulnerable youth. For it to bring an all-inclusive reform the fourth agenda engendered mechanisms for dealing decisively with the discord, disunity and police impunity as these were considered essential in promoting human rights. It was also in the fourth agenda that proposals to reform the police institution to create an independent police institution committed to maintaining the rule of law was based (Kenya National Dialogue and Reconciliation, 2008).

The realization of these goals was a collective effort by various groups such as the political elite, the civil society and the business community. The problems of the police were enumerated and the probable actions recommended. However, it was regrettable that the radical measures failed to recommend how to address the problem of complicity and culpability for officers implicated in human rights violation. This raised the question as to whether the reform recommendations ought to have considered bringing in new people to serve as the police officers. If the old police officers remained in office it would be difficult to eradicate the continued perpetuation of the

rot within the police institution. There was deep seated and widespread rot as no segment of leadership could right the wrongs due to ambivalence of the political elite (Waki, 2008).

An oral interview with a human rights activist in Nairobi revealed that the post-election violence prompted the formation of a commission of inquiry (a human rights activist, 2018). This has been pointed out by AI (2013) that after the National Accord, a commission to investigate the PEV was set up, spearheaded by the court of appeal judge Justice Philip Waki. It was noted that the police officers were technically inadequate if not ill prepared to professionally contain the violence. Owing to inadequate capacity, the police officers frequently acted impartially and recklessly and in some instances instigated rather than controlled the violence.

It emerged from the turn of events that a meaningful and urgent institutional reforms were required to get rid of such magnitude of human rights violation should a similar political stalemate ensue in future (human rights activists, FGD, 2018). This concurs with Kivoi and Mbae (2013) who noted that the Waki-led commission found out that the police brutality and human rights violations emanated from an entrenched culture of impunity, complicity and political interference. This lent credence to the general belief that the police only served the interest of the political elite. Consequently, both the Waki Commission and the National Accord recommended strengthening the police by riding it off its weaknesses through internal and external reforms (Kivoi & Mbae, 2013).

Therefore, the Waki Commission and the Accord proposed a pathway for reforms and set the foundation for meaningful reforms. A human rights lawyer interviewed in Karen confirmed that the formation of a task force on police reforms was the product of the Waki report (Human rights Lawyer, O.I, 2018). This concurs with Kivoi and Mbae (2013) who noted that a task force was initiated following the recommendations of the Waki commission to make proposals on police reform. This inclusive approach to the initiation of structural changes to the police institution was similar in both the National Accord and the Waki Commission particularly with regard to the representation of interest groups.

Another oral interview with another human rights activist revealed that the task force focused on the content of the 2003-2007 police strategic plan in its policy recommendations. The respondent further noted that the task force also conducted public hearing which involved receiving both written and oral submissions from the public, interested stakeholders and the civil societies (a human rights activist, O.I, 2018). This is supported by Marx (2012) who noted that the taskforce received views from various stakeholders and individuals and conducted research in Botswana, United Kingdom, Sweden and Northern Ireland on the appropriate operational standards to guide the work of police officers. A number of recommendations were formulated by the task force whose overall goal was to entrench professionalism in the force and to improve institutional efficiency, effectiveness and accountability while also helping to restore the

elusive public confidence in the police. Following the adoption of the report, the Police Reform Implementation Committee (PRIC) was appointed to synchronize the process of implementing the reform recommendations. PRIC was chaired by Kenya Airways Chief Executive Titus Naikuni. The Joint secretaries were Mr. Victor Okioma and Mr. Musyimi Muneeno. PRIC was mandated to review, identify quick wins, and prioritize recommendations on police reforms, mobilize the relevant resources from diverse quotas including the national and international sources. PRIC was also mandated to develop a communication strategy to promote engagement and stakeholder participation (The Kenya Gazette, 2010).

To promote elaborate change in the police institution, the key reform considerations by PRIC included changing the police force to a service, establishing the NPSC, merging the various police formations, establishment of the internal affairs unit and reviewing the police training curriculum (Judicial official, K.I.I, 2018). This is supported by Nyambura (2012) who revealed that the reforms that had far reaching implications on human rights protection included the compulsory vetting of all senior police officers, systemic retraining of the senior serving police officers and restructuring the organizational framework of the police institution for purposes of accountability and effective coordination.

The interest provoked by the systemic changes in the police forced attracted technical support from the UN, the Swedish Police and the US Embassy

(Ikerd & Walker, 2010) among other development partners who collectively formed a working group to provide a structural engagement with the technical team spearheading the reforms. The recommendations were considered relevant and they were entrenched in the 2010 constitution (KHRC, 2012). An interview with a lawyer in Nairobi shed light on the efforts directed towards operationalization of the constitution and realizing the police reforms a reality notably the relevant acts of parliament (Lawyer, O.I, 2018). These observations are in tandem with the AI (2013) contention that the promulgation of the 2010 constitution presented a legal framework for engagement the constitutional commissions created to deal with the reforms in the police institution. In particular, PRIC engaged extensively with the Commission on the Implementation of the Constitution (CIC) as part of the attempt to facilitate drafting of the relevant legislations and policy papers for promoting the implementation of the proposed police reforms. It seems that the process of formulating and implementing the police reforms considered mainly the legal implications and not much about human rights practice or concerns. Perhaps this explains why the police continued to abuse the civil liberties even when the law was clear about the boundaries of their operations. Furthermore, Nyambura (2012) contended that PRIC also worked in collaboration with the Kenya Institute of Education to come up with a curriculum for training new police recruits. These elaborate and all inclusive initiatives were guided by the principle that public engagement and participation was necessary in the full realization of

the envisaged benefits of the reforms. In particular, mental change required adequate training in new skills and knowledge (Ransley, 2009). It is worth noting that the recommendations made by Waki and Ransley as well as those emanating from PRIC largely guided the whole spectrum of constitutional review and the unprecedented consideration of public participation in the management of government affairs (Republic of Kenya, 2009). The desire for an inclusive and democratic police institution was reflected in the 2010 constitution with the consideration of public views given a serious focus even in the provision of public security.

In a key informant interview in Embakasi, a senior police officer countered that the establishment of the new police structures were beneficial not only to the public but also to the police officers since the responsibility of providing public security was distributed diverse institutions as well as to the public. This created a conduit of human rights protection because the views of the citizens were theoretically incorporated in the entire system of governance. In retrospect this minimized the possibility of political interference in the security sector. The respondent further averred that the institutions provided clear road maps towards complete implementation of the proposed institutional and legal changes in the police institution (Senior Police officer, K.I.I, 2018).

#### **4.10 Police Reforms Task Force: Implementation and Challenges**

The police reform objectives emanating from the police strategic plans and other initiatives and task forces sought to enhance the effectiveness of the police institution. During the Kibaki administration changes in the police institution were genuinely formulated and implemented and this progressively enhanced service delivery in the police institution. This was expressed in an interview with a key informant from the county government. However, due to high appetite for misconduct and lack of accountability, there have been major hindrances to the implementation of the reforms in Kenya. Kivoi and Mbae (2013) contended that the police reforms were simply a drop in the ocean in spite of their well intentions. This is because the enthusiasm of the implementation died with time as some sectors misconstrued it to be a mission by the state to gag them and set up militia groups as self-help mechanisms. As a result continued killing of suspected criminals and innocent people perceived to be accomplices of the criminals has remained widespread (Kivoi & Mbae, 2013). Also the police officers seemed to collude with the criminals thus scaring the public from disclosing the criminal elements in the society. Ruteere (2003) noted that this contributed to the condemnation of the community policing approach.

Undoubtedly, one of the major objectives of reforming the police institution was to restore public confidence in the institution. This is because when the public has confidence in the police, it is easier for the police officers to succeed in controlling and fighting crime. This justifies why a positive

relationship is significant for both the members of the public and the police officers (Ruteere, 2003). As has already been alluded to, the citizens generally tend to keep off from the police often for obvious reasons of trust and lack of awareness about the role of the police. However, the suspicion seems to be symbiotic and the police officers tend to mistrust the public (Member of community policing, O.I, 2018). This is further supported by an oral interview with a senior serving police officer in Langata who noted that:

There is always unprecedented bad relationship between the public and the police. For instance the citizens are not afraid to offer bribes and this is the same case with the police who are willing to receive the bribe. However, in most cases, the police were always blamed of being corrupt but the members of the public were not despite the fact that both were always involved in corruption. Thus, the police felt discriminated leading to them having a bad attitude towards the public (senior police officer, O.I, 2018).

These remarks concur with Monjardet (2000) who intimated that the police are always suspicious and in this suspicious an attitude of mistrust evidently has developed toward the members of the public. As a result, there is always resistance and misunderstanding which ought to be addressed first for community policing to flourish (Monjardet, 2000). Moreover, in an oral interview with another member of the community policing in Nairobi revealed that the cycle of police brutality, misconduct and lack of accountability really destroyed the reform put in place by the government. This concurs with KNCHR (2008) which posited that the adamant nature of the police leadership to institute reforms scuttled the reform train. Therefore,

the police inefficiency and high corruption index is a matter of its own systems' failure to implement accountability mechanisms. Another challenge experienced in the implementation of the police reforms is conflict between senior officers.

A key informant interview with a senior police officer revealed that:

No police officer can actually accept to hand over their arsenal in order for them to be investigated or disciplined when they know that the person doing so is not as clean as is thought. Just because an officer is occupying senior rank does not imply that they are qualified to judge the appropriateness of police action and be able to distinguish between what is right conduct and what is not. Therefore, many senior officers go unchecked about their actions in the police services (senior Police officer, K.I.I, 2018).

These remarks concur with Waller (2010) who noted that if the domineering and highhandedness from the senior officers go unchecked, it could continue to bolster unaccountability and jeopardize the good work being undertaken by the officers, thus creating leadership wrangles in the entire police force. Although the legislative framework for police reforms is an important milestone towards a reformed police service, the unprecedented delays in establishing the required institutions, however, simply serve to suggest lack of or limited political commitment or good will to actualize the reforms. For instance, the executive was slow in ensuring prompt enactment of the operationalizing reform acts. Furthermore, the failure to put up an operational framework limited the capacity of the institutions responsible to carry out their respective mandates even where reforms had been institutionalized.

Kivoi and Mbae (2013) concurs that many years of impunity of different forms had been the undoing of the police. Over the years no one cared whether the police were involved in endemic corruption, non-compliance with the law and illegitimate political interference even though it was a

common knowledge that these influenced in great proportions the propensity to violate human rights.

Slow progress in police reforms has been the result of the failure of the government to engender the policing concerns within the context of national security debate. Therefore, the policing, being a mirror or reflection of the society, have struggled with endemic impunity particularly the incessant deployment of the police officers on oppressive missions. This implies that any undue delays in enacting constitutionally recognized legislations will serve to derail the concerted efforts directed towards create new structures that can quickly eliminate the legacy of mistrust and impunity. An activist interviewed noted that;

The executive seems not to have been barred from violating the constitution and you see we cannot say that we have one away with impunity when the same officers are still going around blatantly disregarding the same constitution they are meant to protect.

In expressing its deep concerns, the UNCT has observed that endemic corruption and ineptness among the officers have watered down efforts previously made to eradicate human rights violations by police officers especially the kind of incarceration being witnessed in the slums and poor urban neighborhoods. This implies that the police have not realized the current reform dispensation that abhors and criminalizes corruption. Perhaps the imposition of aberrant penalties need to be suggested and adopted for police officers while adequate training adopted to equip police officers with new skills and knowledge. In addition, there is a need to have the violators

of civil liberties to be quickly and fairly investigated and those found to be responsible are punished within the confinements of the law. This will go a long way to restore dignity and integrity within the police force. Although the public has of late become outspoken in demanding for a fair and effective police institution, the contribution of many human rights organizations needs to be enhanced.

However, the history of violence against activists fighting police excesses has become common and this has been evident in Kenya. For instance, two human rights defenders namely Oscar Kamau King'ara, a longtime critic of Kenyan police, and John Paul Oulu were killed while in the hands of the police (Kivoi & Mbae, 2013). Hence, police reforms need not take a legalistic approach but focus on social change and policy development. Moreover, in spite of conspicuous evidence of human rights violations by police officers, there has not been any form of punishment against the officers involved in or responsible for the continued human rights violation. Hence, the disciplinary measures or criminal prosecution of officers found culpable of violating human rights should be discerned, outlined and operationalized. As a human rights activist interviewed corroborated, the country has weak institutions charged with protecting civil liberties while the perpetrators often escape with impunity as the police get away with anything, even murder because they know nothing can be done to them. At the point of arrest, quite often, the police officers boast of indomitability suggesting that, oftentimes, they feel unsusceptible from prosecution. Ideally

if a police officer can openly ask for enticement then it implies that the all the public institutions are simply ineffective.

This position received support from Alson (2009) who observed that allegations of human rights violations at the hands of the police are rarely investigated because within the police itself there are death squads that are strategically unleashed to wreak havoc and terror for political gains. In the views of Kivoi and Mbae (2013) police officers were implicated in the blatant torture and unlawful killings of innocent people in Mount Elgon. For reparation purposes there is need to compel the government to conduct and complete investigations into these heinous acts and, where credible evidence exists, to commence prosecutions against all culpable police officers. However, continued government inertia and silence over police inequity serves as an endorsement of police impunity. Ultimately, this would lead to the unfortunate perception that the government was not concerned at all with investigating and punishing the perpetrators of human rights violation particularly when the violators are perceived to be acting on behalf of the state (Mutonya, 2012).

It has also been demonstrated that the Kenyan police operated under resource constrained environment which limits their capacity to be effective in their operations. For example, there was no functional forensic laboratory as well as the logistical capacity including standby operational patrol vehicles. However, this has been availed. Nevertheless, the police officers

often feel starved as a result of poor remuneration that does nothing but lower their morale and together with low quality housing and squalid working environments, the police officers often find it difficult to deal with dangerous, sometimes life-threatening. Such difficult conditions are also fertile ground for bribery and ineptness. A senior serving police supported this by observing that:

It is generally hard to motivate our disheartened officers. Many people are talking about change of culture and attitude but they forget that officers need good working conditions. Otherwise the suggested changes will not make sense to the officers. I think reforms should be seen as a two way process. When the public looks at us with hate and suspicion, we on the other hand react with force and threat.

As already noted, the police suffer from low levels of public confidence due to incessant complicity, highhandedness, corruption and impunity. This is similar to Argentina where corruption and extortion as well as a long history of violence, repression and serious human rights abuses characterized by killings, disappearances and torture of the civilians have been common in the police system (Cole, 1999). Consequently, the public is largely skeptical in their interaction with security agencies and finds it needless to cooperate with the police including sharing with the police any significant and vital information. This could be the major justification for community policing through which, it is anticipated, that challenges of mistrust can be amicably addressed. However, as already discussed elsewhere, the philosophy behind community policing has at times been misapprehended and sometimes mistaken for vigilantism especially when poor coordination leads to

lynching of suspects who take advantage of it to extort money from the public.

This is why there is lamentation from certain sectors that further delay on enactment of proper legislation to formalize the reforms will simply insure the police against victimization in the event of continued use of unjustifiable force and persistent violation of civil liberties. In other words, it is not easy for the police institution to change without any expressed deterring legislations that compel the police to operate under certain set standards of behaviour. Towards this end the institutional ethos has not been fully harmonized and the motivators for highhandedness and civil disobedience emanating from the past will remain un-uprooted. In the meantime, AI will continue to receive reports of police excesses including affront on the members of diverse sociopolitical dispensations. The increasingly discriminatory persecution of the suspected criminals from Somali descent, amidst crackdown on terrorism, for instance, has been cited as the single most unpalatable instance of unprofessionalism displayed by the police institution. Based on the alleged connection with *Al Shabab*, many people of Somali origin have been reportedly harassed during crackdown on the members of the *Al Shabab* terror group. These arrests gave rise to serious concerns about the discriminatory reaction against people of Somali tribality (AI, 2010).

#### **4.11 President Kibaki and Police reforms: Human rights Practice**

Although the urgent need for police reform was recognized during the early years of multiparty democracy in Kenya, the accelerated efforts were made as a result of the drafting and formulation of strategy policy documents notably the economic recovery plan for national development which identified police reform as critical and urgent measures needed in the realization of economic growth. These documents postulated the need to increase the ratio of police against the national population in a bit to promote public safety while ensuring the rule of law. Apart from the reforms, it was evident that the police needed to be adequately equipped with modern technology and equipment while also progressively improving conditions of service and housing for police officers. Although these necessities were quite evident, not much attention was directed towards enacting appropriate legislations to deal with modern crimes involving money laundering, cybercrime and terrorism. Perhaps what was at stake was the need to develop and eventually enforce consistently a road map for enhancing territorial policing and cross-border surveillance which had hitherto been neglected.

During Kibaki's regime, however, the fundamental aim of police reforms was to strengthen the entire governance system for fair administration of justice. The envisaged development considered institutional adjustment a critical component of the criminal justice system. In particular, it was common practice that the police lacked harmonized internal management

mechanisms encompassing codes of conduct and oversight mechanisms with investigative autonomous powers. This is because over the years the executive had deprived the police of the operational transparency and public access as quite often the police had turned into an instrument of perpetuating corruption. In order to realize the envisaged reforms, there was need to improve the police response to corruption through anti-corruption sensitization programmes, rapid response mechanisms as well as superior investigative nuances to help with evidence gathering. This could only work well if there was a paradigm shift in both theory and practice. The ultimate result was to entrench a proactive policing approach that is receptive to human rights protection.

While critics contends that the journey towards real reforms is still at its infancy stage, scholars such as Mutuma (2013) contend that visible evidence exists to delineate the milestones made in regard to the adoption of the professional best practices in areas pertaining crime reporting procedures, increased intelligence-led investigations and the employment of relatively sophisticated techniques and operational equipment. Such sentiments place Kenya close to such countries as Palestine which is frankly unique because it has spectacularly embraced special human rights concepts with some of the elements of peace operation drawn from the old police force (Cole, 1999; Anderson & Killingray, 1992). This has been further accompanied with enhanced motivation packages for the police officers. It was expected that the implication for the perceived improvement in the overall welfare of

the officers with regard to strengthening the police code of conduct and ethics, better salary and gradual and transparent promotions should be reflected in the manner the police officers addressed security concerns. Mutuma (2013) believes that the institutional changes in the police have contributed immensely towards safeguarding civil liberties. It is regrettable; however, that malpractices and culpability have continued to threaten the positive gains. For instance, impunity and the cycle of police brutality are frequently reported without a corresponding effort to prosecute perpetrators. As it has been brought out in the literature review, many scholars have conceptualized the contravention of the fundamental freedoms in the hands of the police as the result of corruption not only in the police institution but in the entire society. I believe that it is unjustifiable to unilaterally punish the police officers implicated in human rights violations when the entire society is corrupt. However, this does not absolve them from being accountable for human rights violations. What this implies is that the police is part of the society and unless the society changes the pace of reform implementation can really be quite slow. In nearly all arms of the government, lawlessness and endemic corruption are rampant and this unfortunate trajectory if precipitated by a state of moral negligence and ineptness in the police as an institution tend to comply with the directives from the executive. Cordone (2000) observed that impunity cannot be deterred when the victims of police highhandedness face monumental obstacles in seeking legal redress including being accused of being

complicit in their own victim situation. In other words, it is perceived that individuals become victims of police excesses out of their own volition. This is why these victims are sometimes harassed and discouraged from vouching for criminal prosecution against culpable human rights violators (AI, 2010; KHRC, 2014; Kagari, 2003).

Therefore, the main concern still remained the failure of the police institution to incorporate the standard of operational procedure that can discourage officers from mistreating the public (Cordone, 2000). Chevigny (1985) conceptualizes the remedy for police malpractices as residing in the vigorous revamping of the service to all slogans, retraining serving and new officers on human rights practice and establishing both the internal and external accountability mechanisms. This implies that the ongoing police reforms implementation should be guided by the need to respect not only the human rights of citizens but indeed that of law enforcement agents as well. Consequently, any reform process must emphasize culture change in both practice and theory and an elaborate procedure for dealing with truancy and ineptness in the security sector. It must also encompass civil liberties by focusing a radical rather than a gradual paradigm shift in terms of institutional reorganization (Bayley, 2006). It is apparent the changes in police force should focus on the humane reality of existence encompassing a more holistic view of the interaction among security, development, democracy and human rights.

The cardinal mark of effectiveness of the police force is its prompt responsiveness to civilian service. The absence of this expectation has continued to be a major challenge causing a real concern particularly when human rights continue to be violated when every effort is being directed towards human safety (Kagari, 2003). Pierson (2000) observes that police reforms in African countries are influenced by political interests which are not guided by genuine desire of mutually exclusive reform processes. This is why the real steps to police reforms are not dictated by original emphasis on accountability and oversight (Alemika, 2007). An oral interview with a member of a human rights group in Kenya concurred that the trend was worrying because the measures instituted have failed to deter impunity. The World Bank (2009) expressed concern that despite the exorbitant investment in the reform agenda, operational ineptness and dipping performance have been the outstanding byproduct. Various civil society organizations in Kenya including the government sponsored KNCHR have also documented and denounced police brutality expressing concern that many obstacles must be eliminated to enhance human rights provision.

Although the police reforms was to bridge the suspicious gap between police officers and the citizens, with the reforms remaining entirely an operational farce, the infrastructure required to adopt human rights practice seemed to have taken a back seat. I not that public safety cannot be achieved if the human rights are not prioritized. Therefore, the reforms have not been critical in promoting a cohesive democratic society given the upsurge of

criminal activities and the subversion of civil liberties (a member of the community policing, O.I, 2018). The World Bank (2009) summarizes this state of affairs by declaring a glaring gap between police performance and the public expectations. While this was to be remedied through the procedural reforms, the candid recognition of the constraints in the implementation process has not been given a serious consideration.

Going forward public participation needs to be recognized in the implementation process since the citizens are ideally the critical stakeholders in the reform process (Nathan, 2006). Neild (2009) further reveals that public participation in the policing processes feeds into the reform process by providing feedback to build on the discipline and civic engagement and partnership. With adequate public participation, the police would not face community resistance (Stodiek, 2006). This has worked in Mauritius where efforts have not been spared to nurture and safeguard the collective tenets of good governance, rule of law and human freedoms. Consequently, Mauritius has undergone insightful structural modifications in the police service by creating a human rights division, a police complaints division, and a national preventive mechanism division. However, there are still cases of police bias against citizens with dissimilar sexual orientation and gender identity.

Nevertheless, increased loss of confidence will be a fodder for crime to thrive and in the long run, insecurity will further destabilize the state and the public confidence in the system will be eroded (Bayley, 2001). Bayley

(2006) contended that the effectiveness of the police in guaranteeing public safety depends on the level of public cooperation in crime reporting, suspect identification and mitigation of social conditions that lead to crime. This was confirmed in an oral interview with a member of a human rights group in Nairobi where root cause of criminal escalation evidently lied in the absence of mutual public-police cooperation and partnership. In this matrix, a positive police-public partnership is important for both the police officers and members of the public (a member of human rights group, O.I, 2018). This concurred with Chalken (2007) who contended that high crime rate would be minimized if the procedure for reporting crimes was formulated. For the meantime, the perceived lack of trust in the police service implies that the public will remain silent amid continued escalation of criminal activities and blatant human rights violation. A key informant interview with a retired police officer in Rongai noted that mutual trust was eroded when the police remained culpable of excessive use of force with members of the public becoming the casualties of torture, extra judicial execution and intimidation (Retired senior police officer, K.I.I, 2018). Chtalu (2014) concurred that the forceful enforcement of law and order is common in almost all police stations in Kenya. This reinforces the perception that the police institution is a public enemy as the officers directly involved in arbitrary arrest, torture, incessant intimidation, extrajudicial killings and endemic corruption are rarely punished.

#### **4.12 Conclusion**

The chapter has examined the police reforms during the Kibaki's administration and its implications on the human rights in Kenya. Kibaki's administration ushered in a new era of hope and a new political platform for police reforms after KANU's government had suffocated and derailed the plans for a robust police reform for a long time. Thus, the NARC administration presented a new lifeline in the transition process and created an opportunity for key reforms. Such reforms were enhanced by the GJLOS and the police reform task force. GJLOS considered police reforms as a vital component of good governance since the police were always recognized as the pivotal state institution that played key roles in the criminal justice. Thus, the GJLOS suggested key police reforms which helped to enhance transparency, public participation in national policing and strengthening the relationship between the community and the police. The reforms considered reviewing and reintroducing the code of conduct and creating independent disciplinary and prosecuting mechanisms.

Another significant development was the introduction of the strategic plan which was considered as a pillar of police performance. The strategic plan recommended a range of structures and processes meant to improve police performance and enhance a change in attitude in the police service to match other world class police systems. The chapter has also pointed out that all the police reform initiatives were implemented in compliance with the state law. However, police misconduct complicity and lack of police

accountability undermined the progress to full realization of the proposed reform recommendations. It also emerged that an opportunity for police reforms heralded after the unfortunate 2007 post-election violence. After the violence, a raft of reform proposals was suggested to change the police institution. However, the widening gap between the police institution and the public created difficulties in implementing the reform initiatives. Similarly, instances of human rights violations remained rampant as corruption, extra judicial killings, excessive use of force continued to characterize the police institution. The next chapter examines the implications of the proposed police reforms in the 2010 constitution on human rights practice in Kenya.

## **CHAPTER FIVE**

### **THE CONSTITUTIONAL CHANGE, POLICE REFORMS AND HUMAN RIGHTS; 2010-2014**

#### **5.1 Introduction**

This chapter interrogated the implications of police reforms on civil liberties as envisaged in the 2010 Kenyan constitution. Important reforms policies and legislations as well as key institutional structures and instruments were incorporated in the 2010 constitution. These recommendations considerably addressed police culpability. Of particular importance were the establishment of the NPSC and the proposed amalgamation of police formations. The NPSC was tasked with formulating appropriate remuneration packages for different cadres of the police officers, framing recruitment and disciplinary procedures, vetting senior police officers and establishing complaints mechanisms.

#### **5.2 The Constitutional and Legal Frameworks for Police Reforms**

The clamor for police reforms reached its climax after the unfortunate violence following the 2007/2008 polls. During this difficult period, police

officers received widespread condemnation for gross human rights violations. As previously alluded to, the violence was quelled by the signing of a national peace accord which was followed by the power sharing agreement brokered through the collective dialogue and reconciliation efforts by the African eminent persons. This process considered the police reforms as one of the key action points to bring sanity. This was reinforced by the Waki's recommendations on the PEV violence which subsequently culminated into the formation a task force in 2009 to examine the prospects of initiating police reforms. The task force was obligated to suggest legal and institutional changes in congruence with the civil liberties enshrined in the constitution and purported to protect civil liberties. Therefore, the proposed changes were recommended to promote the ideals and doctrines of good governance as stipulated in Article 10(2)(a) and (c) of the Kenyan legal establishment. These ideals included, among others, acting transparently in congruent with the rule of law and taking individual responsibility for acts of personal negligence and individual blameworthiness. At the same time Usalama Reforms Forum report on the milestones in police reforms concurred fundamentally that meaningful changes were yet to be felt as the police continued to subdue human freedoms by rendering ineffective services. For instance, the July 2013 Ipsos Synovate survey report revealed shown that that a whopping 58% of Kenyans declined to report criminal activities to the police. This was supported by the TI-Kenya East Africa Bribery Index trends analysis (2010-

2014) which revealed marginal positive improvements in relation to the implications of the police reforms as far as corruption was concerned as shown in table 5.1 and 5.2.

**Table 5.1: Likelihood of paying the police a bribe in Kenya**

<b>Rank</b>	<b>Sector</b>	<b>2014(%)</b>	<b>2013(%)</b>	<b>Variance</b>
1	Police	68.0	70.7	-2.7
2	Land Services	55.0	46.7	+8.3
3	Judiciary	46.7	38.3	+8.4
4	County Administration	21.5	-	-
5	Registry/Licensing Services	19.4	-4.1	-4.1
6	Educational Institutions	14.6	14.6	-0.2
7	Medical & Health Services	13.3	14.1	-0.8
8	Utilities Water/Electricity)	12.7	11.2	+1.5

**Source: TI-Kenya East Africa Bribery Index trends (2010-2014)**

From the aggregate bribery index, the NPS was rated as the most corrupt institution. On the probability of members of the public actually paying a bribe for a favour, the police emerged first at 71.7% as shown in table 3.

**Table 5.2: Prevalence of paying a bribe in selected sectors in Kenya**

<b>Rank</b>	<b>Sector</b>	<b>2014(%)</b>	<b>2013(%)</b>	<b>Variance</b>
1	Police	71.7	71.8	0.1
2	Tax Services	31.4	9.7	+21.7
3	Land services	19.4	38.6	19.2
4	County Administration	25.9	-	-
5	Registry/Licensing Services	19.2	20.0	0.8

6	Judiciary	19.5	19.5	3.8
7	Educational Institutions	13.4	39.5	26.1
8	Medical/ Health Services	10.5	9.8	+0.7
9	Utilities (Water/ Electricity)	5.7	3.9	+1.8

**Source: The East African Bribery Index 2014**

As shown in table 5.1 and 5.2, within the years under review, it was evident that although the likelihood of being asked to pay a bribe marginally reduced, the likelihood of actual payment of bribes while seeking services from the police stations increased tremendously. This was happening yet the police is expected to render services to the public free of charge except for the provision of escort/outrider services (Ashimala, 2014). Moreover, corruption, poor communication equipment, inadequate patrol vehicles, poor housing, public mistrust and difficult working conditions have not been addressed. Gimode (2007) observed that the technological advancement, globalization and free access to firearms have made criminals more sophisticated and lethal to an extent that the police cannot meet the expectations of the society when operating under resource scarcity. The NPS (2013-2018) strategic plan highlighted lack of infrastructural support for satisfactory service delivery which many observers attribute to inadequate budgetary apportionments and application of faulty and outdated security gadgets. It is notable that the budgets are allocated per police division and OCPDs use their own discretions to re-allocate the resources to the stations. Hence, to improve on service delivery, it is prudent for the government to

allocate resources based on the needs of police stations which are at the center of service delivery (Ashimala, 2014).

### **5.3 Transforming the Police Institution from a Force to a Service**

Although the original intention of police reforms was to transmute the police force to a professional service in both theory and practice for the good of all citizens, evidence suggests that the Kenyan police institution is yet to convincingly make the ideological change expected of the Kenyan police. This is because reforms imply a legislative rethinking in terms of developing a more public oriented institution whose officers are determined to provide efficient security services that also lead to the protection of human rights. Generally, upholding the rule of law is a central component of the assessment of the extent to which the state meets or fails to meet its human rights obligations as mandated in its contract with the citizens (Ashimala, 2014). This is because human rights emanate from universally acknowledged principles that place human dignity and worth before everything else. These rights, as clearly highlighted and protected by the international human rights instruments, ought to take a centre stage in the act of public policing. Guided by these principles the police officers are expected to refrain from torture, cruelty, degrading treatment or arbitrary deprivation of civil liberties. In this regard people deprived of civil liberty for any apparent reason should still be unconditionally handled with self-respect as stipulated in the human rights instruments. According to Kagari (2003) the duty to protect human rights imposes requires the police to keep

the population safe and guard their properties as provided for in Article 28 of the UDHR in which all state parties are required to provide citizens with social order for the full and unconditional realization of the fundamental human rights and freedoms. Consequently, the government agencies were expected to guard the civil liberties by restraining from blatant misuse of state instruments of power for personal reasons. Moreover, Article 29 of the UDHR expects every state to guarantee the citizens freedom to exercise their rights and freedoms as long as they have expressed due recognition and respect for the rights and freedoms of others while upholding the requirements of public morality, civil order and general welfare of all citizens.

Although the use of force has not been denied as being central to police work, it carries the heavy risk of abuse which could result into breaching the freedoms expected to be guarded by the police officers (Ashimala, 2014). The principle underlying the use of force and firearms not only protect the public against arbitrary deprivation of freedoms but also guide the police against its misuse as it highlights objectively the reasonable and necessary circumstances confronting the officer that may require proportionate use of force (Crawshaw, 1998). This is because the right to liberty can sometimes be in sharp conflict with the police powers to arrest and detain especially when Article 9 of the UDHR prohibits arbitrary arrest and detention. In most cases, the incarcerated people are vulnerable to maltreatment and deprivation of personal freedoms. For instance, when investigating criminal

activities to collect evidence, the culprits may be denied the presumption of innocence and the prevention of arbitrary interference with privacy. This is quite common in Kenya where these rights are frequently violated especially when the police are searching homes and personal possessions or interviewing suspects mainly without legal representation or warranty. Although police officers have been frequently mentioned as the chief human rights abusers in Kenya, their positive function in the struggle for human rights protection must honestly be acknowledged since they are legally obligated to ensure social order so that all citizens can have equal right to enjoy their fundamental freedoms (Ashimala, 2014). In this regard, Ashimala (2014) contends that a change in thinking is required to enable the police to adopt more proactive approaches to policing with a view to anticipating and preventing crime and disorder before they actually occur. This involves revising the Standing Orders as a basis for improving police service delivery. For instance, the vetting procedure should prioritize a system in which members of the police with past records of human rights violations are excluded from the service. It is also necessary to restructure the curriculum to equip the serving police officers with new skills and techniques for handling the mass during demonstrations. In adhering to the tenets of policing, police officers should be retrained on the limitations of use of force with particular emphasis on proportionality and accountability (Ndung'u, 2008). Other key aspects of the training include negotiation and mediation to help deescalate conflict situations. It is regrettable that some

police officers consider the bill of rights as prohibitive and as a hindrance to effective policing (Ashimala, 2014). To this end the police oversight mechanisms created by the constitution are perceived to be necessary requirement for accountability in addition to providing checks and balances against police excesses.

Apart from improved working conditions for police officers, adequate and appropriate surveillance equipment and gadgets are required to enhance effective police operations. Towards this end Ashimala (2014) has observed that a lot has been done in terms of enacting laws and facilitating institutional reforms but the real hurdle lies in implementing the envisaged institutional changes and getting the requisite equipment for the provision of impartial security services. This implied that the police officers should be retrained in ways of changing their mindset to conform to the reform agenda. Hence, changing the mindset and attitude of the old officers to move towards a human rights led policing in order to enforce the rule of law in tandem with reform packages requires significant investments.

In an interview with retired senior police officer at Amoretti confirmed that the police force had undergone various reforms since the 2010 constitution came into force. The respondent pointed out that the force has changed considerably since then with respect to human rights protection. According to the senior officer, this implied that the police officers were no longer bosses through use of force on civilians but they were servants of the public. It was hoped that the police as the servants would win the trust of the

civilian so as to protect the human rights as outlined in the law and in line with provisions of human right activists (K.I.I. senior retired police officer, 2018). Echoing similar remarks, a 2013 report by the CMR indicated that the police force changed to a service in line with the new constitution. This came as a result of the enactment of the NPSC Act (2011), the NPS Act of 2011 and the IPOA Act of 2011. All these are examined in the subsequent sections in relation to their implications on human rights.

#### **5.4 The National Police Service Commission Act (2011)**

With the enactment of the National Police Service Commission Act (2011) an independent commission was established to supervise the appointment of officers, formulate training programs and undertaking the screening of the serving senior police officers to ensure there was professionalism in policing. It was also mandated to address malpractices witnessed during recruitment and career progression of officers. The commission is also tasked with the oversight role in the disciplinary process and dismissal of members from the service. Therefore, The NPSC Act (2011) sought to ensure that police officers served the public without coercion. Article six of the 2010 constitution articulated that state officers ought to observe the rule of law, discharge their duties indiscriminately and commit to protecting human rights (GOK, 2011). Furthermore, the NPS Act of 2011 harmonized the powers and functions of different security organs which included the KP, the AP and the national intelligence service (GOK, 2011).

What is exceptionally important pertaining to human rights protection is the fact that the act places limits on the extent of the use of firearms and force an officer is allowed when handling suspects. This implies that the act is concerned with ensuring accountability on the part of the police by expecting officers to be explicitly transparent. The act has also placed greater weight on sovereign rights by articulating the urgency to guard against abuse of human rights and civil liberties. This is a demonstration of compliance with the global treaties safeguarding human rights to which Kenya declared to abide by. The treaties require the police to avoid all forms of malpractices meted against the civilians including intended or accidental torture or inhuman treatment.

However, legal changes to the Act in 2014 were seen as a threat to the independence of the police as an institution. The changes allowed the president to appoint a representative in the selection board for top police chiefs. This was viewed as a reversal effort to depoliticize the force. It was also seen as an unwarranted interference by the government in security matters. Having such a presidential representative portended biasness and of course overt political influence and interference in the selection process. The law could allow the government to usurp the supposed autonomous power of the police, acting in contrary to the constitutional provisions for independent institutions. Kiama (2018) conceived this to be a reflection of the government's reluctance to accept the principle of police independence. This supports the premise that the state has historically deployed the police

to serve personal interests of the ruling regimes. This is similar to Cape Verde where there is widespread concern about the systematic use of torture and mistreatment of civilians in police stations. I have already addressed the problem of a political culture of ignoring the spirit of separation of powers despite the fact that the constitution envisioned an independent police service in all its senses, including selection of the serving officers in all ranks. It can be construed that the constant political interference as engendered in the amendment to the law was a backward step killing the original motivation for police reforms.

#### **5.5 Independent Policing Oversight Authority (IPOA) Act 2011**

The Independent Policing Oversight Authority (IPOA) Act created a public-led board to oversee the human resource management in the police institution or envisaged commission. The mandate of the authority was to review the standards and qualifications of police officers and deal with the complaints about misconduct of police officers coming from the general public. IPOA was also mandated to conduct investigations about the complaints against the police and make appropriate recommendations and suggestions for disciplinary action. IPOA is a crucial oversight body that can discharge accountability and monitoring functions in the police service. If it remains faithful to its responsibilities, IPOA can contribute significantly to restoring the much dilapidated public confidence in the police thereby stopping human rights violations. This can be achieved by ensuring that errant officers are disciplined.

Many of the respondents supported the creation of IPOA. For instance, a key informant concurred that IPOA has succeeded in restoring sanity in the operations of the police service by addressing the grievances from the public against police officers (K.I.I. Senior serving police officer, 2018). Moreover, a senior serving administrative police officer in Nairobi concurred that IPOA has performed a crucial role in keeping the police officers under check.

The respondent remarked that;

“With IPOA we are very careful on how we conduct ourselves. In 2015, we witnessed some of our colleagues being probed by IPOA. It is shameful to be brought into the limelight as a police officer being accused of committing crime when you are supposed to be curbing crime (Senior Serving Police officer, K.I.I. 2018).”

From the above verbatim, it is evident that IPOA has been helpful in regulating the operations of the police institution thereby keeping the excesses of the police officers to minimal levels. To fulfill its deterrent functions, many police officers have avoided incidences such as harassing civilians that can land them in trouble with IPOA. Anderson (2014) noted that IPOA has the mandate of investigating police crimes and mistreatment of civilians. Underscoring the need to protect human rights, a senior serving police officer interviewed at Ruiru noted that times have changed and so has the operations of the police officers. He remarked that;

“today things are different in the police force. Unlike during the previous eras, now we have a body that scrutinizes our operations. You cannot just humiliate a

civilian and get away with it...they will report you to IPOA (Senior Serving Police Officer, K.I.I. 2018).”

This indicates that human rights are being taken into consideration by many police officers. Although IPOA has been operationalized, many aspects of the act have not been implemented since the police still use force in their interaction with the public. Therefore, IPOA has not achieved its goals of entrenching professionalism in the police service. Moreover, the public still feels frustrated with IPOA’s sluggish pace of executing its obligation. As one human rights activist observed, there is no need for IPOA to be involved in the recruitment of IGP when it has never incarcerated any officer involved in violation of human rights. Ashimala (2014) concurs that IPOA failed to investigate and hold to account the people responsible for the crisis and massacre that occurred in Tana Delta and Baragoi. Perhaps political interference and the general belief that the police officers usually serve the political elite have slackened IPOA’s prosecution capacity making it difficult to deal with cases of police brutality and human rights violations. This has raised genuine concerns over IPOA’s capacity and commitment to police reforms especially when some police officers continue to commit atrocities with apparent blessing of the executive. In addition, a senior serving police officer interviewed at Embakasi intimated that;

“As police officers under IPOA, we are striving to protect human rights but what happens when a police officer is attacked by members of the public. We do not have activists taking to the streets to fight for the rights of officers. People expect us to be human but they do not reciprocate. It is hard to know how to behave when a police officer is attacked. (O.I. Senior Serving Police officer, K.I.I. 2018)”

These remarks indicate that the police officers feel enough is not being done to protect them. It was noted in an interview with a human rights lawyer in Upper Hill, Nairobi, that the police officers are supposed to be powerful to not only protect themselves but also the civilians. The human rights lawyer wondered;

“Why would an officer be reckless to be attacked by members of the public? Isn't this an indication of failure in the police service? (Human rights activists, K.I.I., 2018)”

This presents sharp contradictions regarding human rights violation. This is a challenge for the policy makers who need to devise legal mechanisms that will allow equal protection of police officers in their line of duty to avoid feelings of negligence on their side.

### **5.6 Office of the Inspector General**

This is one of the developments in the police service with a sole purpose of uniting the various formations of the police service and managing police officers. The office of the IG was created with the ultimate aim of enhancing accountability in the police as an institution by placing police officers under a single command. The constitution gives the IGP security of tenure with express grounds upon which the person serving as the IGP may be dismissed from the office. This implies that the IGP now has functioning freedom and free hand to hire and promote officers. The independence of the IGP's office has been strengthened by banning political meddling with

ongoing inquiries and allowing officers to enforce law and disciplinary actions against culpable individuals (Ashimala, 2014).

It was evident in a focused group discussion involving members of the KNHRC that the creation of the office of IGP was timely and relevant particularly by facilitating the conglomeration of the diverse formations of the police particularly the KA and the AP. The rigorous process followed in the appointment of the office bearer demonstrated the competitiveness of the office. The open and transparent interview procedure for applicants seeking recruitment as the IG and the deputies seemed to restore the lost public trust and confidence in the person holding the office. This appeared to reassure the public that there would be transparency in the operations of the police service. This view was considered by human rights groups as a trend in the right direction. It was outstanding to note that even though public views may not have been considered, the fact that they had a chance to present their views regarding the integrity and capabilities of the applicants indicated attempts to abide by the public participation as a constitutional requirement in the governance processes. This is supported by a human rights activist who recalled that it would not have been imaginable that the recruitment of senior police officers would be conducted in the open by inviting members of the public and giving them an opportunity to raise concerns and give recommendations on the suitability of the applicants. This was a positive trend for human rights activists even though the period of time taken to receive and scrutinize the feedback from the public was not adequate. This

meant that there was increased confidence in the person to deliver on the mandate given by the law.

However, the first IG had hard time dealing with security issues that affected the country during that time. In addition, there were wrangles over mandate that were marked by security hitches in the service such as the ability to deal with the Tana River security issues in 2012. These insecurity incidences were characterized by abundant misuse of force coupled with complicity and loss of innocent lives. Despite the restraining guidelines stipulated in the NPS act, adherence to the provisions of the act was largely ignored by the police providing a fertile ground for unjustifiable violation of human rights particularly through violence and forceful enforcement of the law. KNCHR (2014) indicated that despite the reforms in NPSC, there were various challenges that provided security loopholes and which saw massive violation of human rights. In addition, the report indicated that despite the provision of professionalism and integrity in the recruitment of officers, the process has been marred by incidences of bribery and corruption. With such allegations, the much anticipated trust in the police reforms seemed to have been dented hence raising questions on the genuineness of the reform agenda. A key informant representing human rights in Nairobi county registered displeasure with the limited time allocated in identifying a suitable candidate to occupy the office of the IGP. The time was limited for the entire exercise of recruiting the IGP and the extent to which the issues

raised by the public were considered to influence judgment on the suitability of the recruits for the position of the IGP.

In spite of the dissatisfaction with the work of the IGP, the transparency of the recruitment process was a clear evidence of the accelerated police reforms in Kenya. As a result of public participation, many citizens have become bolder in calling for probes against human rights abuses with a view to ensuring accountability in the police service (Ashimala, 2014). It was also evident that even the terms and conditions of service within the service had significantly been improved given that junior officers better living conditions. However, for the first time since independence, lower ranking officers had the unprecedented opportunity to sue their seniors and demand better conditions of service. This implied that police officers had become bolder and willing to ensure the reforms were implemented for their own benefit (Ashimala, 2014).

### **5.7 Directorate of Criminal Investigations (DCI)**

The directorate of criminal Investigation (DCI) was another department in the police service that has been majorly reformed. The NPS Act specifies the administrative functions and legal powers of the DCI with a robust mandate for increased internal accountability. The DCI was independently funded which enabled it to carry out quality investigations. AI (2013) pointed out that following the enactment of the NPS Act of 2011, DCI was established to carry out independent investigations of criminal activities in

nature. However, it is significant to note that while this was the case, investigation of criminal activities has been in the leading line with regard to human rights violation. Some of the noteworthy evidence involved the investigation and arrest of terror suspects in Kenya and more specifically in Eastleigh and Lamu (Aronson, 2013). This implied that the DCI continued to engage in human rights violations. In addition, DCI has not adequately responded to the complaints raised accusing the police for extrajudicial killings and enforced disappearances. Instead, the human rights groups continued to be deprived of space for operation as the civil space was shrinking as the government actively continued to clip them. In addition, the rights to life, ownership of land and entitlement to a decent living have been violated, ostensibly by the government. There was still overwhelming evidence of police shootings with explicit mandate to exterminate people, including suspected gang members. In this regard it was the sole responsibility of the DCI to investigate these cases in order to guarantee acquiescence with the enshrined civil order and liberties in its operations.

### **5.8 The Internal Affairs Unit**

The Internal Affairs Unit (IAU) is legally recognized by the NPS Act and assigned the responsibility to receive and investigate complaints against police officers or the police as an institution. To enhance its capacity to fulfill its obligations, the unit operates separately from the rest of the service. This has helped to restore the glory of the NPS and promoted professional standards. Most human rights group observers contend that this

has enabled the IAU to conduct independent, thorough, timely and impartial investigations against alleged police misconduct. Among other functions, IAU has also been engaged in investigating complaints launched by Junior Police officers against their seniors. According to Shamalla (2014) IAU has successfully managed to promote uniform standards of good discipline in the service and where necessary appropriate action has been recommended in respect of any police officer found to have violated the code of conduct. In the performance of its functions, the IAU examines personal malpractices by police officers and determines the accusations levied against the police officers from members of the public. As currently elaborately constituted, membership of the unit cuts across various departments and related partners such as the KPS, APS and DCI, IPOA and KNHRC.

Since its inception, it is expected that complaints raised against the police in regard to human rights violations would be addressed. This is because IAU guarantees impartial investigations over complaints made amongst police officers or from the public. Practically the unit is assigned with the generally duty of promoting the ascribed code of conduct in the service. While it is not clear whether this has been achieved, for some time now, many police officers seemed to have complied with the constitutional standards with regard to civilian freedoms. When the unit will finally function to its maximum, high level of professional conduct, integrity and respect for the fundamental human rights will be expected to prevail in the society. This will also seemingly help to restore the generally low public trust in security

agencies particularly the NPS. Generally, the expected outcome of IAU will be enhanced adherence to human rights standards and principles by law enforcement and security agencies that would translate to improved policing services leading to the advancement of rights of all citizens and generally safeguarding properties.

In a focused group discussion with human rights activists, the respondents noted that the internal affairs unit takes care of internal needs of the police officers such as indiscipline as well as look into their welfare on promotions and transfers (FGD, human rights activists, 2018). However, as respondents in another focus group discussion pointed out, the reforms on transfers and promotions will only be effective if more resources are put into the service and avoid politicizing the internal affairs. Despite the force moving to a service, the perceptions the public have towards the police officers have seemingly not changed. The missing link seems to be the lack public awareness programmes to change public perception about the police.

For instance a senior serving police officer observed:

When a police officer arrests about 10 people, only two cases get prosecuted. Like in the case of traffic offenses where officers are able to detect the offense committed such as non-compliance with traffic laws, 90% of the cases are intercepted by cartels, senior officers in the system or prominent people and this beats the justice system a situation that demoralizes police officers

From this sentiment it is easy to see why many citizens still perceive the police institution as a criminal enterprise working in cahoots with the

criminals in total disregard of the cherished motto of universal service delivery. Open pervasive corruption especially in the traffic department has stifled the image of the police. In such a situation, it is difficult to desist from linking the incessant bribery, unlawful detention, physical and sexual assault, torture and killing by the police to corruption in the police institution. By and large this is a pointer that legal, constitutional and policy changes alone are not adequate to bring about complete changes in the police force. The focus needs to be redirected toward strict adherence to the constitution, increased political good will and respect of human rights in order for the fruits of the reforms to be realized and felt by all. There is also fear of change among senior police officers leading to resistance in the implementation of the reforms. Although change is a slow process, the desired reform outcome ought to be construed within the wider framework of good governance and public morality. Ideally, the persistent disobedience to the rule of law and vested political interests has often overshadowed efficacious reform implementation in all levels of governance in Kenya including the police since independence. In this regard, police reforms ought to be placed within collective reform paradigm in order to involve everybody who stands to benefit from the fruits of the reform. This may involve re-socializing the police officers to accept the new philosophy of police reforms as incorporated in the new training guidelines and performance evaluations.

There is also need for altered attitudes and perceptions if the society has to embrace new policing dispensation. If institutional changes are to be achieved, officers who work hard need to be motivated through a just rewards and promotions system based on routine performance appraisal. By rewarding officers who carry out their duties in tandem with the law, accountability can be expected. The public still seemingly view the officers as ruthless thus so much ought to be done to win the trust of the public towards better human rights protection (FGD, human rights activists, 2018). Muraya (2015) articulate that the police internal affairs unit is mandated with the responsibility of handling cases such as corruption, indiscipline, misconduct raised by the public or an officer. In addition the unit is obliged to regularly report to IPOA for accountability purposes.

### **5.9 Change of Operation; Rights of Arrested Persons**

The 2010 constitution explicitly describes the rights of an arrested person who is required to be informed in a simple manner and promptly by the arresting officer the reason for being arrested. It is also provided that this person can choose to remain silent if the person feels that is necessary. In these circumstances, the person should not be denied opportunity to communicate with an advocate and significant others who may be available to give assistance. The law also requires that the person should not be placed under duress to involuntarily make unintended confessions or wrong admissions that could later be presented as evidence of liability. After the arrest, the law is clear on the period of time the accused person should be

presented for prosecution before a legal judicial institution for charging or be informed of the offences committed warranting detention usually before twenty-four hours elapsed. When this is carried out practically, the arrested persons will be presumed innocent until all available emancipation avenues are exploited.

It is also evident that a critically important component of the rights of arrested person involves refraining from detaining individuals for offences that are punishable by a fine or meriting incarceration for less than six months. Basically the legal implications for such stringent measures are to safeguard the rights of the arrested person bearing in mind that an incarcerated person ought to be presumed innocent until irreproachably proved guilty in a court of law charged with the jurisdiction to determine the criminality of the offence committed (KHRC, 2013).

It is in this respect that the nature and mode of operations of the police has significantly changed when the new constitution came into force particularly the articles related to human rights. Mutuma (2006) opined that initially an accused person would take longer before being presented in a court. With the 2010 constitution incorporating human rights bill, the fundamental liberties including the freedom of movement are outlined and as a reform in the police force, accused persons should appear in court within 24 hours after being arrested. Such considerations are also evident in other countries in Africa where reforms have focused on complete ban on all forms of mistreatment against all citizens (Anderson & Killingray, 1991). A senior

serving police officer claimed that the provision had improved the performance of the police officers in the context of human rights practice.

The officer remarked that;

“The changes regarding appearance of an accused person in court within twenty four hours have made our work faster than before. Initially, we would take up to fourteen days investigating before a person appeared in court (O.I. Senior Serving Police officer, 2018).”

From the above remark, it can be hypothesized that the change of operation in the police service as far as taking an accused person to a court has made the police officers work over time. In addition, in an interview with constitutional law lecturer in Karen pointed out that the arrested persons have rights under article 49 and 51 of the Kenyan constitution. Through arresting a person, their freedom of movement is violated and as such the culprit has the right to be informed of the offence committed to permit arrest, communicate with an advocate, opt for silence and demand to be presented to a court of law within the stipulated time. It was also noted that before the mode of operation changed, a person would be arrested on the streets any time without a valid reason (constitutional Law Lecturer K.I.I., 2018). Barkan and Mutua (2010) point out that the new constitution stipulates that one must not be in police custody for more than twenty four hours without the court authority. Upon being taken to court, the person has a right to fair hearing, humane treatment, and right to be defended. This is unlike in Chad where the most significant human rights problems are harsh prison conditions and limitations on freedom of expression and assembly

(Albrecht & Jackson, 2009). Akech (2010) contended that the constitution guarantees individual freedom from degrading and mistreatment during arrest. However, in another interview it was evident that with high insecurity for the last few years in Kenya due to terror attacks, there has been massive violation of human rights. These violations, as noted by the respondent, include extra-judicial killings, mass arrests during terror attacks, lack of fair trials, detentions for a long time among others (Human right activist, K.I.I. 2018). Echoing similar remarks, KHRC (2014) indicated that incidences of suspects being crowded in cells during operation have been reported with the suspects being held longer than twenty four hours. In addition, it emerged from an interview with a long serving law enforcement officer that the reasons why officers sometimes found themselves holding suspects for long was due to fear of insecurity especially in the case of terror suspects. They tended to hold the victims for longer period as they gather evidence to present in court for prosecution. The senior serving police officer intimated that;

“Sometimes it is very difficult to get enough information to prosecute a terror suspect within twenty four hours. Sometimes the time is not enough that is why some of the accused persons just end up being free in the name of respecting human rights and pose more security threat to civilians” (Senior Serving police officer, K.I.I. 2018)

It is clear that despite the reform that ensured that an accused person appeared in court within twenty four hours, difficulties still continued to emerge on how to handle terror suspects perceived to possess a greater threat to national security.

### **5.10 Change in Recruitment, Training and Human Rights Practice**

The traditional form of hiring new police officers often involves setting the criteria for the applicants to meet for consideration into the service. However, questions have been raised regarding the exact skills, abilities and personal characteristics one is required to fulfill to be considered into the service. The main contentious issue is whether the applicants are often drawn from all regions and propensity to service diligently and passionately in the police service. Generally a good recruitment process should seek to obtain the required human resources for an organization (Ombati, 2014). In this regard, recruitment needs to be a gruesome process that seeks to get individuals that are best suited to undergo the training process to completion and serve in the force. Up to date there have been tremendous reforms in the recruitment procedures in the police service. In the context of the current reform initiatives, the recruitment process has been free to all individuals that fall within stipulated age brackets and academic qualifications which include a minimum of 18 years and intermittent grades in KCSE including those with diplomas or degrees in any field.

In an interview in Nairobi on recruitment, a senior serving police noted that the nature of recruitment into the police service has also drastically changed. Recruits are supposed to attain at least a mean grade of C plain in KCSE. However, this requirement has been rescinded and currently grade D+ has since been adopted. In addition, just like in the 20<sup>th</sup> century, the recruits ought to be physically fit. Before the reforms, anyone would join the force

as long as they had the connections as the force was considered for those who had failed in KCSE. Further, during the training it was suggested that trainees undergo a 15 months training rather than nine months. During the training the recruits are equipped with the skills in Information Technology (IT), human rights practice among other areas (Senior serving police officer, K.I.I. 2018). Further, a lecturer in law interviewed at Loresho, Nairobi noted that;

“Initially education background of police recruits was a bit low. As such, there were high incidences of human rights violations. This is because education according to me influences how officers handle civilians. As such, violence against members of the public is changing as the education requirements are improving (O.I. Lecturer, 2018).”

However, Ombati (2014) indicated that on the issue of how long the police officers should be trained, the IG undid the system of training for fifteen months and reversed to the old of nine months in 2014. The argument behind this reverse was that there were inadequate personnel and thus longer training would result into serious security gaps in the country. On the same note, in an interview with a senior serving police officer indicated that there was no need in training the officers in a rush and release them out there to violate human rights (K.I.I Senior Serving Police officer, 2018). This emphasizes the nature of training for police officers and for how long to equip them with the skills of serving the public better. It is in this vein that this study examined whether changes in training were significant in altering the perception of police officers. During the award of certificates to officers who had successfully completing their studies in governance and public

management at Kenya Education Management Institute, Prof. Mabel Imbuga, the Vice Chancellor of Jomo Kenyatta University accentuated the fact that the NPS was indeed a public institution whose officers required soft skills to enable them manage effectively the diverse and ever evolving security trepidations. In the same occasion, the chairman, NPSC, Mr. Johnstone Kavuludi opined that a mastery of soft skills placed the officers at an advantage in dealing with public perception of maladroitness of the police force.

### **5.11 Gender Mainstreaming in the Police Service**

The perceptions of gender insensitivity in the security agencies reveal under representation of the female officers particularly at the higher echelons. Women generally make up a small percentage of the police force and it is evident that the government is not willing to adhere to the gender rule ascribed in the 2010 constitution. The legal obligation is that out of the positions of the IG and the two DIGs, at least one should be a person of the opposite sex. A human rights activist interviewed in Nairobi observed that the recruitments into the service can be termed as moving towards gender inclusivity with gender equality and equity being observed (K.I.I. Human rights activist, 2018). This agrees with the NGECC (2013) which requires a woman to be appointed as a deputy IG. The accommodation of more women in the service as noted by a retired senior police officer at Mwiki, was unheard of until increased agitation for sensitivity in handling incarcerated women prompted hiring of more women in the service (K.I.I. Senior Retired

Senior Police Officer, 2018). In addition, a human rights activist in Nairobi noted that women were coming out to hold positions in the service that initially were male dominated. For example, the positions of the police commanders were traditionally held by men but after the promulgation of the 2010 constitution women such as Grace Kaindi were promoted as the DIG in charge of the Kenya police service.

A report by the CMR (2013) indicates that developments have also taken place to protect the rights of female inmates. For example, the report further indicates that there are cells for women and men separately and citizens can access the cells through legal provisions. As opposed to the previous constitutional dispensation, gender inclusivity in the police service currently enhances service delivery and protects the rights of both male and female inmates. Many observers have noted that the provision of gender inclusivity comes from the 2/3 constitutional dictates on gender rule. The constitution stipulates that in all departments at least a third of the government appointments should represent the minority gender which in most cases is the females (Constitution of Kenya, 2010). However, the execution of this constitutional provision in the police service is yet to be realized given that the police service is primarily designed for crime prevention and detection which require some form of physical strength.

### **5.12 Prospects and Challenges in Implementing Police Reforms**

One of the most complex public sector restructuring is implementing police reforms. However, since independence, NPS was one of the most significant

constitutional initiatives in police reforms in Kenya. Although many positive steps have been realized since there is still a lot yet to be achieved given that many problems and challenges have not been addressed. For instance, the police service has been accused of tribalism, favoritism and corruption. Many citizens perceive the police as a dishonest institution that has renegaded on its cherished motto of providing service to all. Although the structural reforms encompassing mergers and vetting have been implemented there is little impact on human rights violations.

Rampant and wanton corruption especially in the traffic department has stifled the image of the police. Like in Nigeria, the problem of corruption is blamed for the unenviable reputation of the NPS particularly with incessant complaints of bribery, unlawful detention, physical and sexual assault, torture and killing by the police (Greene, 2000). In Nigeria, police corruption has largely become normal and generally expected inevitable reality of life leaving many Nigerians dreadful of their protectors-turned violators of human rights violators.

With regard to the merger between the AP and the KP, resistance was still evident particularly from officers who feared it would stifle their vested interests. The fear about command structure after merger was also a significant challenge as the officers would simply conglomerate under different command structures with different resource pools and lost favors previously enjoyed. In addition, the vetting has been very slow yet it is a central process in the reform agenda. Queries and transparency concerns

raised by the ad hoc process have arisen amid the requirement that retention after vetting would be determined by proved competence, professional conduct, personal discipline and track record on human rights engagement. Regrettably, integrity issues appear to have taken a back stage as many officers have been interrogated on issues of wealth and finances. The outcome of the vetting exercise has not slowed down corrupt practices as the police service still remains the most complicit, inept and fraudulent public institutions in the country. This is evident in an oral interview in which a community policing enthusiast noted that there is fear of radical change as the officers might end up being the casualties of change thus leading to resistance in effective implementation of the reforms. The respondent noted that there has been controversy in the number of months the police should undergo training.

She remarked that;

“On my part I think there is fear for change even among the seniors. We move a step forward then back. For instance, there was suggestion of police training for fifteen months but later it was reversed to nine months which was the initial duration (O.I. Member of community policing, 2018).”

These sentiments indicate that although steps are made towards reforms in the police service there is tendency of going back to the old traditions of the service. This concurs with Ombati (2014) who noted that in 2014 the inspector general reversed the months of training citing shortage of personnel. In addition, Ombati (2014) indicated that the change is a slow process and thus there is a need for patience. Moreover, the desired reform effort ought to be construed within the wider institutional framework for good governance given the track record of political interference in the implementation of noble reforms in Kenya. In this regard, police reforms ought to be placed within the collective institutional reform paradigm encompassing all government institutions not just the police (AI, 2012). This can coerce the police officers to embrace non-coercive investigative techniques to protect human rights and guarantee the presumption of innocence to all persons (Cole, 1999). This calls for the both the executive and legislature to move with speed to formulate policies that will address the long standing ineptness and impunity (Goldstein, 1998). For instance, Ombati (2014) regretted that corruption was to blame for human rights violations even in the hands of the police.

According to Schafer (2001) the police officers need to be re-socialized to accept the new philosophy of police reforms as incorporated in the new training guidelines and performance evaluations. Goldstein (1998) contended that new officers needed adequate knowledge, altered attitudes and perceptions if they have to embrace the new policing dispensation and philosophy. In return, officers who work hard need to be motivated through a just rewards and promotions system based on routine performance appraisal if the organizational changes are to be achieved (Goldstein, 1998; Greene, 2000). By rewarding officers who carry out their duties in tandem with the law the required accountability can be expected (Schafer, 2001). Wilkinson and Rosenbaum (1994) examined the influence of organizational structure on the implementation of reforms and revealed the essential role of having specialized units like the ones recommended in the new constitution can aid the success of a new philosophy. Toch (2008) vouches for the incorporation of the police officers as integral change agents in the reform agenda.

However, budget allocation for the police was also noted to be a challenge that hinders effective implementation of reforms. In an interview involving a human rights crusader highlighted how lowness in budget allocation can hinders effectiveness in the delivery of items meant for the police service. This has led to under resourcing of Kenya police service thus difficulties in implementation of the reforms (K.I.I. human right activist). Oluoch (2015) notes that Kenya adopted the MTEF in 1999 and since then even after

adoption of the 2010 constitution it has remained the primary budgetary system for the Kenya police service. This mechanism is outdated to cater for the changing times that are characterized by different reforms. Further, the mechanism complicates the process of monitoring and evaluation performance since it only indicates items purchased and not services provided by the police. Similarly, it was ascertained through interview with a senior police officer at that corruption impedes carrying out of the reforms for the intended purpose. The respondent noted that despite measures to curb corruption both the civilians and the officers often bribe their way out of trouble. The officer noted;

“With the high living standards in the 21<sup>st</sup> century life is difficult for us. We are often tempted to take “kitu kidogo” but very careful to avoid losing our job (O.I. Senior officer, 2018).”

These remarks reveal that the culture of corruption has been at the core of the police operations. Ruteere and Pommerolle (2003) also observed that corruption among police officers and civilians have impacted negatively on policing and also on public trust. Since independence, the police have always been misused to harass the civilians leading to poor and unwarranted suspicion-laden public-police relationship. With regard to officers’ welfare, it was also noted that much needed to be done since the police always feel neglected. Explaining this in an FGD it was evident that the police officers are viewed as less of human beings with their rights being given less attention. For example, it was noted that the housing is still poor thus loosing, morale of carrying out operations. Further, in cases of police being

attacked they are often accused by human right activists of extra judicial killings without digging deeper to know what transpired (FGD, Police officers, 2018). Emphasizing on the same, Ashimala (2014) noted that less has been given on the rights of police officers whereby they are left to wonder on the way out especially when a civilian attacks for example with a machete or issues death threats; how should the officer react without being accused of violating their rights.

Further, it was noted that lack of adequate personnel in the police institution has not only delayed but also affected the implementation of the reforms. In an FGD involving senior police officers from Nairobi it was observed that the NPS has been facing a very serious shortage of manpower. This has negatively impacted on security provision. It was further revealed that the vetting bodies in the police service were concentrating too much on vetting the police officers rather than recruiting more officers (FGD, county Administrators, 2018). This has led to release of half-baked police officers who are trained within a short duration for the purpose of addressing the shortages. Under such conditions miscalculations and violation of human rights is inevitable (Mutoro, 2011).

Another challenge noted was unhealthy and unprofessional relationship within the police service. This was evident in a focus group discussion with police officers in Nairobi in which junior officers often felt mistreated by their seniors. It was noted that in some cases they pour the bitterness on civilians and rarely resist taking the orders (FGD, Senior Serving police

officers, 2018). In another group discussion with senior police officers, they defended themselves of such allegations arguing what they are propagating is a vice inherited from colonialism. This culture is very difficult to change and it will require a lot of discipline from both the senior police officers and their juniors (FGD, Senior police officers, 2018). In addition, the CMR (2013) pointed out that bad relationship among officers from different ranks could be attributed to lack of mentorship right from the training and moving up the ladder in the service.

### **5.13 Conclusion**

This chapter has interrogated the implications of the police reforms enshrined in the 2010 constitution and its implication on human rights. It has been noted that the 2010 constitution created the framework for transforming the police institution. The overall aim was to safeguard human rights as envisioned in the 2010 constitution. Moreover, a significant reform introduced was the change in the mode of operation where the police officers were restrained from holding up suspects for more than twenty four hours before presenting in a court of law. Although this was viewed as a welcome change, the police officers sometimes were compelled to release key suspects because they could not hold them for long while gathering prosecuting evidence. Concerning human rights practice, the change of operation was commended for fastening the speed of gathering evidence.

In addition, IPOA was established to keep the operations of the police in check. For example, members of the public could report a rogue police

officer to IPOA for investigation and punishment. This was an improvement on the way police officers conducted themselves while handling the public. Further, the office of the IG was created to head the NPS. This was meant to ensure the independence of the police service for easier control and management. Also the level of education was raised to a C plain in KCSE in realization that educated officers performed better in handling the civilians.

Gender inclusivity and sensitivity has also been taken into consideration in the 2010 constitution. Consequently, more female officers have been recruited into the police service with women serving in senior positions including the position of the deputy IG by 2014. Also, in the cells the inmates are held in different cells depending on their gender in response to the constitutional requirement.

Despite the formulation of the reforms, many challenges hampered the implementation of the reforms. For example, misunderstanding within the police service created hiccups that slowed the implementation of some of the reform proposals. In addition, lack of resources due to budgetary constraints also affected the implementation of the reforms. For example, human resources were noted as being scarce even in the wake of the escalating security threats. In theory, the 2010 constitutional dispensation presented a plethora of positive strides in the police reform agenda and human rights practice in Kenya. However, incidences of ineptness and civil disobedience by the police officers appeared to have increased with corruption, excessive use of force, extrajudicial killings and complicity

remaining common place in the police service. This is not only a Kenyan problem but appears to be common in other countries too. For instance, in Chad the most significant human rights violations are harsh prison conditions, arbitrary killings and arrest, torture, politically motivated disappearances, lengthy detention, absence of fair trial and executive influence on the judiciary. Discrimination and abuse of refugees and discrimination and violence against women and children are still problematic in many countries. This suggests that the strategic policy formulation leading to significant police reforms in these countries have largely remained on paper without any active steps to implement the suggested reforms (Albrecht & Jackson, 2009). In the case of Nigeria, the initial reform initiatives were blurred by human rights violations involving torture, killings and extortion, arbitrary arrest and mistreatment of detainees have continued unabated (Cawthra, 1992). The next chapter presents the summary, conclusions and recommendations of the study.

## **CHAPTER SIX**

### **SUMMARY, CONCLUSION AND RECOMMENDATIONS**

#### **6.1 Introduction**

This chapter presents a summary of the major findings, conclusions and recommendations of the study. This includes a summary of the previous chapters, conclusion based on the study objectives, recommendations and suggestions for further research.

#### **6.2 Summary and Conclusion**

In chapter one, the study's background and statement of the problem were presented where the study was clearly contextualized. The study objectives, research questions and the premises were also highlighted. Chapter one also highlighted the scope, justification and significance of the study. In the limitation of the study, some of the problems experienced during the study were highlighted as well as how the researcher attempted to overcome them. The chapter also presented a review of literature and the identified study gaps. The theories upon which the study was based were also highlighted. Finally, the methodology that the researcher employed was presented.

In the second chapter, the study stretched back to the colonial period in order to lay a foundation of understanding the reforms in the police force. It was observed that in the colonial period, the colonial government hired Africans as tribal police officers to implement the pro-colonial orders and to safeguard their interests. However, Africans were minimally involved in

decision making concerning police matters. Due the need to secure the colony, police reforms were introduced with regard to formal training and increased personnel in the force. It was also observed that the training of the police adopted military formation in which the recruits were required to perpetrate violence against fellow Africans. In addition, the study revealed that after Kenya gained independence, the first political government inherited the colonial police structure with senior officers being British. However, the Preventive Detention Act as well as the Security Preservation Act were made that saw the president usurp more powers than the colonial government. Other reforms involved changing the police uniform from short trousers to long trousers. However, after independence, the government continued to deploy the police to promote the interests of the political elite. Consequently, the extent of loyalty influenced the promotion and dismissal of police officers. The post independent policing continued to be marked by the excessive use of force, torture, extrajudicial killings and rampant corruption that made the public lose faith in the police institution. It has been expounded that Jomo Kenyatta's government applied the techniques of political intimidation, including the use of detention without trial and violence. The police institution changed hands in terms of leadership while retaining its basic goal of protecting vested political interests.

In chapter three the police reforms were examined in relation to their impact on human rights in Kenya during Moi era. It was revealed that Moi's administration was marked by heightened human rights violation with the

police being used to scuttle and suppress opponents. It was also noted that Moi's administration was marked by excessive police brutality in containment of political dissent. The GSU in particular took part in perpetrating tribal turmoil and frictions during the 1992 and 1997 plebiscites. The chapter has noted that the police continued to thwart multiparty politics despite the changes in the constitution in 1997 which allowed multiparty democracy. It is evident that the police fanned tribal violence, contravened the law and applied excess force on the common citizens instead of safeguarding public security. Therefore, Moi's administration was marked by police brutality, arrests without warrants, detention without trial and torture, injury and death without any deliberate effort to reform the police institution. Shoot to kill orders were issued to disarm and neutralize errand offenders while freedom of association, assembly, speech and expression were often limited by police brutality.

In chapter four, efforts made at reforming the police force and their implications on human rights protection during Kibaki's administration were discussed. It was noted that the NARC administration heralded a new political dispensation that brought up hope of in the process of police reforms. The outstanding features in police reform during this period included the formulation of an elaborate strategic plan, the entrenchment of the GJLOS reform platform, the establishment of the police reform task force and Waki's recommendations on police reforms. However, it was revealed that a myriad of challenges such as lack of police accountability

and continued police misconduct threatened the implementation of the police reforms.

In chapter five, the study focused on examining the police reforms enshrined in the 2010 constitution and their implications on human rights practice in Kenya. The chapter has highlighted the various changes emanating from the 2010 constitution. The noticeable changes in the police force that had immense implications on human rights practice included the vetting of senior police officers, restructuring the hierarchy of the police service, reviewing the police training structure, establishment of internal affairs unit, establishing the NPSC and the merging of the AP and the Kenya police. Moreover, the 2010 constitution saw the creation of IPOA and the office of the IG as well as consideration of gender inclusivity and sensitivity in the police service. These changes engendered human rights concerns more than ever before. It was pointed out that the reforms proposals compelled the police to handle the civilians in a humane manner. Certainly the police have become milder in their dealing with the general public. Despite the elaborate reforms contained in the 2010 constitution the police have not fundamentally changed but continued to infringe on human rights. With the few improvements, the noticeable exceptions are glaring and highhandedness, corruption, extrajudicial killings and political assassination remain noticeable.

Based on Kurt Lewin's theory of change, the protest theory and the predictive model, this study argued that the transformation and reforms in the police institution in Kenya should be examined in the context of political, institutional and societal reforms. This study argues that to conceptualize the implications of police reforms there is need to understand the political situation and in particular how past regimes have utilized the police force to achieve their personal gains. As postulated in Kurt Lewin's theory of change, the urgency for institutional reforms requires some level of motivation and aptly making a timely decision to change. However, the impact of the change requires that all stakeholders are involved in both the initiation and implementation. In the context of this study the forces against change appear to be historically strong thus compromising the implementation of the reforms in the police institution. The study also made use of the protest theory as a significant determinant of change. This has remained the main challenge despite the protest as envisaged in the protest theory. However, it is evident that a lot of changes have occurred in the police institution dues to the continuous human rights struggle to entrench and guard civil liberties. Moreover, it is predicted that more significant changes will be witnessed in future if radical changes projected in the predictive policing model are promoted. A lot still needs to be put into the boiling pot to facilitate the implementation of police reforms and to guard against retrogressive policing.

### **6.3 Conclusion**

The study explored the implications of police reforms on human rights in Kenya from 1920s to 2014. From the foregoing discussion, it emerged that there was no consolidated piece of work tracing the entire development of the police institution from the colonial period to the present. In this study it has been demonstrated that past administrations instituted police reforms purposely to serve the interest of the political elite. The use of the police to benefit the ruling class is evidently common across the world. Even in the most developed political democracies with advanced modern technologies like the USA and South Africa, the police are still involved in the racial divide which is the social configuration of the society. Practically, it is impossible to reform the police institution while the political government of the day continues to use the police officers unethically and unprofessionally. In deed the police often operated within the prevailing sociopolitical contexts and effort concerned with police reform only acknowledged the sociopolitical realities operating at the time. Thus the outcome of the reforms cannot benefit the citizens but only serve the interests of those in power.

Therefore, the changes in the police force from independence failed to meet the expectation of the Kenyans thus fuelling a negative attitude of the public towards the police. There were no fundamental changes in the police institution as the governing leadership used the police to secure and maintain power by infringing on human rights. Hence a series of enduring

features have remained common characteristics of the police institution. These include police brutality, impunity, extrajudicial and arbitrary executions, complicity, corruption and a widening gap between the police officers and the citizens. These acts of human rights violations have made it impossible to realize the envisioned reform benefits. The study noted that since the colonial period, the successive governments were adamant to allow the police to operate under the rule of law which would have enhanced human rights protection.

Therefore, the conclusion naturally arises that there have not been much differences in the environment of policing since independence. The post-colonial police institution is not different in terms of its orientation to the public service and human rights practice in particular. The police institution practically changed hands in terms of leadership from the colonial administration but its goals remained the same.

It is also concluded that the political considerations often influenced the formulation and implementation of any significant changes in the police force. From this work, the police institution can be understood as part of the wider political establishment. In as much as there is no fundamental change in politics and in character of the state, the police institution will remain largely as it has been. This is because the police as an institution cannot operate independently from other government structures like the parliament, executive, judiciary and the electoral body. Singling out an institution like

the police without connecting it with the others in the whole matrix of reform agenda could be missing the point. It is apparent that the legal, constitutional and policy changes targeting the police alone are inadequate to transform the policing in Kenya. When the politics and the public service remain unchanged it is practically difficult for the police to change. It is regrettable that the police being part of the wider social structure can be used to protect a few in exclusion of the majority. The society is deeply divided and our politics deeply contested. The police being part of a society with a political culture, the transformation of the police in the service of the people in politics would certainly have implications on human rights. However, police and human rights practice give us the opportunity to study the character and context of the police institution.

#### **6.4 Recommendations and Suggestions for Further Research**

From the findings, it is evident that the public has not benefitted much from the police reforms in Kenya. Despite the legal, constitutional and policy changes, the culture of police impunity and complicity has not changed much since independence. The interest of the general public is infrequently served by the reforms in the police force. In order to realize meaningful reforms, there is need for enhanced cooperation in both formulation and implementation of the reforms among the political leaders, human rights activists, the citizens and the police officers.

The police forms part of the matrix of state apparatus employed to sustain the government for the benefit of a few. It is recommended that policy

reforms should be directed to those institutions and systems that benefit directly benefit from police protection. These include the legal, electoral and political systems.

It is also evident that the police reforms have been hindered by inadequate resources and personnel. The government needs to direct more resources towards supporting proposed changes in the police institution. The conditions of service of police officers need to be improved if resistance to change in the police service can be eliminated. For instance, a just rewards and promotions system should be instituted in the police force based on routine performance appraisal.

Police abuse appears to be a structural issue; therefore, police officers need to realize that violence is a sign of bad policing and change their mindset. A positive relationship between the public and the police needs to be enhanced because a poor relationship creates bad blood and breeds a seed for discord. Moreover, the public and the police officers need to change their attitudes towards each other in order to enhance mutual trust.

The researcher felt that the field of police reforms and human rights violation in Kenya has not been fully exhausted. Therefore, the research suggested further research on policing structures in other counties in order to provide a strong justification for better reforms in the police service in Kenya. Further research attention should be directed to the procedure of recruiting officers. More scholarly works are required to ascertain the

impact of transparency in the recruitment and vetting of police officers on human rights protection in Kenya. Finally, the study recommends further investigations on the institutional, legal and structural reforms in other institutions that work directly with the police such as the judiciary to assess their collaborative effect on the protection of human rights.

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#### (b) Life History

**(c) Oral Interviews**

<b>Respondents</b>	<b>Number</b>	<b>Place</b>	<b>Date</b>
Members of the community policing	5	Embakasi	2018
Senior Serving police officer	19	Umoja	2018
Retired senior police officers	10	Westlands	2018
Human rights activists	11	Nairobi town	2018
Human rights lawyers	3	Rongai	2018
Members of human rights group	3	Westlands	2018
Member of the Judiciary	1	Karen	2018
<b>Total</b>	<b>52</b>		

**(d) Key Informant Interviews**

<b>Respondents</b>	<b>Number</b>	<b>Place</b>	<b>Date</b>
County Commissioner	1	Nairobi town	2018
University professor in criminal law	1	Embakasi	2018
County government administrator	1	Utawala	2018
Retired provincial administrators	2	Kayole	2018
Politicians (Former and present)	5	Nairobi	2018
Political detainee	1	Westlands	2018
Political scientist	1	Langata	2018
Retired politician	1	Dagoretti	2018
<b>Total</b>	<b>13</b>		

**(e) Focus Group Discussion**

<b>PARTICIPANTS</b>	<b>No</b>	<b>PLACE</b>	<b>Year</b>
FGD (Professors/Senior Lecturers in political science)	10	Karen	2018
FGD (County Administrators)	10	Nairobi	2018
FGD (human rights lawyers )	10	Loresho	2018
FGD (human rights activists)	10	Kawangware	2018
FGD (Members of community Policing)	10	Nairobi	2018
FGD (members of KNHRC	10	Langata	2018
FGD (senior police officers)	10	Ruiru	2018
FGD (senior retired police officers)	10	Nairobi	2018
FGD (Senior Serving police officers)	10	Karen	2018
FGD (Professors in political science)	10	Nairobi	2018
<b>Total</b>	<b>100</b>		

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## **APPENDICES**

### **Appendix I: Interview Schedule**

This interview is administered to find out more about regime change, police reforms and their implications on human rights practice in Kenya; 1963-2014. Through purposive sampling you have been selected to participate in the study. The information you provide will be treated with confidence and shall not be used for any other purpose other than for this research.

#### **POLICE REFORMS IN AND HUMAN RIGHTS PRACTICE**


- i. Do you think police reforms in Kenya have been implemented as planned? If yes, please explain.
- ii. What factors influenced police reforms during the colonial period in Kenya?
- iii. In your opinion did the police violate human rights during the colonial period in Kenya? If yes, explain how the police was used to violate human rights during the colonial period in Kenya?
- iv. What are some of the issues that informed police reforms in Kenya from 1920s to 1978?
- v. What were the forms of police reforms in Kenya from 1978 to 2002?
- vi. What were the implications of police reforms in Kenya in the period 1978 and 2002?
- vii. What were some of the reforms that the Kibaki government initiated in the police force and what were their implications on human rights?
- viii. In what ways did the 2010 constitution influence police reforms in Kenya up to 2014?
- ix. In what ways did the 2010 constitution influence human rights debate in Kenya up to 2014?

## **Appendix II: FGD Schedule**

### **POLICE REFORMS IN AND HUMAN RIGHTS PRACTICE**

- i. What are some of the issues that informed police reforms in Kenya from 1920s to 1978?
- ii. What were the forms of police reforms in Kenya from 1978 to 2002?
- iii. What were the implications of police reforms in Kenya in the period 1978 and 2002?
- iv. What were some of the reforms that the Kibaki government initiated in the police force and what were their implications on human rights?
- v. In what ways did the 2010 constitution influence police reforms in Kenya up to 2014?
- vi. In what ways did the 2010 constitution influence human rights debate in Kenya up to 2014?

## Appendix III: Research Authorization From NACOSTI



**NATIONAL COMMISSION FOR SCIENCE,  
TECHNOLOGY AND INNOVATION**

Telephone: +254-20-2213471,  
2241349,3310571,2219420  
Fax: +254-20-318245,318249  
Email: dg@nacosti.go.ke  
Website: www.nacosti.go.ke  
When replying please quote

NACOSTI, Upper Kabete  
Off Waiyaki Way  
P.O. Box 30623-00100  
NAIROBI-KENYA

Ref. No. **NACOSTI/P/18/84971/21962** Date: **10<sup>th</sup> April, 2018**

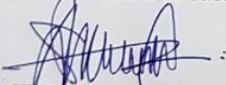
Nelson Mugweru Njiri  
Kenyatta University  
P.O. Box 43844-00100  
**NAIROBI.**

**RE: RESEARCH AUTHORIZATION**

Following your application for authority to carry out research on *“Police reforms and human right violation in Kenya from 1963 to 2014,”* I am pleased to inform you that you have been authorized to undertake research in **Nairobi County** for the period ending **9<sup>th</sup> April, 2019.**

You are advised to report to **the Chief Executive Officers of selected government agencies, the County Commissioner and the County Director of Education, Nairobi County** before embarking on the research project.

Kindly note that, as an applicant who has been licensed under the Science, Technology and Innovation Act, 2013 to conduct research in Kenya, you shall deposit a **copy** of the final research report to the Commission within **one year** of completion. The soft copy of the same should be submitted through the Online Research Information System.



**DR. STEPHEN K. KIBIRU, PhD.**  
**FOR: DIRECTOR-GENERAL/CEO**

Copy to:

The Chief Executive Officers  
Selected government agencies.

The County Commissioner  
Nairobi County.

*National Commission for Science, Technology and Innovation is ISO9001:2008 Certified*

## Appendix IV: Research Permit From NACOSTI

### CONDITIONS

1. The License is valid for the proposed research, research site specified period.
2. Both the Licence and any rights thereunder are non-transferable.
3. Upon request of the Commission, the Licensee shall submit a progress report.
4. The Licensee shall report to the County Director of Education and County Governor in the area of research before commencement of the research.
5. Excavation, filming and collection of specimens are subject to further permissions from relevant Government agencies.
6. This Licence does not give authority to transfer research materials.
7. The Licensee shall submit two (2) hard copies and upload a soft copy of their final report.
8. The Commission reserves the right to modify the conditions of this Licence including its cancellation without prior notice.



REPUBLIC OF KENYA



National Commission for Science,  
Technology and Innovation  
**RESEARCH CLEARANCE  
PERMIT**

Serial No.A **18171**

CONDITIONS: see back page

THIS IS TO CERTIFY THAT:  
**MR. NELSON MUGWERU NJIRI**  
of **KENYATTA UNIVERSITY, 19001-501**  
Nairobi, has been permitted to conduct  
research in *Nairobi County*

on the topic: **POLICE REFORMS AND  
HUMAN RIGHT VIOLATION IN KENYA  
FROM 1963 TO 2014**

for the period ending:  
**9th April, 2019**

Applicant's  
Signature

Permit No : NACOSTI/P/18/84971/21962  
Date Of Issue : 10th April, 2018  
Fee Recieved :Ksh 2000



Director General  
National Commission for Science.

## Appendix V: Endorsement from KNCHR



### NATIONAL COMMISSION FOR SCIENCE, TECHNOLOGY AND INNOVATION

Telephone: +254-20-2213471,  
2241349,3310571,2219420  
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When replying please quote

NACOSTI, Upper Kabete  
Off Waiyaki Way  
P.O. Box 30623-00100  
NAIROBI-KENYA

Ref. No. **NACOSTI/P/18/84971/21962**

Date: **10<sup>th</sup> April, 2018**

Nelson Mugweru Njiri  
Kenyatta University  
P.O. Box 43844-00100  
NAIROBI.

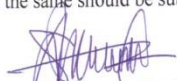


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You are advised to report to the **Chief Executive Officers of selected government agencies, the County Commissioner and the County Director of Education, Nairobi County** before embarking on the research project.

Kindly note that, as an applicant who has been licensed under the Science, Technology and Innovation Act, 2013 to conduct research in Kenya, you shall deposit a **copy** of the final research report to the Commission within **one year** of completion. The soft copy of the same should be submitted through the Online Research Information System.

  
**DR. STEPHEN K. KIBIRU, PhD.**  
**FOR: DIRECTOR-GENERAL/CEO**

Copy to:

The Chief Executive Officers  
Selected government agencies.

The County Commissioner  
Nairobi County.

## APPENDIX VI: Approval from Amnesty International



### NATIONAL COMMISSION FOR SCIENCE, TECHNOLOGY AND INNOVATION

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2241349, 3310571, 2219420  
Fax: +254-20-318245, 318249  
Email: dg@nacosti.go.ke  
Website: www.nacosti.go.ke  
When replying please quote

NACOSTI, Upper Kabete  
Off Waiyaki Way  
P.O. Box 30623-00100  
NAIROBI-KENYA

Ref. No. **NACOSTI/P/18/84971/21962**

Date: **10<sup>th</sup> April, 2018**

Nelson Mugweru Njiri  
Kenyatta University  
P.O. Box 43844-00100  
**NAIROBI.**

#### **RE: RESEARCH AUTHORIZATION**

Following your application for authority to carry out research on *“Police reforms and human right violation in Kenya from 1963 to 2014,”* I am pleased to inform you that you have been authorized to undertake research in **Nairobi County** for the period ending **9<sup>th</sup> April, 2019.**

You are advised to report to the **Chief Executive Officers of selected government agencies, the County Commissioner and the County Director of Education, Nairobi County** before embarking on the research project.

Kindly note that, as an applicant who has been licensed under the Science, Technology and Innovation Act, 2013 to conduct research in Kenya, you shall deposit a **copy** of the final research report to the Commission within **one year** of completion. The soft copy of the same should be submitted through the Online Research Information System.

  
**DR. STEPHEN K. KIBIRU, PhD.**  
**FOR: DIRECTOR-GENERAL/CEO**




Copy to:

The Chief Executive Officers  
Selected government agencies.

The County Commissioner  
Nairobi County.

**APPENDIX VII: Approval from NPS and County Commissioner**


  
**NATIONAL COMMISSION FOR SCIENCE,  
TECHNOLOGY AND INNOVATION**

Telephone: +254-20-2213471.  
2241349, 3310571, 2219420  
Fax: +254-20-318245, 318249  
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When replying please quote

Ref. No. **NACOSTI/P/18/84971/21962**

Nelson Mugweru Njiri  
Kenyatta University  
P.O. Box 43844-00100  
**NAIROBI.**

Date: **10<sup>th</sup> April, 2018**

  
RECEIVED  
12 JUN 2018  
OFFICE OF THE  
DEPUTY INSPECTOR  
GENERAL

**NAIROBI CITY COUNTY  
RECEIVED**  
13 JUN 2018  
EDUCATION DEPARTMENT  
DISPATCH UNIT  
P.O. Box 30298 - 00100 NAIROBI


NACOSTI, Upper Kabete  
Off Waiyaki Way  
P.O. Box 30623-00100  
NAIROBI-KENYA

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**DR. STEPHEN K. KIBIRU, PhD.**  
**FOR: DIRECTOR-GENERAL/CEO**

**COUNTY COMMISSIONER  
NAIROBI COUNTY  
P. O. Box 30124-00100, NBI  
TEL: 341666**

Copy to:

The Chief Executive Officers  
Selected government agencies.

The County Commissioner  
Nairobi County.

13.06.18

