

**DISCIPLINARY PROCEDURES AND JUSTICE FOR ACCUSED
ADMINISTRATION POLICE SERVICE OFFICERS IN NAIROBI CITY
COUNTY, KENYA**

DAVID NJOROGE MUNIU

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UNIVERSITY.**

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DECLARATION

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

Signature  Date: 12/11/2021.....

David Njoroge Muniu

S203/27347/2018

This research project has been submitted for examination with my approval as University Supervisor.

Signature Date

Dr. Kibaba Makokha

Kenyatta University

DEDICATION

I wish to dedicate this work to my wife Beatrice W. Njoroge, my Son Victor Muniu, my daughters Joyann Mwihaki and Faith Wakarima.

ACKNOWLEDGMENT

Foremost I wish to express my heartfelt gratitude to The Almighty God for his grace upon me throughout my study, my supervisor Dr.Kibaba for his continuous support, patience and immense knowledge. His guidance and availability during the study enabled me to complete the project.

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LIST OF ACRONYMS AND ABBREVIATIONS

APC	Administration Police Constable
APS	Administration Police Service
ASP	Assistant Superintendent of Police
CIP	Chief Inspector of Police
CIPU	Critical Infrastructure Protection Unit
CP	Commissioner of Police
CPL	Corporal of Police
FGD	Focus Group Discussion
IAU	Internal Affairs Unit
IP	Inspector
IPOA	Independent Police Oversight Authority
KCSE	Kenya Certificate of Secondary Education
KPS	Kenya Police Service
NACOSTI	National Commission of Science Technology and Innovation
NPS	National Police Service
NPSA	National Police Service Act
NPSC	National Police Service Commission
ORP	Orderly Room Proceeding
RDU	Rapid Deployment Unit
SGB	Security of Government Building
SGT	Sergeant of Police
SP	Superintendent of Police
SPSS	Statistical Package for the Social Sciences
S/SGT	Senior Sergeant of Police
SSP	Senior Superintendent of Police

SSO Service Standing Orders

USA United States of America

OPERATIONALIZATION OF TERMS

Burden of proof: responsibility of proving misconduct by the prosecutor or convincing the presiding officer/disciplinary committee of one's innocence by the accused police officer.

Discretionary power of an arbiter: The power granted to the presiding officer to make a determination without reference to any guide on the sentencing of an Administration Police Officer in a disciplinary proceeding.

Arbiter: the presiding officer in a disciplinary orderly room proceeding of the chair of the disciplinary committee.

Past record: An accused police officer's history of misconduct and sentences rendered as captured in his personal file.

Justice: disciplinary procedural fairness, thoroughness and accuracy which means that the information used to make a decision is correct.

Organizational justice: the exercise of fairness in all matters in an organization or institution

Disciplinary procedures: the process followed in instituting discipline.

Orderly Room proceedings (ORP): the actual session of prosecuting a case where the errant officer is given an opportunity to defend himself/herself as the prosecution presents its case by tabling evidence.

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ABSTRACT

It had been observed that a number of Administration Police Service (APS) officers that had been subjected to disciplinary proceedings had appealed in court the outcomes of the disciplinary process citing procedural unfairness that resulted to unjust outcomes. The purpose of this study was to explore the nexus between disciplinary procedures and justice in the APS in Nairobi City County, Kenya and was anchored on theory of justice by John Rawls which states that “adapting two basic principles of justice would ensure a just community. The study had four specific objectives namely; to examine the influence of discretionary power of an arbiter on justice to APS officer in Nairobi City County, Nairobi, to assess the effect of use of past record of conduct in disciplinary procedure on justice to APS officer in Nairobi City County, Nairobi, to analyze the influence of responsibility of the burden of proof on justice to accused APS officer in Nairobi City County, Nairobi and to establish the changes required in disciplinary procedures to enhance justice to accused APS officer in Nairobi City County, Nairobi. A mixed research design of cross-sectional survey design and exploratory research design were employed on a target population of 679 APS officers stationed in Nairobi City County, Kenya. A sample size of 251 officers was requested to fill the questionnaires. Purposive sampling was used to get 6 key informants (for in-depth information) who were senior police officers that had presided over disciplinary proceedings and two groups of 6 and 7 police officers totaling to 13 police officers that had been subjected to disciplinary proceedings to participate in focus group discussion (FGD). This research involved triangulation (use of multiple research tools) data collection methods consisting of questionnaires to collect quantitative and qualitative data from respondents, FGD and interviews to collect qualitative data. Reliability of the instrument was tested by using the internal consistency technique of Cronbach’s Alpha. A coefficient of 0.79 was accepted as a measure of reliability. Descriptive statistics were used to present quantitative data in form of tables while qualitative data were coded into categories to develop themes to corroborate findings from the questionnaires. The study established that the majority of presiding officers are not independent in making decisions and are not experienced in application of their discretionary power in Orderly Room Proceedings (ORP), it further found that reliance on past records of an accused officer influences the outcome negatively. The study outcomes showed that there is no strict presumption of innocence in disciplinary proceedings and the burden of proof was clearly defined. The study determined that there was need for change on disciplinary procedures in APS and recommended that presiding officers be trained and retrained on disciplinary process, past record of an accused police officer to have a limited life National Police Service Commission (NPSC) to be devolved to handle disciplinary matters and the burden of proof to be squarely on the prosecution.

CHAPTER ONE

INTRODUCTION

1.0 Introduction

This chapter begins with an overview of the context and background that introduces the study. This is followed by statement of the problem, purpose and accompanying research objectives and questions. It also covers justification and significance of the study before describing the scope and limitation and concludes with a section on the assumptions of the study.

1.1 Background to the Study

Discipline is a measure taken by management against an employee or a member who contravenes organization's guidelines or code of ethics, (Grogan, 2009). Discipline is a critical element in every organization. It guides how one communicates, relates with fellow employees and handles emerging issues. Organizations are individuals who pull together as workers with the aim of attaining companies' objectives. However, workers come to companies with different expectations, skills, beliefs and interests, and these differences may cause conflict in a company. The principal aim of discipline is therefore to restore a worker back, where possible, to an optimum level of production and conduct rather than to punish an employee, (Mintah, 2011) as cited by (Tumo, 2017).

According to Nova (2012), disciplinary procedures set out the stages through which any disciplinary action should proceed. The procedure provides an acceptable mechanism within which management may exercise control over employees when their performance or behavior does not reach the required standards (Dzimbiri, 2009). Disciplinary procedures should be applied consistently and management needs to stick to the written rules when disciplining workers. This helps in eliminating discrepancies in rulings and unnecessary appeal as a result of varying outcomes for the same disciplinary offences or harsh penalties. Armstrong (2010) posited that absence of a written or implied disciplinary code was a recipe for disruption to the effective functioning of the organization.

Justice is therefore key in any disciplinary procedure. Justice is perceived fairness that comes from a thorough and correct disciplinary process where similar offences attract

similar punishments and vice-versa. Where justice is preeminent as a critical value of a company's leadership philosophy and practiced through a code of well expounded regulations by the organization's leadership, it may create a system-wide dedication which is important, special and appealing to the sight of workers and clients (Cropanzano, Bowen and Gilliland, 2007). Organizational justice denotes the workers conviction on workplace processes, interaction and outcomes to be impartial and correct, (Baldwin, 2006). Generally, the more a worker perceives accepted and appreciated by the company, the better their attitude and acceptance of organization culture, processes and rules.

In the United States of America (USA), Stephens (2011) in a study on "police discipline, a case for change" found that in most disciplinary proceedings, the focus is predominantly punishment. Majority of senior police officers construed punishment as the only measure to deter police officers from engaging in misconduct. This led to failure to explore other corrective actions that could be used to transform an officer that had been found guilty. The use of punishment as a catalyst to enhance change of behaviour in an indisciplined officer may be positive or productive. A negative outcome can also result especially where the officer is dissatisfied. Looking at how discipline cases are handled or prosecuted may shed light as to whether the resentment of accused police officers is as result of a disciplinary process that is configured to ensure punishment is the ultimate outcome or otherwise.

In South Africa, Der bank, Engelbrecht, and Strümpher (2010) in a study on perceived fairness of disciplinary process in the civil service found that workers had no faith in the disciplinary process which they termed as an emotional torture. Expert participants confirmed that discipline regulations were reasonable. This appeared to suggest that it was not enough to have impartial disciplinary procedures. In the Administration Police Service (APS), it is the senior officers who interpret and apply procedures in the disciplinary proceeding, but whether there is prejudice of justice was the basis of this study.

Resolving issues of impartiality when instituting internal police discipline is founded on Rawls' (1971) theory of Justice which is anchored on two basic principles of fairness that ensure that a society operates or exists within accepted moral standards. One of the principles provides for the right of every individual to enjoy basic freedoms that are in tandem with the rights and freedoms of other people. Principle

two of this theory asserts that position occupied by people socially and economically should benefit all and the opportunity to occupy them should not be limited to a particular group of people. Principle one of this theory stresses that all individuals should have fundamental rights and freedoms and in particular highlights that all human beings are equal under the law which should be applied fairly to all persons (Rawls, 1985). Rawls emphasized that justice as fairness is what one deserves, be it procedurally or in terms of outcomes. Principle two indicates the responsibility of a person in position of authority that his actions should benefit all. The accused police officer would therefore expect fair interpretation and application of the disciplinary procedures by the presiding officer and prosecutor. By their nature, the disciplinary proceedings of the Police officers are designed to respect the legitimate interests of the alleged offender (Baran, 2017).

The National Police Service (NPS) comprises the Kenya Police Service (KPS) charged with Public Safety, the APS charged with Critical Infrastructure Protection, Border Patrol and Anti-stock theft and Directorate of Criminal Investigation (DCI) charged with criminal investigation.

In the National Police Service in Kenya, the disciplinary procedures are documented in manuals and they clearly indicate the types of offences against discipline (unaccepted behaviours) and general range of punishments. The presumption in the APS, is that a senior police officer as an arbiter in a disciplinary proceeding has the capacity and competence to use the discretionary power conferred by Service Standing Orders SSO, 2017 CAP 30(7) to determine the appropriate punishment in line with the offence committed. This study sought to interrogate whether use of discretionary power by the presiding officer availed justice

According to SSO, 2017 CAP 30 Clause 27 (1a) and (34c) one method used by presiding officers in Administration Police Service to arrive at a decision in a disciplinary proceeding is by perusing past record of conduct of an errant police officer. This action helps to shed light on the past conduct of the offender. Where the record is in favour of the accused, it is expected the concerned can use it in mitigation but if the contrary is the case, the prosecution can strengthen its argument coupled with the evidence presented. Whether the presiding officer may be tempted to over-rely on history and overlook the evidence presented by the prosecution and mitigation by the accused and the extent to which this may affect justice is unknown. In addition,

whether the circumstances surrounding previous conviction are properly evaluated before referring to the record and the likelihood of the defense accessing the past record of his client is also not known.

In the APS of Kenya, the disciplinary proceedings are conducted like criminal or civil proceedings. However, it is not clear between the accused and the prosecution who has the burden of proof. According to the SSO (2017) CAP 30 (14) on the composition of the subordinate disciplinary committee, the prosecution, the offended and the presiding officer are one and the same (members of APS, appointed by the Deputy Inspector General (DIG-APS) or immediate senior officer), this may be presumed to lower the standard of proof. Although an officer can be prosecuted and sentenced in absentia in line with SSO (2017) CAP 30 Sec 33, the presiding officer must appoint a representative of the accused as per Sec 33(3) to guard his/her interest. Whether this arrangement rendered justice to the accused police officer was explored in this study.

Senior officers from the rank of Inspector of Police and above presided over disciplinary proceedings in APS. In all instances, the National Police Service Act of 2011 NPSA 2011, National Police Service Commission (discipline) regulations, 2015 and (SSO, 2017) stipulated the process which was clear to the accused, however there continued to be appeals in law court against the process and decisions of the disciplinary proceedings. In a number of these cases, the appeals succeeded citing technicality in the disciplinary procedure, (Kenya Law web page n.d).

The Independent Police Oversight Authority (IPOA) board end term report (2014-2018) indicated that 748 complaints from police officers and the public were referred to the Internal Affairs Unit (IAU) for review. Some of these cases by police officers were complaints against unfair disciplinary procedures. Kenya Constitution 2010 Article 47(1) states that “Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair”. This study sought to find out whether use of the discretionary power of presiding officers, past record of conduct of the accused and unclear responsibility on the burden of proof between the accused and prosecution in disciplinary procedures rendered justice to accused Administration Police officers.

Although there were studies that had been conducted in Kenya on disciplinary procedures (Apalia, 2017; Tumo, 2017), the focus had been on relation of disciplinary

procedures to performance. There was scarcity of empirical information on how disciplinary procedure affected procurement of justice by police officers. This study was seeking to bridge this gap through interrogating the relationship between Police disciplinary procedures and justice to APS in Nairobi City County, Kenya.

1.2 Statement of the Problem

Disciplinary procedure in the APS is well captured in three policy documents namely SSO of 2017, NPSC Discipline Regulations 2015 and NPSA, 2011. The provisions of the procedure are made clear to an accused police officer during disciplinary proceedings; however, police officers continue to successfully appealing the court of law and obtain nullification of the decisions of disciplinary proceedings citing unfairness and injustice of the process. Although it is the right of an accused police officer to appeal unpleasant disciplinary proceeding outcome, the success of challenge to a disciplinary proceeding that has been handled from the Sub County, county, regional level and finally confirmed by the national police service commission may be a pointer of procedural unfairness. The IPOA board report 2014-2018 indicated 748 complaints by police officers and the public were referred to the Internal Affairs unit. Several of these complaints by police officers were on unfair procedure in the processing of their disciplinary cases. Although erring Police officers in APS continue to be subjected to disciplinary proceedings, little is known on how this process affects dispensing of justice. What is generally acknowledged is that fairly treated officers may embrace the correction process as a management tool and avoid resentment, which is critical for an organization practicing justice.

However, there is scarcity of empirical information on how exercise of discretionary power of the arbiter in determining the culpability or innocence of an accused police officer, use of past record of conduct of the accused to shed light on his or her character and responsibility on the proving or negating the allegations in the disciplinary procedures affects justice to police officers. This study therefore explored the relationship between Police disciplinary procedures and justice to APS officers in Nairobi City County, Kenya.

1.3 Purpose of the Study

The purpose of the study was to interrogate the relationship between disciplinary procedures and justice to APS in Nairobi City County, Kenya.

1.4 Objectives of the Study

The specific objectives of the study were to;

- i. Examine the influence of discretionary power of an arbiter in disciplinary procedures on justice to a police officer;
- ii. Assess the effect of use of past record of conduct of an accused police officer in disciplinary procedures on justice;
- iii. Analyze the influence of the responsibility of burden of proof in disciplinary procedures on justice to a police officer;
- iv. To establish the changes required in disciplinary procedures to enhance justice in Administration Police Service;

1.5 Research questions

The study was guided by the following research questions

- i. To what extent does discretionary power of an arbiter in disciplinary procedures affects justice to APS officers in Nairobi City County, Kenya?
- ii. In which way does use of past record of conduct of an accused police officer in disciplinary procedures affects justice Nairobi City County, Kenya?
- iii. In which way does the responsibility of the burden of proof in disciplinary procedure affects justice to APS officer Nairobi City County, Kenya?
- iv. What changes are required in disciplinary procedures to enhance justice to APS in Nairobi City County, Kenya?

1.6 Justification of the Study

The Police Service is a critical component for social, political and economic development in a country. Its function as a security watchdog, helps in maintaining law and order, detection and prevention of crime, protecting life and property which are key for economic development. One of the guiding principles of any organization which bears arms is “Discipline”. The process or procedure of administering that discipline is very central and essential and must be fair and just if the police agency is to achieve its objective of contributing to the socio-economic development of the country. Although there were studies that had been conducted in Kenya on disciplinary procedures, the focus had been on relation of disciplinary procedures to performance. There was scarcity of empirical information on how disciplinary procedure affected procurement of justice by police officers. This study aimed at

understanding how disciplinary procedures could be affecting police officers' perception of justice.

1.7 Significance of the Study

The Police Service in Kenya is undergoing security sector reforms for efficient and effective service delivery. The study forms significant reference material that would inform policy formulation for training of senior officers involved in conducting disciplinary proceedings in order to have fair and acceptable outcomes, thus reducing appeals in law courts against decision of disciplinary proceedings which at times have damaged the image of police agencies. The findings of the study have also become an addition to the pool of knowledge and provided reference information as secondary data and in identification of research gap for future research in the area of disciplinary procedures and justice in the Police Service. It is anticipated that knowledge that has been generated from this study will lead to new insight that will improve efficacy in conducting of disciplinary proceedings in the APS. The study findings also help improve police satisfaction and general security in the country.

1.8 Scope of the Study

The study was specific to APS in Nairobi City County, Kenya and focused on three areas of disciplinary proceeding viz, discretionary power of the presiding officer, responsibility of burden of proof, use of past record of conduct of the accused to determine a sentence and changes required in disciplinary procedures to enhance justice. These are however not the only elements in the police disciplinary procedures. The NPS is in the final phase of reorganization with more than 23,000 APS Officers having been redeployed to KPS. The study, therefore concentrated on the balance of officers left with Nairobi City County having a population of 679 officers distributed in eleven sub-counties and Regional Headquarters (Kasarani, Starehe, Kamkunji, Kibra, Madaraka, Dagoretti, Embakasi, Mathare, Westland, Njiru, Langata and regional headquarters).

The Study adopted a mixed approach research design that involved the cross-sectional survey and exploratory research design to obtain a sample size of 251 respondents and six (6) respondents for Key Informants interview and 14 respondents made up of two groups of 6 and 8 respondents for Focus Group Discussion (FGD).

1.9 Limitations

The study experienced some limitations which included reduced target population which was occasioned by NPS reorganization. Obtaining information from police officers that had been subjected to disciplinary proceedings was also limiting because the study was about discipline and the majority of respondents were hesitant to participate in focus group discussion.

1.10 Delimitations

According to Mugenda and Mugenda (2013), when the population is less than 10,000, a sample size of between 10 and 30% is a good representation of the target population. The study applied Yamane sampling formula as cited by (Kimotho, 2018) to calculate the sample size that generated 251 respondents which was (36.3%) of the target population thus adequate for the study despite the reduced target population. In order to get participants in FGD that were willing to share their experiences in disciplinary procedures, the respondents were assured that their identity would remain confidential and that codes would be used in research findings.

1.11 Assumptions

The study was guided by the following assumptions;

- i. Discretionary power of an arbiter in disciplinary procedure affects justice to APS Officers.
- ii. Use of past record of conduct of police officers in a disciplinary procedure affects justice to APS Officers.
- iii. Burden of proof in disciplinary procedures affects justice to APS Officers.
- iv. There are changes that will be done to disciplinary procedures to enhance justice to APS officers
- v. The study also assumed that the respondents were willing and knowledgeable to participate in the study.

CHAPTER TWO

LITERATURE REVIEW

2.1 Introduction

This chapter presents the literature review and has been organized in four parts namely; theoretical review, presentation and critique of the existing literature related to the study, summary and the conceptual framework.

2.2 Theoretical Framework

Rawls theory of justice was used in this study. Rawls (1971) posited that justice is founded on two major principles that ensures a society operates or exists within accepted moral standards. One of the principles provides for the right of every individual to enjoy basic rights and freedoms that are in tandem with the freedoms of other people. Principle two of this theory asserts that positions occupied by people socially and economically should benefit all and that the opportunity to occupy those positions should not be limited to a particular group of people. Principle one of this theory further stresses that all individuals should have fundamental rights and freedoms and in particular highlights that all persons are equal under the law and that the law should be applied fairly to all persons (Rawls, 1985).

The reason why these principles are accepted as principles of justice is because they guarantee equality and equity in a society. No human being is favoured by the law and therefore each person values the presence of the other person in the society. We all have equal opportunity to pursue our desires and aspirations but are also required to ensure that we don't infringe other peoples' rights and freedoms. Rawls emphasized the idea of justice as fairness. According to Rawls (1985) every rational man should desire a fair society because in fairness everyone gets what he/she deserves.

In relation to this study, every police officer has a right to be treated fairly according to the rule of law (disciplinary procedures) and in line with principle one of Rawls theory of justice. In addition, in conformance with principle two, persons occupying positions of authority for example presiding officers and prosecutors in police disciplinary committees that adjudicate on police disciplinary matters ought to use their positions to enhance justice by proper, fair and just interpretation and application of disciplinary procedural rules. Employees will accept the verdict of a disciplinary process if the procedure followed adhered to the principles of organizational justice

(Cropanzano & Greenberg, 1997). A judgement can be said to be fair when the verdict is balanced and correct. Balance in this case means that similar punishment or actions would be rendered to cases having similar nature while correctness denotes excellence (i.e. accurateness, uniformity, neutrality, precision, procedural meticulousness, compatible with moral principles) of decision-making process (Thompson & Heron, 2005).

2.3 Literature Review

2.3.1 Discretionary Power of Arbiter

Groeneveld (2005) in a study on discretionary power of police officers defined discretion as the authority to decide a matter but the outcome cannot be objectively proved to be right or wrong. Application of discretion is critical for police officers to maintain law and order. Use of discretionary power has at times resulted in outcry from the public especially where an incorrect decision has been made. Incidentally, professional police officers have described the ability to use common sense to attend different situations as a perfect demonstration of discretionary power at work in policing. Although many studies showed police officers required discretionary power in policing work, there was a gap on how its application in disciplinary procedure influenced justice to the accused police officer.

Police work requires a lot of discretion because a law enforcer makes choices and judgements that are dependent on his own analysis of a crime. Grey (1979) states that discretion is also defined as the ability to make decisions without any existing guidelines. The criteria used to judge statutory discretion is defined in previous precedent cases and there is common understanding that discretion was exercised if the decision was rationally made unswayed by immaterial deliberations and not subjectively or unlawfully.

Academics of policing have asserted that security duty is discretionary in that it encompasses choosing or judging. Finnane (1990) noted “every level of police work, especially at micro level, involves choice on the part of a police officer”. Galligan (1994), in the same vein stated that law enforcers have extensive power in determining whether to arrest a person for an offence committed, to arraign in court or warn and release, to advise of settlement of a matter out of court or negotiate over pleas or even to which court to present a matter for adjudication. According to Stenning (2009), discretion is visible throughout the criminal justice system right

from apprehension to judgement and can be differentiated from “principle of legality” which ostensibly tries to minimize use of discretionary power in the civil justice system. Although, use of discretionary power by police officers in the course of policing work was moderated by the justice system, there was a gap in study on use of discretionary power in disciplinary proceeding and how justice is dispensed to an accused police officer especially where appeal was not pursued because an officer was charged in absentia.

The fact that use of discretionary power has no set boundaries, there may be an element of injustice because of inconsistencies that may be witnessed from how different officers can variedly handle a similar situation. Every police officer has authority to interpret and apply the statute as he deems right. This could result in different interpretations leading to unpredictable outcomes and confusion. This is likely to happen where officers are less experienced or the rules are not clear (Young, 2011).

Lipsky, as cited by Heilman (2006) in propositions of origin of policies through organization practices asserted that a street level bureaucrat uses discretionary power when in the course of their work, to make decisions based on their own independent judgement. Lipsky’s definition of street level bureaucrat perfectly matches what is involved in policing. Although a police officer sometimes works without supervision, he/she must be fair, objective and apply laws and regulations to effectively address a given situation. Police officers handle occurrences and situations that call for discretionary decisions such as use of force, dispersion of crowd, searching of passengers or crackdown on illicit brews and drugs.

McCluskey, Varano, Huebner, and Bynum (2004), have posited that the style of management of police leadership contributes to police officer’s conduct. Management style is not simply the rules and or regulations, but “a general underlying principle that can be inculcated to the members of the organization”. Management style provides direction or “tones” or “organizational ethos” that form the foundation of officers’ discretionary decisions (Mastrofski, Ritti, and Hoffmaster, 1987).

Studies have shown that police officers use discretionary power in their duties like whether to arrest offenders or to prosecute right from a micro level, in all aforementioned scenarios, an element of urgency was observed. However, there was a

gap on how the same power was used where urgency was not a factor like in disciplinary proceedings and how justice was rendered to the accused police officer.

2.3.2 Use of past record

Chartered Institute of Personnel and Development of United Kingdom (UK) (2005) stated that disciplinary offences whether serious or minor such as tardiness, being away without official leave, poor performance, contravention of dress code and where worker have been warned verbally or in writing, the punishment should have a validity period beyond which it cannot be referred. A six months period should be enough for a verbal warning, while first and second warning in writing should have a lifespan of one and two years respectively. SSO 2017 CAP 30 Sec 34 (c) of National Police Service on factors to consider when awarding punishment has listed reference to past record and conduct of an accused police officer, however it does not indicate the period beyond which such record becomes immaterial, whether this affected justice to the accused officer was a subject of this study

ILO (1997) asserted that “personal data” that is, employee’s particulars should only be produced according to labour laws and as far as concerns his or her employment. Any decision regarding an employee should factor other considerations beyond information stored in an organization’s employee’s data bank. An employer needs to be alive to an employee’s rights to privacy, freedom of worship, association or political affiliation and equality irrespective of the gender except where such information is in accordance with the law and for the purpose of employment decision.

In any organization, personal data of employees is a property of both the employer and the worker. Both parties need the right of access to the data when need be. However, an employer can deny anyone access to this data for security reasons or where such data is being treated as exhibit evidence in an investigation. That notwithstanding, where an employee is an interested party to the matter under investigation, the data should be available to him to enhance his preparation for a defense (ILO, 1997).

Tumo (2017), in a study on perceived influence of disciplinary action on employee performance stated that progressive disciplinary action involves; verbal warning, written reprimand, termination without pay, suspension without pay and suspension pending investigation. Documentation of an employee’s conduct which includes

disciplinary offences committed, punishment rendered and evidence adduced, appeal by the accused and the verdict, such information should be secured as private and confidential.

The UK Advisory Conciliation and Arbitration Service (ACAS) Code of Disciplinary Practice and Procedures (2004) states that except in a serious disciplinary case, a worker cannot be dismissed without a record of past indiscipline. ACAS and Hackett as cited by Owele, (2007) recommended that records of performance, attendance and other areas prone to offence should be maintained and preserved and employees' records must be kept up-to-date. Nzuve (1997) as cited by Owele (2007) adds that, keeping records of what happened, the action taken and the person who effected it at each stage is important in case the organization is to justify the action at a future date. The records should be kept under confidential cover until the time they will no longer be required.

Kenya Public Service Commission Discipline manual (2016) states the steps to be taken when an employee contravenes the code of ethics. Where an officer is a first-time minor offender, he is warned verbally. This involves discussion of the problem and counselling. The supervisor documents and files the discussion. Where a verbally warned employee commits the same petty offence, he/she is warned in writing by his immediate senior officer. The written warning details the type of offence and the expected future punishment if the accused commits a similar offence. If an employee proves to be a habitual offender, he or she is charged. Past record of conduct or seriousness of the offence seems to determine the decision to charge or punishment to be rendered.

Hirsch (1981) on role of previous conviction on sentencing, stated that accused past record can be used as extenuating conditions that might influence a magistrate to reduce a punishment, or exasperating conditions that might force an arbiter to convict an accused. A past sentence of a similar offense is the most common exasperating reason. When a person commits some misdeed in everyday life and faces a group of friends, associates, or colleagues, he/she may plead that the misconduct was uncharacteristic of his previous behaviour. He/She may use such language as "I'm sorry, I don't know what got into me: it's not been like me to do that kind of thing." The actor pleads in self-extenuation that though this act was wrong, he/she should not suffer full censure for it-because the act is out of keeping with the standards of behavior that he/she has observed in the past. He or she is suggesting that the moral

quality of this act should not fully be used to judge him/her, because it was uncharacteristic for him/her. The rule of thumb is that recidivists are more dangerous and that society will be better served if the recidivists are isolated for longer terms (Hirsch, 1981).

A similar practice of relying on past record of an accused person is used by APS in disciplinary proceedings where records of past conduct and judgements/punishment or actions on an errant police officer are relied upon in determining his/her culpability. However, the effect of use of past record of conduct of a police officer on justice has not been adequately explored. In addition, the reference period is not specific and whether the defense team of the accused is availed or not availed personal data of the accused as provided for by ILO, (1997) is unclear. Police officers are normally transferred after a minimum of three years and therefore, verbal and written warning may have been given under different supervisors. Circumstances and environment may have affected an officer differently. It is for this reason that this study sought to find out whether reliance on past record of conduct and sentences in disciplinary proceeding affected justice.

2.3.3 Responsibility of Burden of Proof

In legal proceedings, there are three levels of standard of proof that are generally recognized. This includes standards used in civil cases, where “the proof need only show that the facts are more likely to be than not so” (Leubsdorf, 2016). The Second is “that proof which results in reasonable certainty of the truth” (Black & Garner, 2004). The third level is “facts proven must, by virtue of their probative force, establish guilt” (Black & Garner,2004). Where this standard is proved, an accused person can be jailed or be deprived liberty.

The ruling in R (Independent Police Complaints Commission) v. Assistant Commissioner Hayman (2008) EWHC 2191 (Admin) stated: “In disciplinary proceedings the tribunal must look with the greatest care at accusations which potentially give rise to serious consequences. But in determining whether or not they occurred, it applies a single unvarying standard, the balance of probabilities. If satisfied it is more likely than not that the facts occurred, then it must find them proved and draw appropriate conclusions as to sanction.” In the Administration Police Service, the presiding officer only needs to be of opinion that the evidence adduced is either sufficient or insufficient for him to make a ruling SSO (2017) CAP 30 Sec 22 Sub-Sec 6 (a) (b). As to whether the party with the onus of the burden of proof was

required to meet a certain evidential threshold due to the consequence of some disciplinary cases and its effect on justice to the accused police officer was explored in this study.

One of the legal requirements is that the accused person is initially deemed innocent. This is reinforced by article 50 Sub Article (2)(a) of Kenya Constitution 2010 which asserts, “any person accused of having committed any offence should be subjected to a just judicial process in which he/she is first presumed innocent until the contrary is established” (Republic of Kenya, 2020). The defendant is therefore innocent unless he/she takes a voluntary plea of guilty at the onset of a case hearing before an arbiter. Although not captured in disciplinary procedures, it should be the norm. This is the practice in the criminal justice system where a prosecutor is required to prove his case beyond reasonable doubt for a conviction to be secured.

Ozin, Griffin, & Campbell (2008) in their paper, using the civil standard of proof in corrective processing line with the upper House of parliament decision, posited that where there were serious allegations against a barrister and the consequences likely to terminate the career of the accused, the standard of proof be equal to criminal proceeding requirement- beyond reasonable doubt, otherwise for any other allegation, the civil suit standard of proof-based upon balance of probability to apply. The Law Society for England and Wales (2017) in expounding ‘The standard of proof “stated that Standard of proof’ is the quantity and quality of evidence that must be adduced to prove or disprove a fact. It further explains the reason for use of criminal standard of proof was because the weight of the repercussion to the accused if the verdict was not in his favour would be great. However, in APS a defaulter is not presumed innocent but the prosecutor needs to prove why an accused officer should be declared as guilty. It is not known whether that happens, especially considering that one can be prosecuted in absentia (SSO, 2017, CAP 30. Sec.33(7)). This study sought to understand whether the responsibility of burden of proof in disciplinary proceedings affected justice.

2.4 Summary of Literature Review and Theoretical Review

The literature reviewed highlights the relationship between the independent variables and dependent variables and also the use of the theory of justice in which one of the principles provides for the right of every individual to enjoy basic freedoms that are in tandem with the freedoms of other people. An individual will consider it just if the

law is applied impartially and an individual is subjected to the same principles and procedures as others in similar situations. The employee centered focus is a clear advantage to approaching disciplinary proceedings. Using the framework as means of connecting with an accused employee, can facilitate understanding and appreciation of the process and reduce lethargy on the part of the employee. The theory can assist the supervisor in operationalizing the path of transformation toward justice.

2.5 Conceptual Framework

A conceptual framework is a basic requirement in any research. A concept is a representation of independent and dependent variables or a symbol. The study presented discretionary power of the presiding officer, use of past records and responsibility of the burden of proof as independent variables while justice as the dependent variable which was intervened by other factors namely, organization policies and legal policies. The study sought to find out whether the discretionary power given to presiding officers, application of the responsibility of the burden of proof and use of past record of an accused disciplinary procedure resulted in a just and fair outcome according to a theory of justice by (Rawls, 1971).

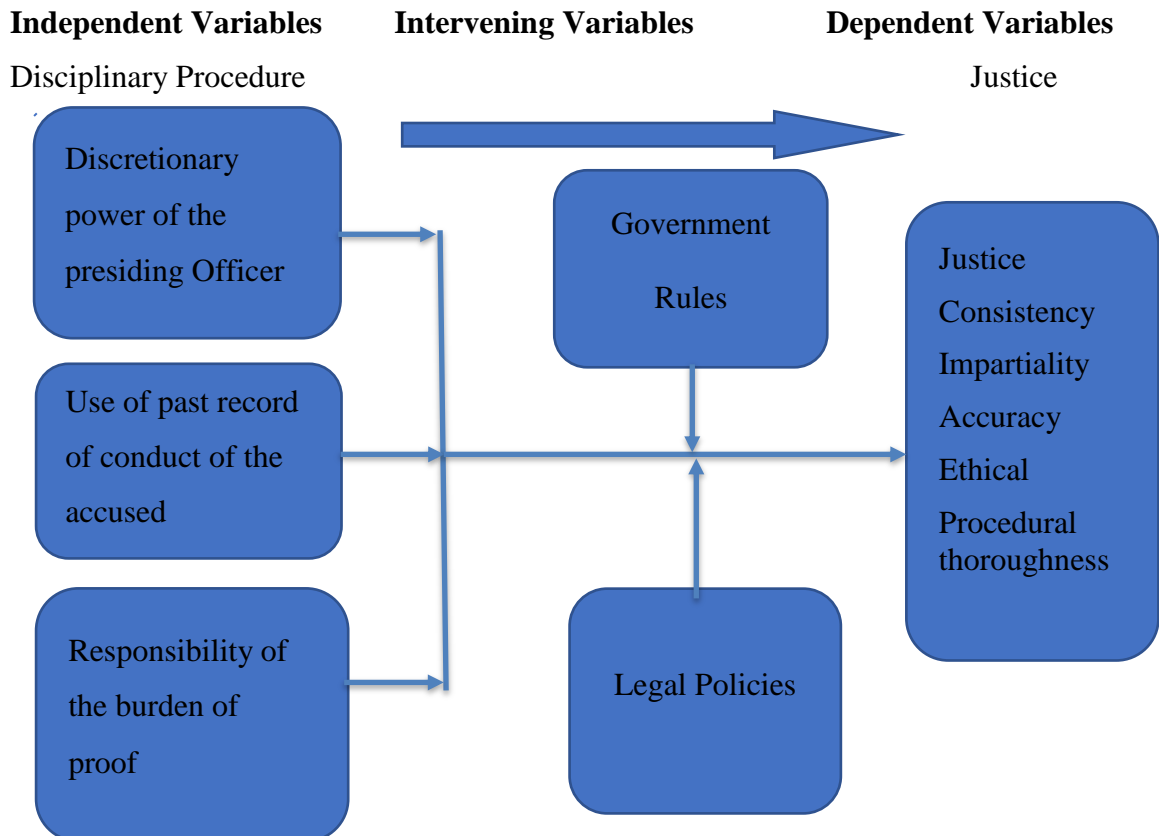


Figure 2.1: Conceptual Framework

Source: (Author, 2021).

CHAPTER THREE

RESEARCH METHODOLOGY

3.1 Introduction

This chapter begins with a research design and the site of the study. This is followed by target population, sampling techniques and accompanying research instruments. It then highlights how a pilot study was conducted, data collection procedure, data analysis and presentation and finally expounds on data management and ethical consideration.

3.2 Research Design

A mixed research approach of both cross-sectional survey and exploratory research design was used. The cross-sectional survey design enabled capturing of responses (quantitative and qualitative data) from both officers that had and those that had not undergone through disciplinary proceeding, while exploratory research design was purposively used in Focus Group Discussion (FGD) with a few officers that had undergone disciplinary proceedings and interviews with key informants. The study covered the entire Nairobi City County. The adoption of a mixed research approach assisted in getting a balanced or wide range of responses from respondents.

3.3 Site of the Study

The study was conducted in Nairobi City County which is also the capital city of Kenya. The County has had the highest number of Police officers appealing the outcome of the disciplinary proceedings (Kenya Law web page n.d). The county has eleven sub-counties (Starehe, Westland, Njiru, Langata, Dagoreti, Embakasi, Mathare, Kibra, Makadara, Kamkunji and Kasarani) and the headquarters. It is bordered by Kiambu County to the North and West, Kajiado County to the South and Machakos County to the East. The study involved APS.

3.4 Target Population

The targeted population comprised officers of APS working in Nairobi City County, who are 679 officers. This is the total population of officers serving Nairobi City County after the reorganization of the NPS (Administration Police personnel records-Nairobi Region, 2019). These officers are distributed within twelve Sub-Counties namely Regional headquarters, Starehe, Westland, Njiru, Lang'ata, Dagoreti,

Embakasi, Mathare, Kibra, Kasarani, Makadara and Kamkunji. Although there are more than 5000 Administration Police Officers whose units are headquartered in Nairobi such as Embakasi Campus “A”, Government Buildings Security, (RDU) and Critical Installation Protection Unit (CIPU), the study purposely excluded them because their officers are deployed all over the Republic their inclusion in the study would attract more time and cost.

Using a purposive sampling technique-maximum variation sampling also known as heterogeneous sampling, Nairobi was used as the area of study. Using this technique, one is able to capture a wide range of perspectives to the thing that one is interested in studying Bernard (2002). In this case, the study was interested in an area with a total representation of APS disciplinary cases appealed against. Nairobi had the majority of disciplinary cases appealed in court and nullified (Kenya Law Web n.d).

3.5 Sampling Technique and Sample Size

The study adopted multi-stage sampling that included stratified random sampling technique because the population of APS in Nairobi City County is small and heterogeneous and exist in strata viz;gazetted officers (Commissioner, Senior superintendent, Superintendent and Assistant Superintendent), members of inspectorate (Chief Inspector and Inspector) and junior officers (Senior Sergeant, Sergeant, Corporal and Constable). The sample size was calculated using Yamane (1967) sampling formula as cited by Kimotho (2018) generating a sample of 251 officers that were requested to fill the questionnaires.

The 251 officers were divided into strata of rank depending on the proportion to the total sample size using formulae that were coined from the Yamane formula to arrive at each stratum and Sub County contribution to the sample size. This was followed by stratified random sampling at the Sub County level to get the actual participants in the study.

In addition, document or data review was done at APS headquarters to identify both categories of officers that had conducted disciplinary proceedings and those that had been subjected to it. These categories of officers were purposively selected (6 key informants to be interviewed for in-depth information and two groups of 6-8 police officers totaling 14 police officers for focus group discussion) as part of the 251 respondents making the sample size.

Table 3.1: Population of Administration Police Officers in Nairobi Command

S/NO	REGION/ SUBCOUNTY	CP	SSP	SP	ASP	CI	IP	S/SGT	SGT	CPL	PC	POPULATION
1	Regional Hqs	1	2	1	0	2	5	5	3	14	67	100
2	Starehe				1	1	2	1	3	3	36	47
3	Westland				1	1	2	2	5	7	53	71
4	Njiru					1		2	4	5	54	66
5	Langata					1	2	3	3	4	29	42
6	Dagoreti					1	2	2	2	5	32	44
7	Embakasi					1	3	2	3	5	36	50
8	Mathare				1	1	1	2	2	2	17	26
9	Kibra					1	3	1	3	4	24	36
10	Kasarani					1	3	3	6	2	45	60
11	Makadara					1	3	3	4	8	49	68
12	Kamkunji				1		1	4	6	3	54	69
TOTAL		1	2	1	4	12	18	30	44	62	496	679

Source: (APS Regional Headquarters, 2020)

Formula I: Sample Size Calculation

$$n = \frac{N}{1 + N(e)^2} = \frac{679}{1 + 679(0.05)^2}$$

=251 Officers

n-sample size

N-Population size

e-Sampling error or Confidence interval or level of precision

Formula II: Contribution of Stratum (Each Rank) to Sample Size

$$S_s = \frac{S_p * n}{N}$$

Where: S_s = Contribution of stratum (Each rank) to Sample size

S_p = Population size for stratum (Rank)

N = total population size

n = total sample size

Table 3.2: Contribution of each Stratum (Each Rank) to Sample Size of the Study

S/NO	DESIGNATION	POPULATION PER RANK	STRATUM CONTRIBUTION TO SAMPLE SIZE FOR CROSS SECTIONAL SURVEY	KEY INFORMANTS	MEMBERS OF FOCUS GROUP DISCUSSION
1	Commissioner of Police (CP)	1	0	1	0
2	Senior Superintendent of Police (SSP)	2	0	1	0
3	Superintendent of Police (SP)	1	0	1	0
4	Assistant Superintendent of Police (ASP)	4	0	1	0
5	Chief Inspector of Police (CIP)	12	2	2	0
6	Inspector of Police (IP)	27	9	2	0
7	Senior Sergeant (S/SGT)	30	9	0	2
8	Sergeant (SGT)	44	14	0	2
9	Corporal (CPL)	62	18	0	4
10	Constable (APC)	496	177	0	6
TOTAL		679	229	8	14

Source: (Author, 2021)

Formula III: Contribution of Each Sub County to the Stratum of the sample size

$$S_b = R_{sb} \cdot S_s$$

Pr

Where:

S_b= Contribution of Each Sub County to the Stratum of the sample size

R_{sb}= Rank in sub county

Pr= Population of a Rank in All Sub-Counties

S_s=Contribution of stratum (each rank) to Sample size

Table 3.3: Size of Stratum per Station

S/NO	REGION/ SUBCOUNTY	CP	SSP	SP	ASP	CI	IP	S/SGT	SGT	CPL	PC	POPULATION
1	Regional Headquarte rs	0	0	0	0	1	2	2	1	5	26	37
2	Starehe				0	0	2	0	1	1	14	18
3	Westland				1	1	1	1	2	3	20	29
4	Njiru					1	0	1	2	2	11	17
5	Langata					0	0	1	1	2	11	15
6	Dagoreti					0	0	1	1	2	13	17
7	Embakasi					0	1	1	1	2	15	20
8	Mathare				0	0	1	0	0	0	7	8
9	Kibra					0	1	0	1	2	10	14
10	Kasarani					0	1	1	2	0	18	22
11	Makadara					1	1	1	2	3	20	28
12	Kamkunji				0	0	0	2	2	1	21	26
	Sample Size	0	0	0	1	4	10	11	16	23	186	251

Source (Self, 2020).

3.6 Research Instrument

The researcher collected primary data using questionnaires that had both open and closed ended questions (quantitative and qualitative data). These questionnaires were administered through a survey. Document data review checklist was used to identify both categories of officers that had conducted disciplinary proceedings and those that had been subjected to it. In addition, interview schedules were used to guide interviews with seven key Informants (senior APS officers who had conducted disciplinary proceedings) and group discussion with APS officers that had been subjected to disciplinary proceedings.

3.7 Validity and Reliability

The level of quality in research is proportional to its inherent value and strength of quality. For research finding to be valid, it needs to bring out a parallel of the reality as it exists in the world and what that validity describes. Validity is the extent to which a test appears to gauge and what it portrays to gauge (Silverman, 2016). The objective is to try and establish whether the entire spectrum relating to the variable or construct is measured by the instrument. Face validity which is a subset of content validity is the extent to which a measurement method appears “on its face” to measure the construct of interest; it is an expert’s judgement. The instrument was submitted to experts (the researcher's supervisor) and some lecturers within and outside the field of study who were asked for their opinion as to whether the instrument measured the intended concept. The feedback was used to adjust the instrument to ensure it remained focused, correct and consistent.

Content validity is the degree to which a measure “covers” the construct of interest. It is measured by prudently examining the measurement technique compared to the theoretical description of the construct. This was checked by ascertaining that there are enough items. A test has construct validity if it accurately measures a theoretical, non-observable construct or trait. In this study, a test was said to have construct validity, if scores on the individual test items correlated highly with the total test score (It has enough questions). The reliability was tested for five instruments using Cronbach’s alpha (α). The alpha value ranges between 0 and 1 with reliability increasing with increase in value. Coefficient of 0.6-0.7 is a commonly accepted rule of the thumb that indicates acceptable reliability. A coefficient of 0.79 was attained which implied that the instruments were dependable.

3.8 Pilot Study

Questionnaires were pre-tested in a pilot survey using 20 respondents and 2 key informants drawn from Kiambu County which had similar characteristics to the study population. The outcomes of the pilot study were not encompassed in the final data analysis. The aim was to ascertain practicability and effectiveness in gathering the desired information using identified instruments. The researcher therefore restructured or rephrased questions that were not clear or were misunderstood by the respondents.

3.9 Data Collection Procedure

Two research assistants assisted the researcher in the administering of the questionnaires. Questionnaires were used to gather primary data by use of both close-ended and open-ended questions. Interview-schedules guided interviews of key informants and to trigger discussion with respondents in FGD. Both the interview and group discussion sessions were tape-recorded with the consent of the respective respondents. In cases where the respondents appeared not to conceptualize the questions, the researcher rephrased the question to elicit intended responses without interpretation to avoid bias.

3.10 Data Management and Analysis

This involved interpreting information gathered from respondents once questionnaires and tape-recorded interviews and discussions were received. Questionnaires were examined for comprehensiveness, eligibility and completeness to ensure that only instruments that were completely filled were used. The researcher used the appropriate analysis techniques to analyze the data gathered. Descriptive statistics consisting of frequency tables, graphs and percentages were used to analyze quantitative data. Data was analyzed with the help of Statistical Package for Social Science (SPSS) in order to generate frequency tables and percentages. It has been observed that percentages are easy to calculate and understand (Babie, 2011) and are the most widely used and understood standard of proportion. Qualitative data analysis involved coding the data into themes and capturing some discussions and interviews verbatim, then generalizing from the themes and verbatim about the phenomena in question and interpreting in light of the available literature to corroborate the findings from the questionnaire.

3.11 Ethical Consideration

In the research project, as a prerequisite to gather data, approval was sought from the Key institutions namely, Kenyatta University, National Commission for Science Technology and Innovation (NACOSTI) and APS headquarters to conduct the study. Consent was also sought from individual participants before being interviewed. In order to encourage free expression and preserve the right to privacy, participants were not required to indicate their names in the questionnaires while pseudo names were used in the key informants' interviews and FGD.

Confidentiality was also ensured by not disclosing data obtained from third parties without approval of the initial source. In addition, information gathered was not revealed in a manner that made it possible to connect it to a particular person. The information collected was only used for academic purpose.

CHAPTER FOUR

RESEARCH FINDINGS AND DISCUSSIONS

4.1 Introduction

The chapter presents the analysis of the study findings based on the data and information obtained from the research questionnaires, FGD and interview with key informants. The analysis is done using descriptive statistics and presented in tables and figures. The interpretation is done using frequencies, mean and standard deviations and for qualitative data using the available literature. The analysis starts with the response rate, the demographic information and the findings based on the study objectives.

4.1.1 Response Rate

The study sampled 251 respondents to fill in the questionnaire forms. After core analysis for completeness, 208 Questionnaires were able to fill and return the questionnaires making a response rate of 82.9% as presented in Table 4.1. The response rate was regarded as excellent. According to Mugenda and Mugenda (2003), a response rate of 50% from the sample size is adequate for analysis and reporting a rate of 60% is good and a response rate of 70% and over is excellent. Based on the assertion, the response rate in this study was excellent.

Incomplete questionnaires accounted for 17.1% respondents of the sample size. These were be treated as defective survey. The incomplete responses were removed from analysis because of their minimum effect on the sample size. According to Mugenda and Mugenda (2013), when the population is less than 10,000, a sample size of between 10 and 30% is a good representation of the target population. In this study 208 respondents which was 82.9% of the sample size completed the questionnaires. This figure was 30.6% of the target population hence adequate for analysis.

Table 4.1: Response Rate for Questionnaire

Response	Frequency	Percentage
Complete	208	82.9
Incomplete	43	17.1
Total	251	100

Source: Field Data, 2020.

The study further sampled 14 participants who had been subjected to Orderly Room Proceedings (ORP) and requested them to participate in the FGD. 11 out of 14 respondents participated making a response rate of 78.6% which was excellent for this study as represented in table 4.2.

Table 4.2: Response rate in FGD

Response	Frequency	Percentage
Participated	11	78.6
Did not participate	3	21.4
Total	14	100

Source: Field Data, 2020

The study also included 8 participants who had presided over ORP and requested them to participate in the Key informants' interview. 6 out of 8 respondents participated making a response rate of 75% which was excellent for this study as represented in Table 4.3

Table 4.3: Response rate for Key informants

Response	Frequency	Percentage
Responded	6	75
Did not respond	2	25
Total	8	100

Source: Field Data, 2020

4.2 Demographic Information

The demographic characteristics included respondents' gender, rank distribution, years in APS, number of years served in the current station and the level of education.

4.2.1 Distribution of respondents' gender

The study sought to establish the respondents' gender. The study findings are presented in Figure 4.1

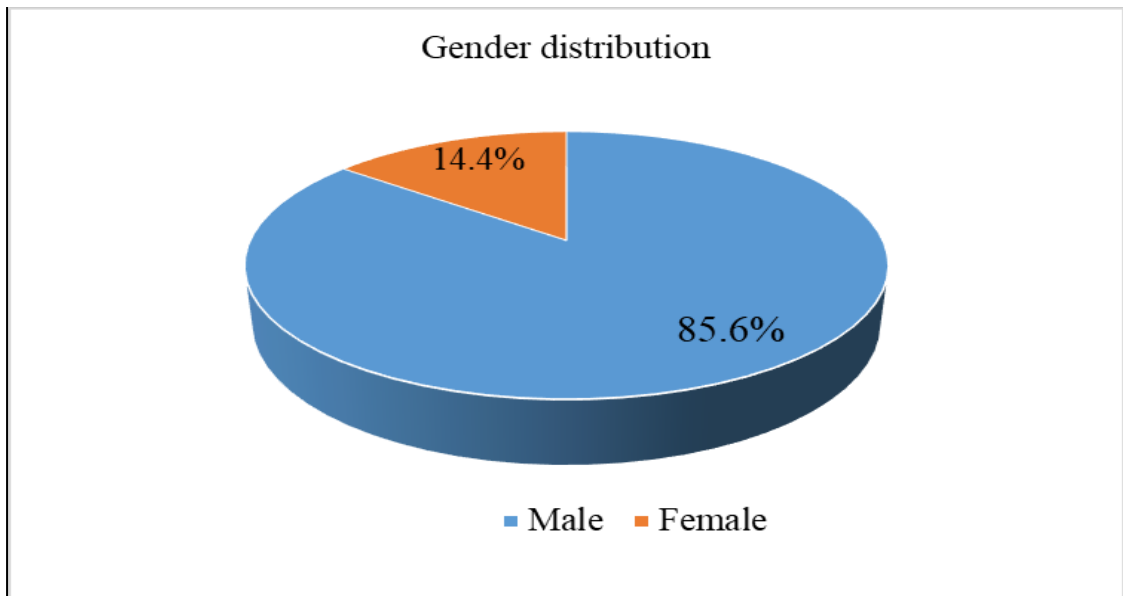


Figure 4.1: Distribution of respondents' gender

Source: Field Data, 2020

From the findings presented in Figure 4.1, (85.6%) of the respondents were male while 14.4 percent were female. This shows that there were more male police officers serving Nairobi City County as compared to the female officers. The wide difference in gender distribution might have been as a result of lack of recruitment of female officers in the APS before the year 2003. The first national recruitment of female officers was in the year 2003. Since then, the ratio of female to male recruits has been 1:2.

4.2.2 Distribution of Respondents by Rank

The respondents were requested to indicate their position/Rank in the service. The findings are presented in Figure 4.3

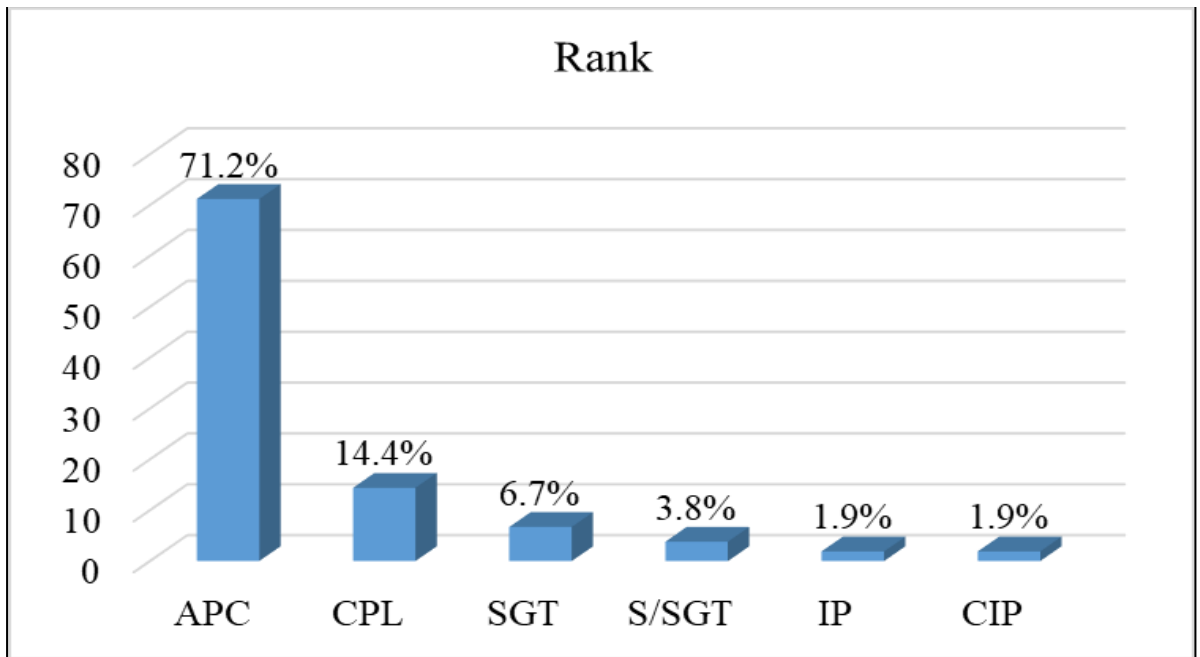


Figure 4.2: Distribution of respondents by Rank

Source: Field Data, 2020

The findings showed that the majority (71.2%) of the respondents were APC at, followed by CPL at 14.4 percent, SGT at percent, S/SGT at 3.8 percent and IP and CIP both at 1.9 percent each. The respondents from the rank of CPL down to CIP were fewer because they are supervisory ranks. However, the findings showed that different respondents from the service ranks participated in the study thus giving a broader representation for the issue under research.

4.2.3 Age distribution

The study sought to establish the age distribution of the respondents. The findings are presented in Figure 4.3

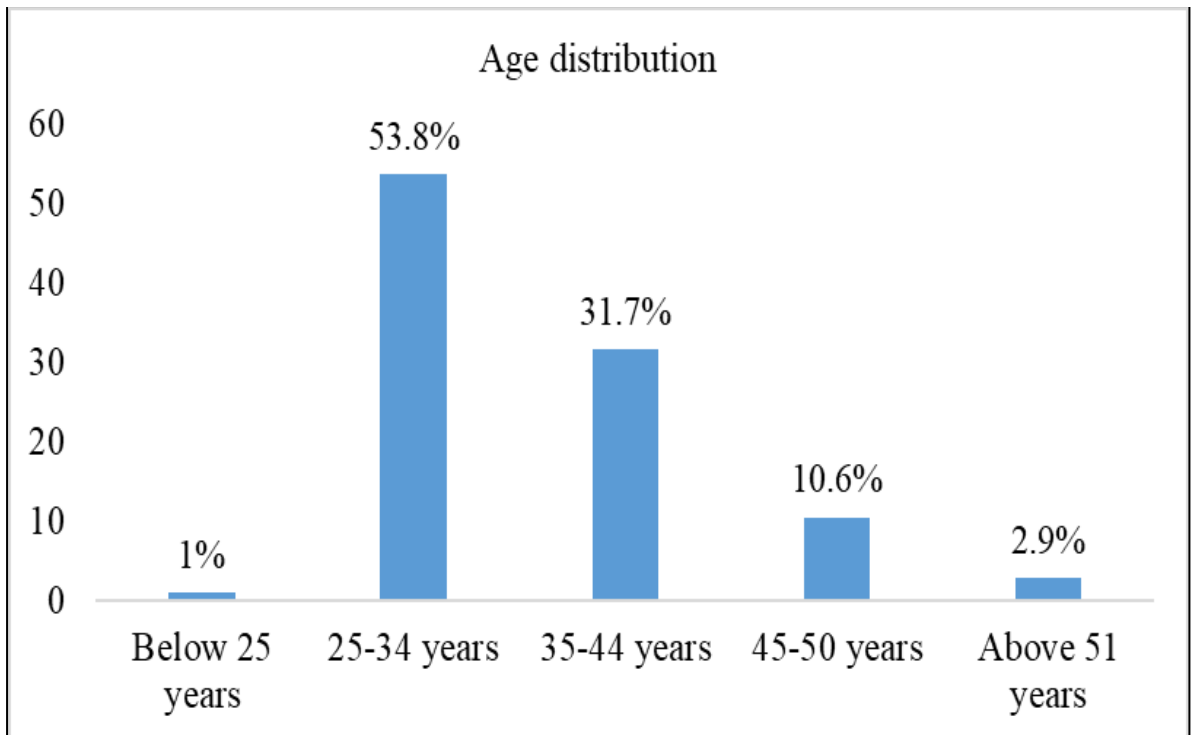


Figure 4.3: Age distribution

Source: Field Data, 2020

From the study findings as presented in Figure 4.3, Police officers aged between 25-34 year formed majority (53.8%) of the respondents, followed by 35-50 years at 31.7 percent, 45-50 years at 10.6 percent, above 51 years at 2.9 percent while below 25 years were the least at 1 percent. The findings showed a wide range of different ages of respondents participated in the study hence likely bringing out different experiences on the matter under study.

4.4 Years of Service in APS

The study sought to establish the respondents' years of service in APS. The results are presented in Figure 4.4.

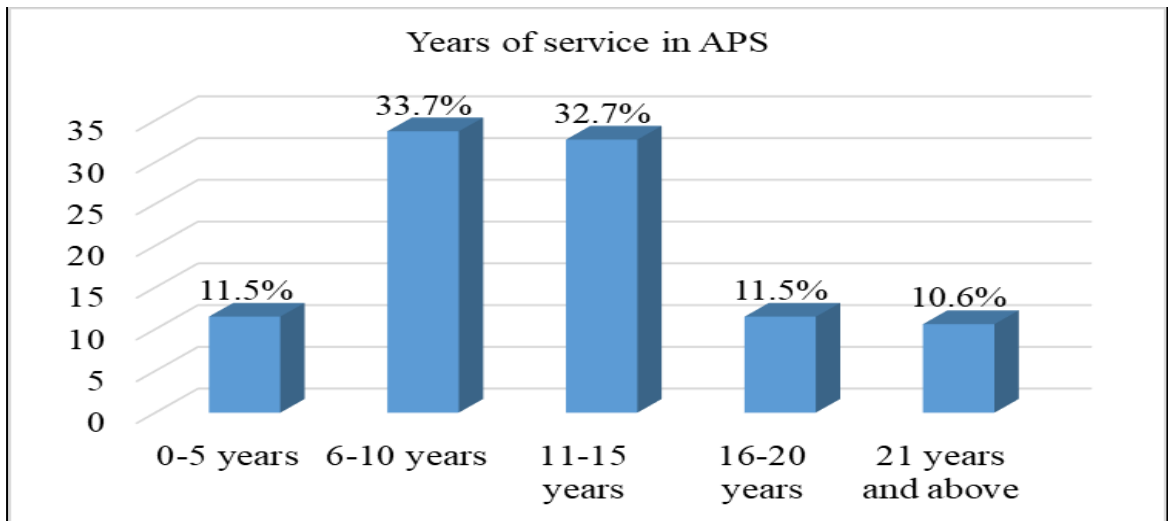


Figure 4.4: Years of Service in APS

Source: Field Data, 2020

The findings in Figure 4.4 show that the majority (33.7%) of respondents had served in the APS for 6-10 years, followed by those that had served for 11-15 years at 32.7 percent. Respondents that had served between 0-5 years and 16-20 years were 11.5 percent each. Officers that had served in the APS above 21 years were 10.6 percent of the respondents. Results reflected a cohort of a relatively average experience in service. Respondents who had served between 6 years and above 21 years totaled 88.5 percent which could be an indicator that they were aware of disciplinary procedures.

4.2.5 Years in Current rank

The study further sought to find out the length of period a respondent had stayed in a particular rank. The findings are presented in figure 4.5

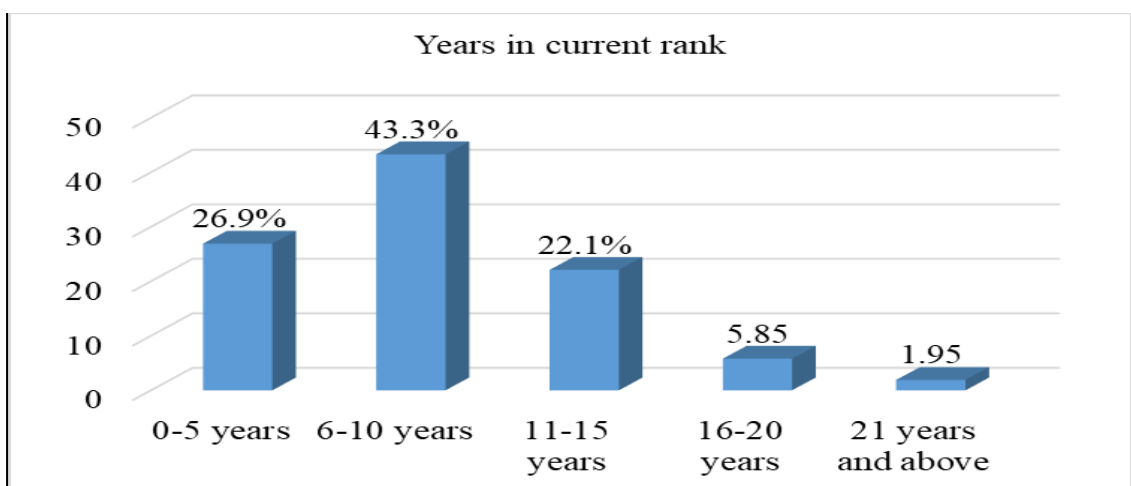


Figure 4.5: Years in Current Rank

Source: Field Data, 2020

The findings reveal that 43.3 percent of the respondents had served in the current rank for 6-10 years, 26.9 percent for 0-5 years, 22.1 percent had served for 11-15 years, 5.8 percent for 16-20 years while 1.9 percent had served in the current rank for 21 years and above. The findings portrayed that majority (82.1%) of respondents had served in their current ranks for a period of between 6 years and above 21 years and therefore understood disciplinary requirements and processes in relation to their ranks which was vital to the study

4.2.6 Years of service in current duty Station

The respondents were also requested to indicate the number of years they had served in the current duty station and the findings presented in Table 4.4.

Table 4.4: Years of service in current duty station

	Frequency	Percent
0-5 years	184	88.5
6-10 years	20	9.6
11-15 years	4	1.9
Total	208	100.0

Source: Field Data, 2020

The study results show that majority (88.5%) of the participants had been in the current duty station for 0-5 years, 9.6 percent of the respondents indicated a period of 6-10 years while 1.9 percent of the respondents showed they had been in the current duty station for 11-15 years. This showed that majority (88.5%) of the respondents had served a period of 0-5 years in their current duty station and were likely to be conversant with station dynamics and disciplinary requirements and processes.

4.2.7 Level of Education

The study sought to determine the respondents' level of education on the understanding that education enhances the ability of a person to reason and look at issues more critically and make informed decisions when responding to the questionnaire and the findings presented in Table 4.5.

Table 4.5: Level of Education

Level of Education	Frequency	Percent
Primary	4	1.9
Secondary	146	70.2
Tertiary College	10	4.8
University	48	23.1
Total	208	100.0

Source: Field Data, 2020.

The findings presented in Table 4.5 show that the majority (70.2% of the respondents attained secondary level of academic education, 23.1 percent had attained university level, 4.8percent had attained tertiary college level, while 1.9 percent had attained primary level of academic qualification. The study showed that a total of 98.1 percent of the respondents were of secondary education level and above. This could be as a result of the APS recruitment policy of minimum entry level of education being Kenya Certificate of Secondary Education (KCSE) D+ and above. The 1.9 percent primary level of education may be representing officers recruited before the new recruitment policy came to effect and are still in service or sportsmen and tradesmen. The high percentage (98.1%) of officers with secondary education could be an indicator that the majority of the respondents had the capacity to effectively respond to questions on issues under research.

4.2.8 Subjection to an Orderly Room Proceeding

The study also sought to find out whether the respondents had been subjected to an orderly room proceeding (ORP) of the APS Disciplinary process.

Table 4.6: Subjection to an orderly room proceeding (ORP)

	Frequency	Percent
Yes	72	34.6
No	136	65.4
Total	208	100.0

Source: Field Data, 2020.

The findings presented in Table 4.6 reveal that 34.6 percent of the respondents had been subjected to an ORP while 65.4 percent had not. The findings indicated a ratio of

1:2, implying that for every three respondents one had been subjected to ORP while approximately two had not. This in essence meant that a third of the total respondents had a personal experience of the matter under research. It was therefore possible to get respondents for FGD and interviews that enriched the study. This provided an opportunity for the interviewer to seek clarification on any issues raised by the respondent or ask probing or follow-up questions.

4.3 Discretionary Power of an Arbiter in Disciplinary Procedures

The first specific objective of the study was to examine the influence of discretionary power of an arbiter in disciplinary procedures on justice to APS officers in Nairobi City County, Kenya. The respondents were therefore requested to indicate the extent to which they agreed with statements on the effect of discretionary power of an arbiter in disciplinary procedures on justice to an accused police officer. The findings are presented in Table 4.7

Table 4.7: Discretionary power of an arbiter in disciplinary procedures and justice

Statement on Discretionary Power of Arbiter	N	Min	Max	Mean	Std. Deviation
Presiding officers are balanced or objective in adjudicating disciplinary cases	208	1.00	5.00	4.15	1.04
Presiding officers are good listeners	208	1.00	5.00	3.62	1.09
Presiding officers are experienced in dealing with disciplinary procedures or proceedings	208	1.00	5.00	4.11	0.89
Presiding officers DO NOT allow the accused officer to argue their case without harassment	208	1.00	5.00	3.26	1.09
Presiding officers have control over orderly room proceeding giving all parties equal chance	208	1.00	5.00	3.93	1.15
Presiding officers are NOT independent in making a ruling	208	1.00	5.00	2.04	0.76
Valid N (listwise)	208				

Source: Field Data, 2020

From the study findings presented in Table 4.7, majority of the respondents disagreed that presiding officers were balanced or objective in adjudicating disciplinary cases as demonstrated by a mean of 4.15 and a standard deviation of 1.04. They further disagreed that presiding officers were experienced in dealing with disciplinary procedures or proceedings as demonstrated by a mean of 4.11 with a standard deviation of 0.89 and that presiding officers have control over orderly room proceeding giving all parties equal chance as illustrated by a mean of 3.93 and a standard deviation of 1.15. They also disagreed that presiding officers were good listeners as shown by a mean of 3.62 and a standard deviation of 1.09.

The findings are consistent with Groeneveld, (2005) who asserted that discretion is the authority to decide a matter and where the outcome cannot be objectively proved to be right or wrong. The challenge of using discretionary power is that it can produce negative consequences when an incorrect decision is made. Common sense is a phrase used to explain the need of discretionary ability in policing. The problem with this is that it can produce inconsistent outcomes for the same offence.

Majority of the respondents agreed that presiding officers were not independent in making a ruling as demonstrated by a mean of 2.04 and a standard deviation of 0.76. However, the majority of the respondents were neutral on the statement that the presiding officers do not allow the accused officers to argue their case without harassment as shown by a mean of 3.26 and a standard deviation of 1.09.

The findings are inconsistent with Rawls' theory of justice. Rawls' (1971) theory of Justice which is anchored on two basic principles of fairness that ensure that a society operates or exists within accepted moral standards. One of the principles provides for the right of every individual to enjoy basic freedoms that are in tandem with the rights and freedoms of other people. Principle two of this theory asserts that positions occupied by people socially and economically should benefit all and the opportunity to occupy them should not be limited to a particular group of people. Principle one of this theory stresses that all individuals should have fundamental rights and freedoms and in particular highlights that all human beings are equal under the law which should be applied fairly to all persons (Rawls, 1985). The responsibility of procedure and growth relies on each and every individual. By doing so we create a level playing field. Rawls principle of justice postulates that a process is just if the outcomes are fair, consistent and correct.

The study further conducted focus FGD with two groups of six (6) and eight (8) respondents that were selected through purposive sampling after document review at APS headquarters. The respondents were requested to state their opinion on the power given to a presiding officer to determine the punishment to be rendered to an accused police officer in disciplinary proceedings. One respondent stated that;

“though the presiding officer conducts the ORP in presence of the assistant presiding officer and the observer, they have little input in the final punishment rendered”.
(Respondent F1)

This was consistent with NPS Standing orders (SSO) CAP 30 Appendix 30(a) on treatment of disciplinary process. Column (1) of the table of the referred appendix indicates the rank of a police officer empowered to enquire into offence and or award punishment. The assumption is that an officer of a given rank authorized to inquire into an offence or preside over a disciplinary proceeding is competent or has the ability to render a just and fair punishment to a defaulter or an accused police officer. It is also reinforced by observation from Finnane (1990) who noted that police work by nature is discretionary “every level of police work, especially at micro level, involves choice on the part of the police officer”.

Another respondent in the FGD observed that;

“the verdict appears to be determined by the presiding officer alone yet the defaulter is presented to the disciplinary committee “.(Respondent F2)

The finding suggests that the verdict by the presiding officer was subjective or procedurally unfair. The Kenya Constitution 2010 Article 47(1) emphasizes that “Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair”.

Another respondent in (FGD) noted that;

“the discretionary power given to the presiding officer to determine the punishment to be rendered to the accused is unguided and hence leading to different presiding officers rendering different punishment to a similar disciplinary offence. I was late to attend duty and was given the same punishment as my colleague who was absent for one day”(Respondent F3)

This finding was inconsistent with Heilman (2006) in proposition of the origin of policies through organization practices asserted that a street level bureaucrat uses

discretionary power when in the course of their work, make decisions based on their own independent judgement. However, the finding in this case seems to undermine a cardinal principle of justice that similar cases are given similar treatment and dissimilar cases, dissimilar treatment in proportion to the difference.

The study further held interviews with key informants. One of the key informants stated that;

“Discretionary power of the presiding officer enhances justice in disciplinary procedures because I act without undue influence and I am also assisted by the deputy presiding officer and an observer of the proceedings”.
(Respondents K1)

The finding indicated that the decision was by a committee and was not solely an individual verdict. The observation was consistent with Varano, Huebner, & Bynum (2004), in which the style of management of police leadership contributed to police officer’s conduct including the application of discretionary power.

Another key informant stated that;

“I have conducted several ORPs and the fact that I rose from a constable to the level of an Inspector, I cannot be unjust to my juniors but I am always guided by the SSO”. (Respondent K2)

The finding suggests that experience is critical in the use of discretionary power. This was inconsistent with Young (2011) observation that the fact that use of discretionary power had no set boundaries, there was a possibility of injustice because of inconsistencies likely to be witnessed from how different officers variedly handled a similar situation. Every police officer has authority to interpret and apply the statute as he/she deems right. This could result in different interpretations leading to unpredictable outcomes and confusion. This is likely to happen where officers are less experienced or the rules are not clear

The overall findings in this study indicate that use of discretionary power depends on the individual person which may have an effect on justice. The use of a disciplinary committee in APS disciplinary procedures may help in the interpretation of the rules and improving on accurateness, uniformity, neutrality, clearness, procedural meticulousness, compatibility with ethical standards, thus meeting the first principle of Rawls Theory of justice that upholds that all people need to have the familiar basic

civil freedoms and more so right to be treated in harmony with the statute and right to fair treatment.

On the flip side, use of discretionary power in disciplinary procedures may result in either too broad or too narrow outcomes that may cripple justice due to arbitrariness that may be exemplified by the disciplinary subordinate committee or the presiding officer as a result of varying experience in the disciplinary process.

4.4 Use of Past Record of Conduct of an Accused Police Officer in Disciplinary Procedures

The Second specific objective of the study was to assess the effects of use of past record in disciplinary procedures on justice to APS officers in Nairobi City, County, Kenya. The respondents were requested to indicate the extent to which they agreed with statements on the effect of use of past record of conduct of an accused police officer in disciplinary procedures on justice to a police officer. The findings are presented in Table 4.8

Table 4.8: Use of Past Record of Conduct of an Accused Police Officer in Disciplinary Procedures

Statement on the use of Past records	N	Min	Max	Mean	Std. Deviation
Past record of sentence shows the character of the accused police officer	208	1.00	5.00	4.00	1.23
Reliance on past record of sentence informs the presiding officer of the circumstances surrounding the previous offence(s)	208	1.00	5.00	3.95	1.18
The accused officer DOES NOT have an opportunity to rebut or disprove records of past sentences in order to obtain justice in disciplinary proceedings.	208	1.00	5.00	2.12	0.86
Where past records of sentence are absent, it is okay to call previous station of the accused to get orally the character of the accused	208	1.00	5.00	4.10	1.10
Past record of sentence or conduct of an accused police officer DOES NOT influence negatively the decision of the presiding officer	208	1.00	5.00	3.87	1.07
Use of past record of an accused police officer by a presiding officer in a disciplinary proceeding to make a ruling disadvantage the accused police officer	208	1.00	5.00	2.44	1.35
Valid N (listwise)	208				

Source: Field Data, 2020.

The findings revealed that the majority of the respondents agreed that use of past record of an accused police officer by a presiding officer in a disciplinary proceeding to make a ruling disadvantaged the accused police officer as shown by a mean of 2.44 and supported by a standard deviation of 1.35. The respondents further agreed that the accused officer does not have an opportunity to rebut or disprove records of past sentences in order to obtain justice in disciplinary proceedings as shown by a mean of 2.12 and a standard deviation of 0.86.

The findings of this study were inconsistent with Nzuve (1997) who found that keeping records of a disciplinary action such as what happened, the action taken and the person who effected it at each stage is important in case the organization is to justify the action at a future date.

The respondents disagreed that where past records of sentence are absent it is okay to call the previous station of the accused to get oral record of the character of the accused as demonstrated by a mean of 4.10 and a standard deviation of 1.10 and that past record of sentence shows the character of the accused police officer as illustrated by a mean of 4.00 and a standard deviation of 1.23. The respondents further disagreed that reliance on past record of sentence informs the presiding officer of the circumstances surrounding the previous offence(s) as shown by a mean of 3.95 and a standard deviation of 1.18 and that past record of sentence or conduct of an accused police officer does not influence negatively the decision of the presiding officer as illustrated by a mean of 3.87 and a standard deviation of 1.07.

This was consistent with a report by the Chartered Institute of Personnel and Development (2005) that stated that disciplinary offences whether serious or minor for example unpunctuality, being away without official leave, poor performance, contravention of dress code and where worker have been warned verbally or inwriting should have a validity period beyond which it cannot be referred. A six months period should be enough for a verbal warning, while first and second warning in writing should have a lifespan of one and two years respectively

The study conducted FGD with two groups of 6 and 8 respondents and requested them to comment on reliance on past record of conduct or sentences of the accused in a disciplinary proceeding in enhancing or undermining justice. One respondent stated that;

“some past records about an accused police officers were generated by a perceived bias presiding officers and relying on them is not fair because such records may prejudice the pursuant of justice in the case”(Respondent F4)

This finding is consistent with ILO (1997) assertion which stressed that “personal data” that is, employee’s particulars should only be produced according to labour law and as far as concerns his or her employment.

Another respondent observed that;

“Past records may sometimes make the accused presumed guilty while he/she is not. The respondent further commented that past record should not be used since officers accused may have changed their character and relying on past record would result in unfair judgement”.(Respondent F5)

The findings are inconsistent with the Employment Act 2007 Section 74 (1) (i) which states that employment records to be kept by an employer concerning an employee should include a record of warning letters and any other evidence of misconduct. This implies that these records can be relied on to make a future decision concerning an employee.

Another discussant in FGD stated that;

“the urgency of the presiding officers to consider past record of the accused in setting the level of the disciplinary offense and of punishment reflects a desire to protect the service rather than the need to render just punishment”
(Respondent F6)

The finding is consistent with Hirsch (1981) who stated that the normal practice should be to jail a repeat offender for a longer period because a community would be better without such persons. This assertion raises the question of the assumption of the dangerousness of a repeat offender based solely on a misconduct that has been previously penalized.

The study also conducted interviews with six key informants. One station commander, stated that;

“past record of an accused police officer is a balance reference document not only for ORP but also for promotion consideration or even counselling”.(Respondent K3)

The finding is consistent with the Public Service Commission Discipline manual for the Public Service Guide (2016) which states the steps to be taken when an employee contravenes the code of ethics. Where an officer is a first-time minor offender, he is warned verbally. This involves discussion of the problem and counselling.

Another key informant opined that;

“Where the accused's past record portrayed an accused as a habitual offender it weighed on the final punishment to be rendered”. (Respondent K4)

The finding is consistent with Hirsch (1981) on the role of previous conviction on sentencing, which stated that the accused past record can be used as extenuating condition that might influence a magistrate to reduce a punishment, or exasperating condition that might force an arbiter to convict an accused. A past sentence of a similar offense is the most common exasperating reason. Past record of sentencing of an accused police officer helps to establish a repeat offender and a first offender and in determining punishment.

The overall findings in this study indicate that use of past record of an accused or defaulter in gaining sight of his/her character is the practice in disciplinary proceedings and in the judicial criminal system as an effort to arrive at a fair and just decision by an arbiter. However, over-reliance on this parameter in the APS disciplinary process and lack of set limit of admissibility of past record of sentence of an accused can disadvantage the offender.

4.5 Responsibility of burden of proof in disciplinary procedures

The third objective of the Study was to analyze the influence of the responsibility of the burden of proof in disciplinary procedures on justice to APS officers in Nairobi City County, Kenya. The respondents were requested to indicate the extent to which they agreed with statements on the effect of responsibility of burden of proof in disciplinary procedures and justice to an accused police officer. The findings are presented in Table 4.9

Table 4.9: Responsibility of burden of proof in disciplinary procedures and justice to a police officer

Statement on the Responsibility of the burden of Proof	N	Min	Max	Mean	Std. Deviation
The responsibility of burden of proof in police disciplinary proceedings is NOT on the prosecution.	208	1.00	5.00	2.38	1.30
The standard of proof required from prosecution in police disciplinary procedure is adequate.	208	1.00	5.00	4.03	1.27
The accused police officer in disciplinary proceedings is not presumed innocent until proven guilty.	208	1.00	5.00	2.04	1.37
The accused police officer in a disciplinary proceeding is at the same level with prosecution.	208	1.00	5.00	4.11	1.02
The level of standard of proof in police disciplinary proceedings is proportional to the misconduct committed.	208	1.00	5.00	3.82	1.11
The NPS Standing Orders and regulations on discipline are clear on the burden of proof in disciplinary proceeding	208	1.00	5.00	4.05	1.18
Valid N (listwise)	208				

Source: Field Data, 2020.

The study outcomes show that majority of the respondents agreed that the accused police officer in disciplinary proceedings is not presumed innocent until proved guilty as shown by a mean of 2.04 with a standard deviation of 1.37 and that the burden of proof in police disciplinary proceedings is not deemed to be on the prosecution as shown by a mean of 2.38 and standard deviation of 1.30. The findings of this study point to an inconsistency between the NPS disciplinary protocols and the provision of the article 50 sub article (2)(a) of Kenya Constitution 2010 which asserts, “any person

accused of having committed any offence should be subjected to a just judicial process in which he is first presumed innocent until the contrary is established.

This is also against the rules of natural justice in which the decision-maker is required to come to a decision in a procedurally fair way. Without such procedural fairness, even if the decision-maker is not acting ultra vires, the decision may still be unlawful. The common law recognizes procedural fairness, or the existence of 'due process', as a key principle of just decision-making. Fairness is a concept drawn from the constitutional principle of the rule of law, which requires regularity, predictability and certainty in public authorities' dealings with the public. Where legislation confers an administrative power, there is a presumption that it will be exercised fairly.

The respondents disagreed that the accused police officer in a disciplinary proceeding is at the same level with prosecution as demonstrated by a mean of 4.11 and a standard deviation of 1.02 and that the NPS Standing Orders and regulations on discipline are clear on the burden of proof in disciplinary proceeding as illustrated by a mean of 4.05 and standard deviation of 1.18. They further disagreed that the standard of proof required in police disciplinary procedure is adequate as demonstrated by a mean of 4.03 with a standard deviation of 1.27 and also disagreed that the level of standard of proof in police disciplinary proceedings is proportional to the offence or misconduct committed as shown by a mean of 3.82 and a standard deviation of 1.11.

These findings are not consistent with the ruling in (Independent Police Complaints Commission) vs. Assistant Commissioner Hayman [2008] EWHC 2191 (Admin) in which it was stated: "In disciplinary proceedings the tribunal must look with the greatest care at accusations which potentially give rise to serious consequences. But in determining whether or not they occurred, it applies a single unvarying standard, the balance of probabilities. If satisfied it is more likely than not that the facts occurred, then it must find them proved and draw appropriate conclusions as to sanction."

The study further conducted FGD and sought the opinion of the respondents on the effect of the burden of proof in a police disciplinary proceeding on justice of the accused officer. One respondent stated that;

"the burden of proof is left on the accused yet the charges are normally allegation unless proved". (Respondent F7)

This finding is not consistent with the Kenya justice system rules in which it is the duty of the initiator or prosecution to investigate, collect admissible evidence and exhibits and present witnesses to prove his case against the accused.

Another discussant in FGD asserted that;

“the defaulter is labeled before the start of ORP”. (Respondent F8).

This finding is inconsistent with Rawls’ (1971) theory of Justice which is anchored on two basic principles of fairness that ensure that a society operates or exists within accepted moral standards. One of the principles provides for the right of every individual to enjoy basic freedoms that are in tandem with the rights and freedoms of other people. Principle two of this theory asserts that positions occupied by people socially and economically should benefit all and the opportunity to occupy them should not be limited to a particular group of people. Principle one of this theory stresses that all individuals should have fundamental rights and freedoms and in particular highlights that all human beings are equal under the law which should be applied fairly to all persons Rawls (1985). The responsibility of procedure and growth relies on each and every individual. By doing so we create a level playing field. Rawls principle of justice postulates that a process is just if the outcomes are fair, consistent and correct.

During key informants’ interview, one informant narrated that;

“The burden of proof is squarely on the prosecution because ORPs are quasi-judicial proceedings, however, it is also incumbent upon the accused to prove his innocence by factually rebutting every allegation made against him.”(Respondent K5).

The finding is consistent with rules of natural justice in which the responsibility to prove a case is on the investigating team that, on the balance of probability, can prove that the alleged events took place after carrying out investigation competently and without bias. The process, at all stages, has to be fair both in fact and in appearance, and the accused has to be given a full opportunity to challenge the evidence given against him.

However, it is not lost that the source of the above opinion is a key informant who has the authority to inquire into an offence and or award punishment and therefore would likely be inclined to portray the disciplinary process as fair.

The overall findings in this study indicate that the burden of proof in APS disciplinary process is not categorically assigned to the prosecution. The adjudication of disciplinary cases depends on the experience and skills of the presiding officer or subordinate disciplinary committee in ensuring that this critical component of judicial or disciplinary process is met in order to avail justice and fairness to the accused.

These findings show that there is divided opinion on the effect of disciplinary procedures on justice of an accused officer before ORP based on the discretionary authority of the presiding officer or subordinate disciplinary committee, use of past records and burden of proof in determining the outcome. Whereas some respondents that have been subjected to ORP in APS opined that the disciplinary procedures do not provide an avenue for justice to the accused or defaulter, a number of key informants hold the view that the current disciplinary procedures have stood the test of time as a process that has been used to avail justice though not an end in itself because any case of unfairness can always be address by NPSC and the Court of law.

4.6 Changes Required in Disciplinary Procedures to Enhance Justice in Administration Police Service

The following is the presentation of findings and discussions in relation to objective four of the study. The respondents were requested to indicate whether there are changes required in the disciplinary procedures in order for justice to be enhanced to an accused police officer before ORP. The findings are presented in Table 4.8

Table 4.10: Are there Changes required in disciplinary procedures

	Frequency	Percent
Yes	146	70.2
No	62	29.8
Total	208	100

Source: Field Data 2020.

The study results show that the majority of the participants (70.2%) opined that the current disciplinary procedures required changes, while 29.8 percent of the respondents indicated that the disciplinary procedures did not require any change. The findings could be a pointer that although the disciplinary procedures in the NPS are

well expounded in the SSO 2017, NPSA 2011 and NPSC regulations 2015, they may need to be reviewed.

The study further conducted FGD and sought to find out which changes were required in disciplinary procedures to enhance justice to Administration Police Service Officers. The respondents gave several suggestions. One respondent stated that;

“The accused or default should be given fair chance to argue their case without being intimidated by the officers handling ORP as the officer authorized to inquire into an offence and or award punishment is normally senior in rank than the accused. The cases should be handled by an impartial organ like NPSC”.(Respondent F9).

In the current disciplinary procedures, the presiding officer is assisted by the deputy presiding officer, while the defaulter has an observer to ensure that the process adhered to, is in accordance with service standing orders. The submission of the observer on the fairness of the process should be able to contribute to just determination of a disciplinary case.

Another discussant in FGD opined that;

“the accused police officer should be given a chance to be represented by a lawyer and the burden of proof to be on the prosecution. The respondent further opined that the accused should be provided with all evidence and statements of the prosecution witnesses to be relied on by the prosecution on time before the accused officer is brought to the orderly room proceedings to enable him/her to prepare effective defense in order to obtain justice”(Respondent F10).

The SSO (2017) provides for representation of an accused by an officer of the rank of inspector but not above the rank of the presiding officer. The representation is only allowed if the accused is charged in absentia. Although this proposal would appear to enhance justice, the cost and burden of lawyers may be unnecessary because not all ORPs result in a punishment of dismissal.

Another respondent in the FGD suggested that;

“the standing orders should be amended on the disciplinary actions for fair judgment and that the presiding officers and those in the disciplinary panel should be well trained to serve their purpose correctly”.(Respondent F11)

Training and retraining are key to capacity building and since the role of presiding over a disciplinary matter may not be a daily occurrence, it is a valid suggestion that when need arises to conduct an ORP, the presiding officer has the requisite expertise to deliver procedural justice.

Another respondent indicated in the questionnaire that;

“Punishment for each offence or misconduct need to be specified and justified. The respondents further proposed that where a warning was issued in a different station from the current, that warning to be disregarded in future ORP”(Respondent F12)

The specificity of punishment corresponding to a disciplinary offence is right to information that may be deemed to enhance justice as supported by Rawls (1971) who posited that justice includes the right to have the basic rights and liberties. The right to information is a basic right. According to the Chartered Institute of Personnel Development (2005) records of punishment need also to have a life span after which it is not just to refer to them for decision making.

Another responded proposed in the questionnaire that;

“the presiding officers should be more than one and each to write his own ruling to avoid possible biases in the proceedings and judgment which may emanate from personal individual conflicts”.(Respondent F13)

The proposal to have more than one presiding officer separately giving their verdict would be a necessary burden for the sake of justice. Apparently, appeal for any decision is provided for by NPSC and Court of law which gives an avenue for addressing any dissatisfaction. This arrangement serves the same purpose that having more than one presiding officer could be trying to address.

However, the findings of the study had also some respondents that indicated that disciplinary procedures did not require change. One key informant stated that;

“The disciplinary procedures in the SSO are elaborate in process and range of punishments covering different offences and that appeals provision can easily identify any form of injustice practiced by a subordinate disciplinary committee”. (Respondent K6)

Another key informant in the interviews observed that;

“disciplinary procedures are applicable to any member of Administration Police including those who serve as presiding officers, deputy presiding officers, prosecutors and observers in disciplinary committee”.(Respondent 5)

Another respondent indicated in the questionnaire that;

“Experience and training of members selected in a disciplinary committee and guidelines provided by the SSO 2017 guarantee a just and fair outcome of the disciplinary proceeding or process”. (Respondents K6)

The findings of the study indicated that there was divided opinion on whether or not the disciplinary procedures in the Administration police service required change in order to enhance justice to an accused police officer in ORP. Whereas majority of key informants preferred the disciplinary procedures to remain in their current state, majority of other respondents in FGD and response from questionnaires proposed change in disciplinary procedures.

CHAPTER FIVE

SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

5.1 Introduction

This chapter presents a summary of the study findings, the conclusions, recommendations and suggestions for further studies. The presentation is based on the four study objectives.

5.2 Summary

The purpose of the study was to interrogate how disciplinary procedures of APS impact justice of accused APS officers in Nairobi City County, Kenya. The objectives were to examine how discretionary power of an arbiter in disciplinary procedures affects justice to a police officer, to assess how the use of past record of conduct of an accused police officer in disciplinary procedures affects justice, to analyze how the responsibility of burden of proof in disciplinary procedures affects justice to a police officer and to assess the changes that may be required in disciplinary procedures to enhance justice of accused officers in Administration Police Service. A mixed research design of both cross-sectional survey and exploratory research design were used. The targeted population comprised officers of the APS stationed in Nairobi City County. The sample size was calculated using Yamane sampling formula generating an initial sample of 251 officers that were requested to fill the questionnaires and a sample of 208 Respondents were used in the final analysis. The study also held a key informant interview with six participants and a FGD with 13 participants. Appropriate analysis techniques were used to analyze the data. The following is the summary of the findings;

5.2.1 Discretionary Power of an Arbiter in Disciplinary Procedures

The study established that the majority of presiding officers are not independent in making a ruling neither are they balanced or objective in adjudicating disciplinary cases. This category of presiding officers are not experienced in dealing with disciplinary proceedings and have no control over ORP thus treating parties to a disciplinary proceeding unequally. The majority of presiding officers are not good listeners and, in some cases, they do not allow the accused officers to argue their case without harassments. The study also established that majority of presiding officer lack

experience and skills in disciplinary process and adjudication hence resulting in arbitrary ruling that amounted to injustice to defaulters.

5.2.2 Use of Past Record of Conduct of an Accused Police Officer in Disciplinary

The study found that use of past record of an accused police officer by a presiding officer in a disciplinary proceeding to make a ruling disadvantage the accused police officer. Where past records of sentence are absent it is not okay to call the previous station of the accused to get an oral report on the character of the accused. Past record of sentence is not necessarily a reflection of the character of the accused police officer presently.

Reliance on past record of sentence does not always inform the presiding officer of the circumstances surrounding the previous offence(s). Reliance on past records in some cases are not recommendable since the record may have been biased and may sometimes make the accused presumed guilty while not. The past record of conduct of an accused police officer influences negatively the decision of the presiding officer, more so the accused officer does not have an opportunity to rebut or disprove a record of past sentence in order to obtain justice in the current disciplinary proceedings. The past record should not be used since accused officers may have changed their character and hence relying on past record would result in unfair judgement.

5.2.3 Responsibility of burden of proof in disciplinary procedures

The study outcomes showed absence of firm principle of the supposition of guiltlessness of an accused in a disciplinary process and that the responsibility of proving a case in police disciplinary proceedings is not clearly defined as a responsibility of the prosecution. The accused police officer in a disciplinary proceeding is not at the same level with prosecution although the general principle is that the case has to be proved by the initiator of the proceedings. The NPS Standing Orders and regulations on discipline are not clear on the burden of proof in disciplinary proceeding while the standard of proof required in police disciplinary procedure is inadequate.

5.2.4 Changes Required in Disciplinary Procedures

The study determined that there was a need for a few changes in the disciplinary procedures as follows; the accused should be given fair chance to argue their case without being intimidated by the officers handling their cases as in most cases the

presiding officers are their seniors. This could be done by having the cases handled by a devolved NPSC. The accused should also be given a chance to be represented by a lawyer and enough proof by prosecution should be provided prior to the disciplinary action. The standing orders should be amended to only allow use of past records of an accused covering a specific period. The presiding officers and those in the disciplinary panel should be well trained to serve their purpose correctly and should make their ruling separately with the majority or unanimous decision carrying the day. Finally, the punishment for each misconduct or offence needs to be specified in the SSO and justified.

5.3 Conclusions

The first research question was, to what extent does discretionary power of an arbiter in disciplinary procedures affect justice to an accused APS officer in Nairobi City County, Kenya? The study concludes that the majority of the presiding officers are inexperienced in dealing with disciplinary procedures or proceedings. Discretionary power given to presiding officers lead to similar offences getting different punishment.

The second research question was, in which way does the past record of conduct of an accused APS officer in disciplinary procedures affect justice to APS in Nairobi City County, Kenya? The use of past record of an accused police officer by a presiding officer in a disciplinary proceeding to make a ruling disadvantage the accused police officer. Past record of sentence or conduct of an accused police officer influence negatively the decision of the presiding officer.

The third research question was, in which way does the burden of proof in disciplinary procedures affect justice to an accused APS in Nairobi City County, Kenya? The study concludes that the accused police officer in a disciplinary proceeding is not at the same level with prosecution. The level of standard of proof in police disciplinary proceedings is not proportional to the offence or misconduct committed. The burden of proof is placed on the accused police officer thus inhibiting the presiding officer to give a fair judgement to the accused with respect to the standing order and regulations.

5.4 Recommendations

Based on the study findings, the following recommendations are made;

The discretionary powers of the presiding officer powers should be shared amongst the members of the disciplinary committee who should be appointed from another station other than the defaulter or the accused station.

The NPSC which at the moment is an appellate body and handles appeals from accused police officers who have exhausted all the appellate levels in the NPS should be devolved to the Sub-County level and its human capacity enhanced for it to handle disciplinary cases at first-level hearing

To ensure that judgement by the presiding officer is just, the SSO should be amended to clearly match the punishment to be rendered against the offence or misconduct done.

The study also recommends for non-reliance on past record since the record may have been bias or emanated from an incompetent presiding officer. Where it is of essence to refer to the past record of an accused police officer, the period of the record should be factored to conform to common practice in Human Resource Management.

The SSO needs to be amended to clearly place the responsibility of proving a case on the prosecution. The standard of proof needs only show that the facts are more likely to be than not so.

5.5 Suggestions for Further Studies

From the foregoing discussion, the study has established various research gaps that may be pursued by future researchers to create more knowledge and fill the existing gaps left by the present study. A similar study should be carried out in other disciplined services within the Ministry of Interior and Coordination of National Government and compare the experiences so as to gauge if the current recommendations can be replicated for adoption at the NPS. There is a need for a study to be carried out on the efficacy of the disciplinary procedures that are employed by the Kenya Defense Forces. This is because there are very few appeals that are made to the High Court in relation to the outcomes of their disciplinary proceedings.

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APPENDICES

Appendix I: LETTER OF REQUEST TO CONDUCT RESEARCH

David N. Muniu

P.O. Box 1384-00100

NAIROBI

The Deputy Inspector General

Administration Police Service

P.O. Box 30501-00200

NAIROBI

Dear Sir,

**RE: REQUEST FOR PERMISSION TO CONDUCT RESEARCH ON
DISCIPLINARY PROCEDURES AND JUSTICE AT NAIROBI COUNTY**

I am a student at National Police Service Senior Staff College Loresho pursuing a Master of Arts Degree in Leadership and Security Management. As a requirement for this program, I am supposed to conduct an academic research project in partial fulfilment for the award of a Master Degree in the aforementioned area. The study shall be on Disciplinary Procedures and Organization Justice in Administration Police Service. I am therefore requesting for authority to collect primary data for Analysis from Administration Police Officers within Nairobi City County.

Yours Faithfully,

DAVID N. MUNIU

Appendix II: INTRODUCTORY LETTER TO PARTICIPANT

Dear Participant,

RE: FILLING OF QUESTIONNAIRE

I am David N. Muniu, a Postgraduate student at Kenyatta University pursuing a Master of Arts degree in Leadership and Security Management. I am currently working on my project and would greatly appreciate your assistance. My research topic is "Disciplinary Procedures and Justice in Administration Police Service Nairobi Kenya. It is aimed at examining Police officers' perception of Justice on our disciplinary procedures.

Your participation will help in shedding light on how disciplinary procedures are perceived to be fair or just in inculcating discipline to officers. The outcome of the research may also reveal whether there is need to improve some areas of the disciplinary process. You are requested to complete the attached questionnaire in an objective and frank manner. Please read and respond to each question. The information to be gathered will be held in strict confidence and purely for the purpose of this study. It will not be divulged to any person other than the researcher. You will remain anonymous hence **DO NOT WRITE YOUR NAME** on the questionnaire. You may seek any clarification regarding any concern about this study or your participation.

Thank You.

David N. Muniu

Appendix III: SAMPLE QUESTIONNAIRE

INSTRUCTIONS

Please tick in the boxes provided after each question. Write your answer in the space provided. If the space provided is insufficient use the back of the respective page. Fully filled questionnaires should be submitted to the researcher or the research assistant.

SECTION A: DEMOGRAPHIC INFORMATION

1. Gender: Male Female

2. Position/Rank

APC [] CPL [] SGT [] S/SGT [] IP [] CIP []

ASP [] SP [] SSP [] CP [] AIG [] SAIG []

3. Indicate where you fall among the following age brackets (years)

Below 25

Between 25-34

Between 35-44

Between 45-50

Above 51

4 a) Years of service in the APS

b) Number of years served in current rank

c) Number of years served in the current duty station

5. Academic level of education

a) Primary school

b) Secondary level

c) University level

d) Any other (specify) -----

6. Have you ever been subjected to an orderly room proceeding (ORP)?

a) YES []

b) NO []

SECTION B: DISCRETIONARY POWER OF THE PRESIDING OFFICER

To what extent do you agree with the following statements?

(1-Agree 2-Strongly Agree 3-Neutral 4-Disagree 5-Strongly Disagree)

S/N	Discretionary Power of the presiding officer	1	2	3	4	5
0						
1	Presiding officers are balanced or objective in adjudicating disciplinary cases					
2	Presiding officers are good listeners					
3	Presiding officers are experienced in dealing with disciplinary procedure or proceedings					
4	Presiding officers DO NOT allow the accused officer to argue their case without harassment					
5	Presiding officers have control over orderly room proceeding giving all parties equal chance and where the prosecution shows unpreparedness and shoddiness in presentation of evidence, witnesses or exhibits; the case can be dismissed					
6	Presiding officers are NOT independent in making a ruling					

7. In your own opinion, what is your comment on the power given to a presiding officer to determine the punishment to be rendered to an accused police officer in disciplinary proceeding? -----

SECTION C: RELIANCE ON PAST RECORD OF CONDUCT AND SENTENCE

To what extent do you agree with the following statements?

(1-Agree 2-Strongly Agree 3-Neutral 4-Disagree 5-Strongly Disagree)

S/NO	RELIANCE ON PAST RECORD OF SENTENCE TO MAKE A DECISION	1	2	3	4	5
1	Past record of sentence shows the character of the accused police officer					
2	Reliance on past record of sentence informs the presiding officer of the circumstances surrounding the previous offence(s)					
3	The accused officer DOES NOT have an opportunity to rebut or disprove records of past sentences in order to obtain justice in disciplinary proceedings.					
4	Where past records of sentence are absent it is okay to call previous station of the accused to get orally the character of the accused					
5	Past record of sentence or conduct of an accused police officer DOES NOT influence negatively the decision of the presiding officer					
6	Use of past record of an accused police officer by a presiding officer in a disciplinary proceeding to make a ruling disadvantage the accused police officer					

7. In your opinion what is your comment on reliance on past record of conduct or sentences of the accused in a disciplinary proceeding in enhancement or promotion of justice-----

SECTION D: BURDEN OF PROOF

To what extent do you agree with the following statements?

(1-Agree 2-Strongly Agree 3-Neutral 4-Disagree 5-Strongly Disagree)

S/N	STANDARD OF PROOF IN DISCIPLINARY PROCEEDING	1	2	3	4	5
1	The burden of proof in police disciplinary proceedings is NOT deemed to be on the prosecution.					
2	The standard of proof required in police disciplinary procedure is adequate.					
3	There is NO strict principle of the presumption of innocence in disciplinary proceedings.					
4	The accused police officer in a disciplinary proceeding is at the same level with prosecution because the general principle is that the case has to be proved by the initiator of the proceedings.					
5	The level of standard of proof in police disciplinary proceedings is proportional to the offence or misconduct committed.					
6	The National Police Service Standing Orders and regulations on discipline are clear on the burden of proof in disciplinary proceeding					

7. In your opinion, what is the effect of the burden of proof in a police disciplinary proceeding on justice?

SECTION E: CHANGES THAT MAY BE REQUIRED IN DISCIPLINARY PROCEDURES

1. Are there changes required in disciplinary procedures?

Yes

No

b). If the answer is yes in question 1 what are these changes?

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c). If the answer to question 1 is No what are the strength in Police disciplinary procedures?

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Appendix IV: INTERVIEW SCHEDULE FOR KEY INFORMANTS

A. DISCRETIONARY POWER OF THE PRESIDING OFFICER

1. In your own opinion does discretionary power of presiding officer ease the conduct of disciplinary proceedings?
2. In what way does discretion power of the presiding officer enhance justice?

B. USE OF PAST RECORD

1. Are past records of conduct of the accused a balanced reference document?
2. In your own opinion, would a presiding officer in a disciplinary proceeding arrive at a similar verdict without referring past records of the accused?

C. BURDEN OF PROOF

1. How does the burden of proof affect the outcome of a disciplinary proceeding?
2. Comment on the burden of proof in relation to justice in a police disciplinary proceeding.

D. CHANGES THAT COULD BE ADOPTED IN STRENGTHENING POLICE DISCIPLINARY PROCEDURES.

1. Are there changes that are required in Police disciplinary procedures?
2. If your answer in 1 is yes explain your answer.

Thank you for your time and cooperation

Appendix V: AUTHORITY FROM ADMINISTRATION POLICE SERVICE.



ADMINISTRATION POLICE SERVICE

Tel.: 020-2252680/2/3/4/6/7/8/9
Fax: 020-2248087
E-mail:
admin.ap@administrationpolice.go.ke

ADMINISTRATION POLICE
HEADQUARTERS

Office of the DIG,
Jogoo House 'A',
P.O. Box 53258-00200,
NAIROBI, KENYA.

Ref. No.:**NPS/APS/T&R/6/1/VOL.XII/02**

20th November 2019
Date....., 20.....

Mr. David Muniu, SP
P.O. Box 1384-00100,
NAIROBI

REF: REQUEST FOR AUTHORITY TO COLLECT DATA


The Service is in receipt of your letter dated **11th October 2019** on the mentioned subject.

As per your request, the Service would like to inform you that you have been **APPROVED** to collect your data in relation to your research topic "THE NEXUS BETWEEN DISCIPLINARY PROCEDURES AND JUSTICE: A CASE OF ADMINISTRATION POLICE SERVICE IN NAIROBI CITY COUNTY, KENYA."

Upon receipt of this letter, kindly report to the Nairobi CIPU Regional Commander for further direction. You are further advised to seek for the National Commission for Science, Technology and Innovation (NACOSTI) Research Permit in order to align your research with the Ministry of Education's policies on research.

You are required to provide **one (1No.) hard copy** and **soft copy** of the Final Report to this office upon completion.

The Service wishes you the best in your studies.


JILLO G. JILLO, HSC
FOR: DEPUTY INSPECTOR GENERAL

Appendix VI: AUTHORITY FROM KENYATTA UNIVERSITY



KENYATTA UNIVERSITY
GRADUATE SCHOOL

E-mail: dean-graduate@ku.ac.ke

P.O. Box 43844, 00100
NAIROBI, KENYA
Tel. 810901 Ext. 4150

Website: www.ku.ac.ke

Internal Memo

FROM: Dean, Graduate School

DATE: 12th October, 2020

TO: David N. Miniu
C/o Security & Correction Science Dept.

REF: S203/27347/2018

SUBJECT: APPROVAL OF RESEARCH PROJECT PROPOSAL

This is to inform you that Graduate School Board at its meeting of 11th September, 2020 approved your Research Project Proposal for the M.A. Security & Correction Science Degree Entitled, "Disciplinary Procedures and Justice: A Case of the Administration Police Service in Nairobi City County, Kenya".

You may now proceed with your Data Collection, Subject to Clearance with Director General, National Commission for Science, Technology and Innovation.

As you embark on your data collection, please note that you will be required to submit to Graduate School completed Supervision Tracking Forms per semester. The form has been developed to replace the Progress Report Forms. The Supervision Tracking Forms are available at the University's Website under Graduate School webpage downloads.

Thank you.

**ELIJAH MUTUA,
FOR DEAN, GRADUATE SCHOOL**


C.C.: Chairman, Security & Correction Science Department.


Supervisor:

1. Dr. Kibaba Makokha
C/o Department of Security & Correction Science
Kenyatta University

E.M/S.w.


Appendix VII: AUTHORITY FROM NATIONAL COMMISSION FOR SCIENCE, TECHNOLOGY AND INNOVATION.


REPUBLIC OF KENYA


NATIONAL COMMISSION FOR SCIENCE, TECHNOLOGY & INNOVATION

Ref No: **189228** Date of Issue: **23/November/2020**


RESEARCH LICENSE




This is to Certify that **Mr. David Njoroge Muniu of Kenyatta University, has been licensed to conduct research in Nairobi on the topic: Disciplinary Procedures and Justice: A case of Administration Police Service in Nairobi County, Kenya for the period ending : 23/November/2021.**

License No: **NACOSTI/P/20/7824**

189228
Applicant Identification Number


Director General
NATIONAL COMMISSION FOR SCIENCE, TECHNOLOGY & INNOVATION

Verification QR Code



NOTE: This is a computer generated License. To verify the authenticity of this document, Scan the QR Code using QR scanner application.

**Appendix VIII: NAIROBI CITY-COUNTY MAP SHOWING
CONSTITUENCIES AND ASSOCIATED BOUNDARIES.**

