Kenyan Police Reforms under Unwilling Contexts: Concern for Continued Undemocratic Policing and Loss of Public Confidence and Trust in the Force

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Abstract: In its course of work, a democratic police force or service is one that is fairer, commits fewer violations, is held by more professional standards, gains legitimacy and improves its professional conduct, which in turn makes it more effective and earns public confidence. However, many police services across the world do not uphold integrity and professionalism in executing their mandates. The Kenyan police force has been under sharp criticism for decades owing to its incapacity to tackle crimes effectively, excessive use of force, rampant corruption, impunity as well as the general disregard for people's rights and democratic ideals. Following the adoption of the 2010 Constitution, massive police reforms have been adopted in Kenya in the spirit of having a democratic policing. This article examines the police reform path in Kenya and critically analyses its success and challenges that could impact on the public's confidence in the police service. It has been established that the required legal and structural changes needed for implementation success are in place. However, despite these steps, the police reforms have largely remained theoretical as the police service is characterised by a continued abuse of human rights, repeated failure to protect the citizens and demonstrable lack of accountability. Some of the factors standing on the way of democratic policing in Kenya include inadequate resources, poor coordination and cooperation of the two units of NPS, lack of political goodwill and political interference, and a poor culture of brutality and impunity where the dictates of the law are ignored. There is, therefore, the need to recommit to the course of implementing all reforms to ensure that the police service becomes effective and earns public trust.

Keywords: Kenya, Legal framework, Police Accountability, Police Reforms, Public Confidence, Policing Institutional Architecture.

I. INTRODUCTION

The main assignments of democratic police services are to maintain law and order, reduce fear, prevent and detect crime, protect peoples' fundamental rights and freedom, and offer help and services to the citizenry (Carty, 2008). In reference to Sir Robert Peel's 1829 Nine Principles of Policing, Slessor and Weis (2015) noted that the power of the police services and forces to fulfil their mandate and functions is dependent on the public approval of their existence, behaviour, actions and capacity to secure and maintain public respect. Osse (2014) noted that a democratic policing is one that is fair and effective and works for the public good as opposed to serving the interest of a given section of the society such as political, ethnic or otherwise. A well-functioning police service earns public confidence that in turn assist the force in execution of its mandate. Slessor and Weis (2015) posited that securing the trust and confidence of the public is crucial to deliver successful policing and law enforcement solutions anywhere in the world. The International Association of Chiefs of Police (2012) noted that building and maintaining the public trust is a pillar for successful policing as well as law enforcement, and takes a great deal of continuous effort. Police departments are required to abide by the principles of professionalism and integrity as cornerstones of community confidence-building. Since law enforcers hold a position of

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trust and confidence in their societies, and are given immense authority to execute their functions, any excessive use of that authority, abuse of power, or failure to fulfil their duties can easily erode public trust and reduce or destroy their credibility within the communities they serve (International Association of Chiefs of Police, 2012).

However, the police conduct across the world has exhibited unprofessionalism leading to loss of confidence and trust in them by the larger public. The International Association of Chiefs of Police (2012) noted that it was unfortunate that the ethical work done by thousands of enforcement officers was easily undone by behaviour of unethical officer. In the United States, New Orleans and New York's police departments rattled the communities that were concerned about law and disorder across the country following cases of excessive force (Thompson, Rice, & Hampton, 2010). Indeed, New Orleans' mayor called fort the overhaul of the city's force. Milgram (2015)noted that the US police officers were experiencing difficult times with public confidence in them recording the lowest it has ever been since 1993 following a rise in violent crimes. The shootings of unarmed civilians by the police made President Obama to establish the President's Task Force on 21st Century Policing to explore ways of holding police accountable and improving trust between them and the communities (Kami, 2015).

In reference to the 2007 report of the Commonwealth Human Rights Initiative, Boateng (2015) noted that the abusive behaviour exhibited by the Ghanaian police through excessive use of force, illegal arrest and detention, corruption, impunity, and failure to respond to complaints had hurt their relationship with the public. All categories of the South African police have also been criticised for their misconduct and engagement in illegal activities. The public trust in this force is declining as too many law enforcers have been associated with gangsters and killers, brutality, excessive use of force and nepotism (Burger, 2011). In Mozambique, Baker (2003) stated that the confidence in the police was low because of their inefficiency, human rights abuses, complicity with criminals, bribe seeking, corruption, and lawless conduct. Her police composition also reflects major regional and gender biases, severe understaffing, and partisan behaviour. The Tanzanian police service had also suffered from decades of negative public perception over concerns related to corruption, road accidents, fraud, drug trafficking, violence, and terrorism (Scher, 2010; Were, Gakure, Kiraithe, & Waititu, 2012).

In Kenya, the police force has been under sharp criticism for decades owing to its excessive use of force, impunity as well as the general disregard for people's rights and democratic ideals (Centre for Human Rights and Policy Studies (CHRIPS) & African Policing Civilian Oversight Forum (APCOF), 2014). The Kenyan police have not properly been held to account to the citizenry. The police prioritised on the demands of the ruling regime and powerful individuals instead of the rule of law and at the expense of the needs of Kenyan people. In the service of the political elite and other powerful people, the police have developed a record of arbitrary detention, torture, suppression of dissent, extrajudicial killings and fomenting ethnic violence (Auerbach, 2003). The Kenyan police was accused of brutality while handling the citizens and indicted following the 2007-08 post-election violence. The International Centre for Transitional Justice (2015) noted that there was a widespread mistrust of police forces throughout Kenyan history as majority of them were linked to robbery with violence, shootings, rape and extrajudicial killings. Similar sentiments were echoed by Ndungu (2011) by noting that the public confidence in Kenya's police had been eroded following constant accusations of excessive use of force and brutality, abuse of due process, impunity, and malignant corruption. The Kenyan police force is perceived as incapable of tackling crimes effectively as in some cases, it has frequently ignored particularised threats (Akech, 2005). Consequently, a majority of victims of criminals fails to even bother reporting such crimes to the police as they view them inefficient and corrupt.

As a result of the police force's failure to live up to its mandate of effective civic policing that is accountable, representative of the community it serves, free from partisan political control, imbued with a human rights ethos, and holding the highest professional standards, there has been a public outcry and call for accountability by transforming the sector. The need to change the Kenyan police reputation and a unit that respects human rights saw the Kenya's 2010 Constitution changed its name from the Kenya Police to the National Police Service (Kwamboka & Ngubihi, 2017; Sunday Nation Team, 2017).

II. POLICE REFORM PATH IN KENYA

The current Kenyan police originated from the British rule that traces back to 1896 (Ruteere & Pommerolle, 2003), and which developed the culture, philosophy and attitude of oppression, mistrust of, disdain for, hostility of and disregard of civilians (Centre for Human Rights and Policy Studies (CHRIPS) & African Policing Civilian Oversight Forum (APCOF), 2014). After independence in 1963, the regimes in power continued to use the police to bludgeon critics into

submission making it a means of maintaining and serving interest of a subgroup in the society. In 2003 when NARC Government came into power, it emphasised on the need for reforms to create a structure for police accountability and the Police Reform Task Force was created. However, no meaningful reforms were pushed forward in the security sector as they were hindered by the competing political interests as well as infighting for power (Centre for Human Rights and Policy Studies (CHRIPS) & African Policing Civilian Oversight Forum (APCOF), 2014). The call for police reforms regained momentum after the 2007/2008 post-election violence when the civil societies and other stakeholders continued to mount pressure calling for reforms. During this violence, the police officers were linked to crimes of sexual assault, rape, and murder of 450 people. After the local and international community brought the government and opposition together to sign the National Peace Accord to form the government of national unity (GNU), the need for reforming the police was among the agenda items of this Accord (Amnesty International, 2013).

In May 2009, the GNU appointed the National Task Force on Police Reforms (NTFPR) to advice on the structures and policies for reforms, and it issued its report (The Ransley Report) on October 2009. The comprehensive recommendations in this report were codified in the 2010 Constitution where the structure and policies for police reforms are enshrined (Hope, 2015). Hope (2015) noted that the Constitution offered an overarching legal framework for the transformation of Kenyan policing institutional architecture with an aim to improve governance and efficiency, increase transparency and accountability and enhancing professionalism. The 2010 Constitution stipulates that policing must adhere to the rule of law, democracy, fundamental freedoms and human rights, and all national security departments must remain subordinate to the civilian authority. The values that police are required to uphold include accountability, prevention of corruption, professionalism, discipline, and respect for human rights and promotion of good relations with the public (Centre for Human Rights and Policy Studies (CHRIPS) & African Policing Civilian Oversight Forum (APCOF), 2014).

Institutional Architecture for Police Reforms

As noted by Osse (2014) new accountability institutions (Inspector General (IG), National Police Service Commission (NPSC), and the Independent Police Oversight Authority (IPOA)) were put in place. The Inspector General is a member of the NPSC and his/her roles include heading the Administration Police and the National Police Service, implementing the new structures in so far as they fall within his mandate, leading in acquainting the staff with the new legislation and ensuring they comply with the new requirements, and ensuring all the Standing Orders and other (internal) procedures and regulations accord with the new laws and are made public (Amnesty International, 2013; Osse, 2014).

The main roles of the NPSC as contained in the National Police Service Commission Act (2011) include: keeping under review all matters relating to standards or qualifications required of members of the Service; recruiting and appointing persons to hold or act in offices in the service, confirming appointments, and determine promotions and transfers within the National Police Service; ensuring that the Service is efficient and effective; hearing and determining appeals from members of the Service; receiving and referring civilian complaints to the IPOA, the Director of Public Prosecutions (DPP), the Kenya National Commission on Human Rights or the Ethics and Anti-Corruption Commission (EACC), as the case may be, and where necessary; monitoring and evaluating the performance of the Service; receiving complaints and recommendations from police associations registered in accordance with the applicable law; and preventing corruption, and promoting and practicing transparency and accountability (Hope, 2015).

IPOA is the oversight body mandated to receive public complaints regarding police conduct and also have powers to conduct its own independent investigations (Ndungu, 2011). Among its main duties as contained in the Independent Policing Oversight Act (2011) include: holding the Police accountable to the public in the performance of their functions; ensuring independent oversight of the handling of complaints by the National Police Service (NPS), and giving effect to the provision of Article 244 of the Constitution that the Police shall strive for professionalism and discipline and shall promote and practice transparency and accountability (Hope, 2015).

Legislative Framework for Policing Accountability

As delineated by Osse (2014) the key legal elements for the police in the 2010 Constitution are:

i. Clear descriptions of the functions of the Administration Police, Kenya Police, Criminal Investigations Directorate and Reserve Police;

ii. Establishment of an Internal Affairs Unit to investigate misconduct, which is independent of the two services and reports directly to the IG;

iii. Vetting of all current police officers on their suitability and competence by the NPSC;

iv. Clear descriptions of police powers and how they are to be used, including the power to use force and the power to arrest and detain;

v. Disciplinary procedures meeting the standards of 'fair administrative action' as set out in the Constitution;

vi. Placement of human resource–related matters, hiring and firing, under the control of the independent NPSC;

vii. Establishment of the IPOA to register and investigate all deaths and serious injuries resulting from police actions, independently investigate complaints against the police and monitor police operations;

viii. Requirement to make public the Service Standing Orders and other regulations, in the interests of transparency;

ix. Improvement of police–community relations by embracing community policing and establishing Community Policing Forums at local level and County Policing Authorities at the county level.

III. CRITICAL ASSESSMENT AND DISCUSSION OF THE KENYAN POLICE REFORMS

Following the changes in the legislative and institutional architecture of the Kenya police, notable milestones have been recorded.

i. A comprehensive review, revision and updating by the NPS of the Police Force Standing Orders to the National Police Service Standing Orders encompassing and reflecting all constitutional and national legal frameworks and reflecting best international practices;

ii. NPS established a centralized command centre and operationalization of standard emergency numbers (999/112) for the public to contact the police;

iii. Development of multi-year strategic plans for the NPS, NPSC and IPOA. These strategic plans provide a road map for each institution's approach to meeting their mandate, and articulate strategies for realizing their respective vision and mission for professional, transparent and accountable policing;

iv. NPS developed policies related to gender and human rights for policing in Kenya;

v. NPS developed a communications strategy;

vi. Revision and updating by the NPS of the Police Code of Conduct and Ethics including compliance, enforcement, and disciplinary measures and procedures;

vii. NPS developed a police anti-corruption strategy entailing anti-corruption measures categorized into four strategic objectives: (1) promoting a positive police culture of ethics and integrity, (2) enhancing accountability and transparency, (3) engaging the community, and (4) cooperating with oversight stakeholders and building partnerships;

viii. NPS developed community policing guidelines and programs based on the national community policing policy and intended to enhance interaction with the public and pro-active policing;

ix. NPS established the Kenya Association of Women in Policing (KAWP) to support female police officers in professional development and networking;

x. Improvement of police officers' welfare through the provision of new housing units, group life insurance and comprehensive medical insurance cover;

xi. On-going acquisition by the NPS of new police vehicles and allocation to police stations with mechanisms put in place for their proper utilization;

xii. Operationalization by the NPS of the Internal Affairs Office (IAU) to investigate complaints of misconduct against police officers;

xiii. NPS developed county commands in the 47 counties and the formation of 290 NPS police divisions in line with the statutory requirements;

xiv.   Implementation of vetting by the NPSC to determine the suitability and competence of police officers or potential police officers to serve;

 xv.   NPS developed new training programs and curricula in anti-corruption and ethics;

xvi.   NPS developed a conflict of interest policy; and

xvii.   An increase in the number of investigations by the IPOA of police misconduct resulting from use of firearms and/or human rights violations and an increase in the number of police officers charged with such violations and prosecuted

Though the current Kenyan police reforms agenda is regarded as the second largest in Africa after that of South Africa, its implemental weaknesses make it necessary for this paper to do some analysis with reference to a few successful stories of the practices undertaken by the Tanzanian Inspector General, Saidi Mwema, when he took over the negatively publicised police force in 2006 and launched a long-term reform programme. Osse (2014) noted that despite the changes on police accountability institutions, their impact on the conduct of the police remains modesty. The Kenyan strategic plans and institutional frameworks are in place, and all is required is their operationalization.

Though NPS developed the Kenya Association of Women in Policing to support women officers in the service, there should be proper mechanisms to empower and give them leadership roles even on matters reforms. It is unfortunate that the President sacked the Deputy Inspector General of Police who was a woman in 2015, and instead replaced her with a man leading to an uproar from the opposition and the Federation of Women Lawyers Kenya (Obala & Loise, 2015). This Deputy Inspector had indeed showed the desire to reform the police service as was witnessed with her December, 2014 abolition of an entire traffic base in Kabete and transfer of its officers across the country (Mukinda, 2015).

The Sunday Nation Team (2017) reported that the Kenyan police continued to maim the citizens, an indication that it was far from the reform agenda. Osse (2014) noted that after three years of reforms implementation, the strategies had little impact and were on the verge of stagnation following lack of guidance, direction and political goodwill. In the case of Tanzania there was a strong political goodwill and support led by the then President Kikwete from whom ideas on how to orchestrate the reform process were sought (Scher, 2010). The Kenyan executive arm of government failed to support the reforms and permitted undemocratic policing to continue as the newly established institutions continued operating under the same political conditions. In addition, the envisaged and constitutionally stipulated operational autonomy of the Office of the IG was stripped away following the 2014 amendment of the NPS Act (Chapter 11) that gave the president more control over the recruitment and removal of the IG. Under such a condition, there is no way that the IG will fail to act in a manner that most favours the ruling regime. This encroachment into his autonomy of command and various accountability mechanisms has made it difficult for the law enforcers to professionally execute their mandates. In reference to the Tanzanian reforms, the police service remained operationally independent, the regional commanders remained committed to the course and sought for officers' and public opinions and suggestions through opinion boxes (Scher, 2010).

Despite the fact that the NPS should be a single, there are still two service units namely the Administration Police Service (APS) and the Kenya Police Service (KPS). Though the two units are under the IG, they continue to execute different functions (Amnesty International, 2013). Working as separate units has seen them issue conflicting orders and focus on self-preservation instead of professional policing responses to provide assistance to the citizen save properties, and arrest lawbreakers (Hope, 2015). In addition, the APS and the KPS still take their training in different facilities and institutions, and have widespread mistrust and rivalry. As noted by Osse (2014) the decision by the government to retain the provincial administration through the establishment of county commissioners to represent the national administration and tasking them with security roles could be another setback that is perpetuating regime policing instead of a democratic policing. This presence of county commissioners contradicts the spirit of the 2010 Constitution that gave the IG command and operational independence, which in turn blurs the line of control and accountability.

There have also been delays in vetting of all police officers as required by the law, which according to the Amnesty International (2013) it is a major impediment to the reforms implementations and improvement in the public image of the police. Such delays have made it possible for the status quo in the operation of police by continuing to serve under senior officers in charge under the old dispensation. In other words, the police officers have failed to adapt to the new constitutional dispensation as they have continued to operate I their traditional hierarchy of command where the seniors are under direct political influence, especially the executive and continues the culture of impunity. In their study to establish the challenges and opportunities facing local policing accountability, the Centre for Human Rights and Policy

Studies (CHRIPS) and African Policing Civilian Oversight Forum (APCOF) (2014) found that one of the challenges to a more effective and fair policing in Kenya is police hindrance. Law enforcers are condescending, disrespectful and dismissive of the communities they serve. Since the Tanzanian police force was itself resistance and hindrance to reforms, Mwema and his team used a bottom up approach through consultations and compromise.

The context and environment under which the police service operates also greatly influences its culture. Stable democracies and which are committed to reducing the corruption index in the country will ultimately improve confidence in government and by extension to the police. The political institutions and democracy in Kenya has been poor, which has been adopted by several agencies including the NPS. Osse (2014) argued that one of the potential factors impacting on the police reforms was organized crime and corruption, especially in a state with a culture of impunity. Political involvement in crimes such as ivory poaching, incitement to violence and drug trafficking by senior government officials and businessmen closely associated with the political elite have seen such people unsupportive of a police that handles crimes professionally as they would be netted during investigations. Indeed, Kenya tops on the globally most corrupt countries and using the 2017 corruption perception index, it was ranked number 143 out of 180 with a score of 28% (Transparency International Kenya, 2018). The Amnesty International (2013) reported that the ingrained corruption in the Kenyan police was hindering efforts to address the problems of arbitrary police actions. The Amnesty International continued to state that the failure to prosecute law enforcers perpetrating human rights violations is still a serious threat to accountability in Kenya.

Another possible reason for the lag in having a democratic policing in Kenya is the legalist approach under which these reforms have taken. Though important, there has been too much focus on legislations with little stress on social change and policy development (Amnesty International, 2013). The public is also unaware of what a democratic policing should be like and instead of voicing their aspirations, their focus is mostly on what need not be there. In worst cases, the public has been supportive of some of the police acts of responding with violence, especially where violent crimes and rampant insecurity are rife thereby entrenching the culture of unaccountability (Centre for Human Rights and Policy Studies (CHRIPS) & African Policing Civilian Oversight Forum (APCOF), 2014). For instance, a police officer killed an unarmed man, who was among a gang that was terrorising the residents and had killed two law enforcers, in a broad daylight in Eastleigh while the public surrounded the scene praising the acts as a job well done (Daily Nation, 2017). This was one of the social media comments, "Those are thugs who have been terrorising people in Eastleigh estate. He was armed and killed a police officer. Any armed thug should be arrested, stoned and shot. Period." Commenting on the incident, Nairobi County Police Commander warned such armed criminals that he would hunt and ruthlessly deal with them.

Hope (2015) noted that although there has been notable donor support for the police reform agenda, the resources have always been inadequate to meet the required expenditures for material and activities support identified as crucial for transformation towards democratic policing. Osse (2014) noted that the systematic underfunding and misallocation of money greatly hampered the police service to develop to one that meets the international professional standards. These sentiments were further echoed by the Centre for Human Rights and Policy Studies (CHRIPS) and African Policing Civilian Oversight Forum (APCOF) (2014) that the slow pace of police reforms resulted from inadequate resource allocation and failure to prioritise key measures and facilities that would enhance police service and accountability. Amnesty International (2013) added that the Kenyan police operated with very limited resources, which weakened its operational preparedness. The NPS also lacks equipment and logistical capacity such as a forensic laboratory while vehicle patrols are hindered by unavailability of vehicles and funds for fuel. An article by Capital FM (2018) stated that currently, the NPS was 4,500 less of the needed units of police vehicles. It further noted that the shortage was expected to grow to 11,000 units in the next five years owing to the additional administration structures, constitutional offices and strengthened Criminal Investigations Department.

The lack of resources has also affected the welfare of the NPS from their salaries to the houses. Amnesty International (2013) noted that the police salaries were meagre and they have bad housing and poor working conditions. One of the constructs of motivation adopted by Were, Gakure, Kiraithe, and Waititu (2012) in their study to establish the effect of motivation on the performance of regular police (KPS) was the compensation. They found that 37.8% and 37.2% of the respondents reported to be highly dissatisfied and dissatisfied respectively by their salary schemes. The Kenyan government should increase its effort in budgeting and using the domestic and donor resources for police reforms. In reference to the Tanzanian police reforms, it should focus on modernising the infrastructure, human resource management, communication technology, and equipment and information (Scher, 2010). Notably were the new training programs that emphasised human rights training and on-the-job training.

The NPS should ensure that its new training program is implemented. Klinger (2012) stated that most of the training that police officers gain is highly salient on matters of public accountability such as the use of excessive force. Police culture is the cornerstone of brutality. In this case, the core argument is that to alter the perception, it is vital to incorporate human rights at the centre. The approach based on human rights should concentrate on changing the culture of the police at two core levels. First, a change that establishes professionalism culture with the desire to make sure that the law enforcement officers are ingrained by principles of human rights until they can apply them in their day-to-day jobs. Secondly, a change that generates a responsibility culture with the desire to boost acceptance of principles of accountability within the structures of the police to counter any impunity culture (Pastor, 2016). In advancing a professionalism culture, training plays a critical role whereas accountability mechanisms are basic in improving a responsibility culture.

Several professionals argue that when human rights are incorporated into the police training, the trainers should make sure that the training does not become a mere "window-dressing", a term referring to a kind of tokenism or official requirement to be incorporated in the police curricula without true relevance. Apparently, the significant desire is to encourage human rights training in the police curriculum. On the contrary, there lack appropriate approach, enough depth, or proper conviction and commitment, resulting in ineffective and poor human rights training (Pastor, 2016). Therefore, to avoid developing a comprehensive human rights education that does not outline methodologies, materials, and directions of the training effectiveness, the NPS should incorporate it as a core to the curricula. The integration of human rights as core to the curricula would demand the development of a strategic framework that specifies the purpose of the training, methodologies, and guidelines on how the training should go about. Moreover, it will ensure that human rights' training is not taught as stand-alone lessons. Instead, it will be integrated with all other police training aspects. Such a program will lead to a shift in the philosophy of policing, from an exclusive law enforcement approach to one that focuses on prevention, partnerships and problem-solving (Carty, 2008).

IV. CONCLUSION

Though legal and structural changes have been effected in the spirit of having a democratic policing in Kenya, the continued abuse of human rights, repeated failure to protect the citizens and the demonstrable lack of accountability serves as an indication that the police reforms have largely remained theoretical. There is the need to have real and meaningful reforms that many Kenyans will see and consequently change their attitude towards the NPS. Some of the factors standing on the way of democratic policing in Kenya include inadequate resources, poor coordination and cooperation of the two units of NPS, lack of political goodwill and political interference, and a poor culture of brutality and impunity where the dictates of the law are ignored.

The NPS should majorly focus on the right training curricula. At the core of such a training program, the NPS should have the human rights training since it is an imperative deterrent tool of police culture of brutality with the ability to transfer knowledge, skills, and attitudes on human rights, and design them to be excellent and applicable in the day-to-day police work. The police oversight bodies should use all the available channels to increase awareness on police accountability across the country. There is also the need to leverage on the benefits of community policing through capacity strengthening. The NPS and oversight institutions should chart a clear course of community participation in their own security and partnerships with the police. The police should be well remunerated to increase their morale and barring them from engaging in corruption. There should be a well-planned budgetary allocation to ensure that the NPS have the right equipment and facilities for their work. The entire NPS should also have a harmonised, standardised and uniform policy direction that it must follow and ensure that the APS and the KPS stop operating as parallel police services.

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