



**Strathmore University**

**Law School**

**POLICE OVERSIGHT IN EXECUTION OF GENERAL DUTIES IN KENYA: A  
CASE FOR THE INTRODUCTION OF BODY WORN CAMERAS**

Submitted in partial fulfillment of the requirements of the Bachelor of Laws Degree, Strathmore  
University Law School

By

Joseph Alexander Fernandes

145725

Prepared under the supervision of

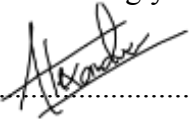
Dr. Melissa Muindi

January 2025

Word count: 10,482 (excluding footnotes and bibliography)


**Declaration**

I, JOSEPH ALEXANDER FERNANDES, do hereby declare that this research is my original work and that to the best of my knowledge and belief, it has not been previously, in its entirety or in part, been submitted to any other university for a degree or diploma. Other works cited or referred to are accordingly acknowledged.

Signed:  .....

Date: 19/ 01/ 2025 .....

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

Signed:  .....

Dr. Melissa Muindi

Date: 19th January 2025 .....

### **List of Statutes**

The Constitution of Kenya (2010).

The Evidence Act, No 46 of 1963.

National Police Service Act, No 11A of 2011.

Constitution of South Africa (1996).

South African Police Service Act (1995).

Protection of Personal Information Act (2013)

### **List of Cases**

Citizens Against Violence (CAVI) & 14 Others v Attorney General & 3 Others [2020] eKLR.

Onunga v Inspector General National Police Service & Another (Constitutional Petition E002 of 2023) eKLR.

Republic v Sule (Criminal Case 16 of 2016) eKLR.

Republic v Agwingi (Criminal Case E007 of 2022) eKLR.

### **List of International Instruments**

African Union, *African Charter on Human and Peoples' Rights*.

International Covenant on Civil and Political Rights (ICCPR)

United Nations, General Assembly, Human Rights Council, 23 May 2011.

United Nations, *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* (1990).

## **List of Abbreviations**

AU: African Union

BWC: Body-Worn Camera

CAVI: Citizens Against Violence

eKLR: Electronic Kenya Law Reports

ICCPR: International Covenant on Civil and Political Rights

IPID: Independent Police Investigative Directorate

IPOA: Independent Policing Oversight Authority

JMPD: Johannesburg Metropolitan Police Department

KE: Kenya

NPSA: National Police Service Act

POPIA: Protection of Personal Information Act

UN: United Nations

## **Abstract**

*This study aims to address the longstanding issue of curbing police misconduct and abuse of power in Kenya by investigating the potential impact of implementing body-worn cameras (BWCs) to enhance police oversight and accountability in the execution of their general duties. Through a doctrinal research approach, the study seeks to study the adequacy of current control measures in ensuring adherence to legislative standards and evaluate the effectiveness of enhanced oversight in improving police conduct and compliance with the laws as enshrined. Drawing on theoretical frameworks and previous studies, the research seeks to determine whether BWCs can lead to improved police conduct and reduced instances of abuse of power. The proposed study will examine the effects of poor oversight on police conduct, strategies for enhancing oversight, and the feasibility of implementing BWCs within the Kenyan context. It will focus on addressing gaps in the legal framework that would otherwise limit its applicability, and proposing measures to promote transparency and accountability. This research aims to contribute valuable insights to the ongoing discourse on police reform in Kenya and foster a more trusting relationship between the police force and the public through proposed subsidiary legislation that aims to bridge the gap between rule and reality.*

## TABLE OF CONTENTS

1. CHAPTER 1: INTRODUCTION	8
1.1 Background	8
1.2 Statement of the problem	10
1.3 Research Objectives	11
1.4 Hypothesis	11
1.5 Research Questions	12
1.6 Justification	12
1.7 Theoretical Framework	13
1.7.1 Legal Realism theory	13
1.7.2 Critical Legal Studies theory	13
1.8 Literature review	16
1.9 Research Design	18
1.9.1 Methodology	18
1.9.2 Limitations	19
1.10 Chapter Breakdown	19
CHAPTER 2 : CURRENT LEGAL FRAMEWORK SURROUNDING POLICE ACCOUNTABILITY	21
2.1 Introduction	21
2.2 The Constitution of Kenya	21
2.3 The Evidence Act	22
2.4 The National Police Service Act	23
2.5 IPOA Regulations	24
2.6 Proposed Subsidiary Legislation	25
2.7 Conclusion	26
CHAPTER 3 : COMPARATIVE ANALYSIS BETWEEN SOUTH AFRICA , KENYA AND OTHER JURISDICTIONS.	27
3.1 Introduction	27
3.2 Historical Contexts of Police Oversight	28
3.2.1 Kenya	28
3.2.2 South Africa	28
3.3 Comparative Legal Frameworks	30
3.3.1 Kenya	30
3.3.2 South Africa	30
3.4 Technology and Oversight: A Comparative Lens	32
3.5 Challenges in Police Oversight	32
3.5.1 Kenya	32

3.5.2 South Africa	33
3.6 Lessons Kenya Can Learn from South Africa	34
3.7 Cases from other jurisdictions	34
3.8 Conclusion	35
CHAPTER 4 : PROPOSED SUBSIDIARY LEGISLATION	36
4.1 Introduction	36
4.2 Objectives of the Legislation	36
4.3 Key Provisions of the Legislation	37
4.4 Conclusion	38
CHAPTER 5 : CONCLUSION AND RECOMMENDATIONS	39
5.1 Conclusion from findings	39
5.2 Recommendations	39
5.2.1 Enacting New Legislation for Body-Worn Cameras	39
5.2.2 Establishing a Special Branch for BWC Management	40
5.2.3 Enhancing Community Awareness and Funding	40
5.2.4 Integrating BWCs into Judicial Processes	40
5.3 Conclusion	41
Bibliography	42
Journals	42
Books	43
Reports	43
Online Sources	43



## CHAPTER 1: INTRODUCTION

### 1.1 Background

*"Returning violence for violence multiplies violence, adding deeper darkness to a night already devoid of stars." ~ Martin Luther King, Jr.*

The issue of abuse of police power and authority is no new phenomenon in Kenya.<sup>1</sup> From the brutal influence of colonial administration, to the mistrust and tension in the Moi era, culminating in the atrocities committed during post election violence, the conduct of the police force has struggled to remain refined and adapt to the needs and expectations of the common citizen.<sup>2</sup> The police force is under the executive arm of government and according to the doctrine of separation of powers, the legislature and judiciary ought to limit its excesses.<sup>3</sup> Its excesses would be activity outside its mandate that are by their nature ultra vires. Article 244 of the Constitution of Kenya provides the objects and functions of the National Police Service, espousing the promotion and practice of transparency and accountability.<sup>4</sup> It further obliges officers to comply with constitutional standards of human rights and fundamental freedoms and train staff to the highest possible standards of competence and integrity and to respect human rights and fundamental freedoms and dignity

Despite the clear delineation of these responsibilities, their field activities are largely unobservable and unregulated.<sup>5</sup> This makes the degree of oversight over police activities narrow, resulting in incredible difficulty proving police misconduct as was seen in the Citizens Against Violence case.<sup>6</sup> The lack of transparency and accountability within the police force perpetuates a culture of impunity, undermining public trust and exacerbating societal tensions.

---

<sup>1</sup> United Nations, General Assembly, Human Rights Council. 23 May 2011. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns. Addendum Follow-up country recommendations – Kenya. A/HRC/17/28.

<sup>2</sup> Carotenuto, Matthew, and Brett Shadle. "Introduction: Toward a History of Violence in Colonial Kenya." The International Journal of African Historical Studies, vol. 45, no. 1, 2012, pp. 1–7.

<sup>3</sup> Article 94(5), The Constitution of Kenya (2010)

<sup>4</sup> Article 244, The Constitution of Kenya (2010).

<sup>5</sup> National Police Service Act No. 11a of 2011

<sup>6</sup> Citizens Against Violence (CAVI) & 14 others v Attorney General & 3 others [2020] eKLR

Even when political leaders do recognise an issue, their primary response is improving police conditions to incentivise good behaviour by increasing police numbers, salaries and improving amenities and benefits such as housing, none of which however directly address the underlying issues of unprofessionalism and incompetence which greatly impact police performance.<sup>5</sup> While the issues they address are indeed important, it is necessary to solve the problem starting at the root.

The police leadership and their methods of handling the affairs of the police shows evidence of the poor oversight and regulation of police activities, whereby, the vetting done by the National Police service commission reveals incredible negligence, bordering on incompetence, when it comes to leadership responsibilities within the force.<sup>7</sup> It is clear that the police require a decisive form of action to introduce a measure of control and responsibility in the fulfilment of their duties to the nation. The constitution of Kenya provides that authority assigned to state officers is a public trust and therefore there is a responsibility to exercise this authority and leadership in a manner that promotes public confidence in the integrity of the office.<sup>8</sup>

In Kenya, the regulatory body in charge of police conduct is known as IPOA (Independent Policing Oversight Authority). Its mandate is to conduct independent and impartial investigations, inspections, audits and monitoring of the National Police Service to enhance professionalism and discipline of the Service. However, in IPOA's strategic plan of 2019-2024, they noted inadequate tools and equipment for implementation of the Authority's mandate.<sup>9</sup> A report done on Kenyan police by the United States Bureau Of Democracy, Human Rights, And Labor demonstrated that a number of cases have gone unanswered with regards to rampant police misconduct and blatant violations of human rights, clearly defeating the NPS's mandate of complying with constitutional standards of human rights and fundamental freedoms.<sup>10</sup> It is difficult to lodge a complaint due to the near impossibility of producing evidence whereas police officers (who hardly patrol alone) can simply summon or fashion an alibi from among their fellow officers.

---

<sup>7</sup> Osse, A. (2014). Police reform in Kenya: a process of "meddling through." *Policing and Society*, 26(8), 914.

<sup>8</sup> Article 73(1), The Constitution of Kenya (2010).

<sup>9</sup> The Strategic Plan for the Independent Policing Oversight Authority, 2019-2024

<sup>10</sup> 2020 Country Reports On Human Rights Practices: Kenya Bureau Of Democracy, Human Rights, And Labor March 30, 2021

## **1.2 Statement of the problem**

Despite the robust legal framework in Kenya, including Articles 10, 27, 35, 49, and 244 of the Constitution of Kenya (2010), the Kenya Evidence Act (Sections 63, 106A-106B), and the National Police Service Act (Sections 4, 49, and 58), critical gaps of efficacy and implementation persist in ensuring the spirit of the above provisions are practicably achievable. The maxim "ubi jus ibi remedium" translates to "where there is a right, there is a remedy." It informs that a legal right or law without a means of enforcement is essentially ineffectual. The gap exists in ensuring practical adherence to the standards of police behaviour set out in statute. Ensuring transparency, accountability, and fairness in police operations, particularly in evidence collection thereby preventing arbitrary arrests would all contribute to the achievement of procedural justice by ensuring proper limitation of police power in areas where it would be prone to abuse.

The reliance on officer testimony and insufficient oversight mechanisms often result in disputes over evidence credibility and rights violations, undermining Article 50's guarantee of fair trial. Furthermore, the lack of effective tools to monitor police adherence to Article 49's provisions on lawful arrests and the IPOA Act's mandate for oversight weakens accountability for misconduct. While electronic evidence is admissible under the Evidence Act, there is no formal adoption of body-worn cameras (BWCs), nor any legal requirements which could ensure verifiable, real-time documentation of police interactions and uphold the spirit of these legal protections. This legal and technological gap especially when the advancement of technology has made them a possibility impedes the realization of transparent law enforcement practices and leaves room for arbitrary actions by police officers, compromising public trust and access to justice.

The evidence of concrete steps towards regulation of police behaviour are scant. Meanwhile, bodycams have been introduced utilised in various jurisdictions including in areas of South Africa. As well as Trinidad and Tobago to promote transparency, deter misconduct, and provide

evidentiary support in legal proceedings.<sup>11</sup> By documenting police interactions with civilians, bodycams can serve as a means of objective evidence, facilitating impartial review of police conduct and strengthening public confidence in law enforcement institutions.

### **1.3 Research Objectives**

The main objective of this study is to evaluate the existing gaps in control measures to ensure transparency and accountability to the standards enshrined in legislation.

Specific Objectives:

1. To analyse the current legal framework and determine if the existing legal protections surrounding police accountability and evidence law are sufficient to accommodate BWC's.
2. To investigate whether BWC's and other control measures would be a contributory factor in improving police accountability and conduct.
3. To determine how BWC's would practically bring reform all while aligning and adapting to the existing Kenyan context.

### **1.4 Hypothesis**

The police in the general execution of their duties would greatly improve their interactions with the public and reduce instances of abuse of power if mechanisms were instituted to monitor their actions and interactions. This study tests the hypothesis that enhanced police oversight and accountability through the use of BWC's would provide an accurate and compelling framework for improving the relationship between citizens and their state officers charged with upholding the law and protecting their fundamental rights and freedoms.

---

<sup>11</sup>Wallace W, 'Police Unions and the Implementation of Body-Worn Cameras in a Small Island Developing State: The Case of the Trinidad and Tobago Police Service' 58 *International Annals of Criminology* (2020), 111–129.

## **1.5 Research Questions**

Whether there are sufficient control measures to ensure transparency and accountability to the standards enshrined in legislation

How will better oversight affect police accountability and conduct in the general exercise of their duties?

What measures would be beneficial and compatible within the Kenyan context. How can the proposed solution be implemented in a Kenyan context?

## **1.6 Justification**

The study holds crucial significance in addressing the undeniable issue being faced today by the citizens of Kenya. The legislation directing police protocol and behaviour exists but there is no legal framework to facilitate the fulfilment of the prescribed legislation. There is no clear indication that the gaping hole in the evidentiary realm of police work will be filled any time soon without the imposition of abrupt and stringent measures that will enforce professional and humane behaviour towards civilians.

## **1.7 Theoretical Framework**

### **1.7.1 Legal Realism theory**

This theory was posited by Oliver Wendell Holmes Jr. He is famous for stating that "The life of the law has not been logic; it has been experience."<sup>12</sup> This underscores the idea that laws must have practical use, straightforward application and enforceability to serve their purpose. Legal Realism emphasizes the practical application of law, focusing on how it operates and evolves within society based on its needs rather than constituting purely abstract principles. This theory presents an argument that the law is shaped by human behavior, institutional practices, and societal influences rather than being simply a result of a rigid set of rules. It prioritizes concrete empirical evidence and real-world observations to understand legal outcomes, arguing that these are influenced significantly by the decisions and actions of legal actors such as judges and police officers.

The concept of police oversight through body-worn cameras (BWCs) aligns with the principles of Legal Realism in that they are increasingly utilized as tools for promoting accountability, transparency, and trust in law enforcement. They provide an empirical basis for evaluating police-citizen interactions, capturing real-world evidence that reflects the practical enforcement of laws. This mechanism of oversight directly ties to Legal Realism's focus on understanding and facilitating law enforcement through observable practices and behaviors, rather than solely relying on formal legal texts or theoretical assumptions to guide and influence desired conduct.<sup>13</sup>

### **1.7.2 Critical Legal Studies theory**

Critical Legal Studies (CLS) challenges traditional notions of law as an objective and neutral system, emphasizing that law is deeply intertwined with social hierarchies, power dynamics, and systemic inequalities. While often critical of legal tools that reinforce existing power structures, CLS also recognizes the potential for certain mechanisms to disrupt these hierarchies and empower marginalized communities. BWCs, when implemented thoughtfully, can align with the

---

<sup>12</sup>Holmes OW, *The Common Law* (Boston: Little, Brown, and Company, 1881).

<sup>13</sup> Kennedy D, 'Legal Education and the Reproduction of Hierarchy' 33(4) *The Journal of Legal Education* (1983), 591-615.

goals of CLS by exposing injustices, amplifying marginalized voices, and creating opportunities for systemic reform.

From a CLS perspective, BWCs can function as a tool to challenge the narrative monopoly often held by law enforcement. Historically, the interpretation of police actions has been dominated by institutional authority, with officers' accounts often privileged over those of civilians, particularly marginalized individuals. The difficulties in lodging complaints against police misconduct, compounded by police officers' ability to create alibis through fellow officers, expose systemic issues within law enforcement. This perspective encourages a critical examination of the power imbalances between police and communities, advocating for reforms that ensure equitable treatment under the law.

BWCs disrupt this dynamic by providing visual and audio evidence that can counter biased or incomplete accounts of interactions. This disruption aligns with CLS's goal of exposing the ways law and legal institutions often obscure or legitimize oppressive practices.<sup>14</sup>

BWCs can also empower communities by democratizing access to evidence and promoting accountability. CLS emphasizes the importance of critiquing and dismantling systems that perpetuate inequality, and BWCs can serve as a means to highlight patterns of abuse and misconduct within policing. For instance, documented evidence of racial profiling, excessive force, or procedural violations captured by BWCs can provide a tangible basis for challenging institutional practices and advocating for reform. This visibility can fuel grassroots advocacy, policy change, and broader public awareness, contributing to the disruption of entrenched power structures within law enforcement.

However, CLS also encourages a critical examination of the conditions under which BWCs are implemented. For BWCs to align with the emancipatory goals of CLS, their use must be governed by policies that prioritize transparency, civilian oversight, and equitable access to footage. Without such safeguards, BWCs risk becoming another tool of surveillance that disproportionately impacts marginalized communities or reinforces state control.

Zimbardo, and his work in the Stanford prison experiment, provides that unregulated exercise of power and authority can quickly corrupt even the most morally astute people. When the exercise

---

<sup>14</sup> – [https://www.law.cornell.edu/wex/critical\\_legal\\_theory](https://www.law.cornell.edu/wex/critical_legal_theory) accessed 7th January 2025.

of police power and authority is left to be managed by the same people executing the power, accountability and humanity ultimately fly out the window.<sup>15</sup>

The systems of police regulation have been granted to bodies such as IPOA, but ultimately the collection of evidence to be brought before IPOA is left primarily to the same police who are facing the allegations. This allows for brutality, killings and torture with no recourse for help by the victims and no evidence to adduce in the pursuit of justice.

Inversely, the Hawthorne effect demonstrates that people tend to try to improve their behaviour when they know they are being observed.<sup>16</sup> This monitoring would alleviate the immense burden placed under Section 107(1) of the Evidence Act for the victim alleging facts of police brutality to prove that those facts exist.<sup>17</sup>

There have been numerous reports of arbitrary and unlawful killings by government agents, and IPOA has received complaints regarding deaths resulting from police actions or inactions, with cases of excessive force, shootings, and assaults leading to fatalities, especially in low income high population density areas.<sup>18</sup>

Human rights organizations documented cases of torture, inhuman treatment, and violence by police and prison officials. Methods such as physical battery, bondage, and electric shock were reported, with excessive force used in arrests and crowd control, including against peaceful protesters and citizens during the coronavirus disease of 2019 (COVID-19) pandemic. This has since further escalated with the slew of abductions, killings and inhumane treatment of the anti-finance bill protesters of 2024

Although some police officers were investigated and prosecuted for misconduct, including killings, convictions remain rare. IPOA investigations resulted in few convictions, with cases of

---

<sup>15</sup> Zimbardo P, *The Lucifer Effect Understanding How Good People Turn Evil*, Random house group, 2008.

<sup>16</sup> Jones SR, Was there a Hawthorne effect?, *American Journal of sociology*. 1992 1;98(3):451-68.

<sup>17</sup> Section 107(1), *The Evidence Act*, (2023).

<sup>18</sup> United States Bureau of Democracy, Human Rights, and Labor, 2020 Country Reports On Human Rights Practices: Kenya, 30 March 2021.

disciplinary actions and prosecutions often delayed or resisted by authorities. Victims of police abuse faced challenges in filing complaints, with reports of police resistance, intimidation, and transfers to evade accountability.

Efforts have been made to address police misconduct, including online training courses on human rights and crowd control, and digitization of police records to enhance accountability. However, challenges persisted in implementing reforms and ensuring transparency and accountability within the police force.

The framework therefore suggests for the situation to change from a Stanford state, the Hawthorne effect must be elicited.

## **1.8 Literature review**

This section seeks to explore various articles , books and studies which touch on the nexus between oversight and conduct within law enforcement. The aim is to harmonise the various complementary literary notions to highlight a credible way to bridge the gap between legislation and execution within the sphere of law enforcement. It aspires to demonstrate that proper oversight coupled with relevant training can ensure the safety and accountability of both the citizenry and the police force.

The first article of interest was an examination of Police reform in Kenya by Anneke Osse.<sup>19</sup> In this article the author provides a historical background of police reform and several statistical analyses of the benefits from the attempts. Based on the findings and observations presented in this article, the author concludes that the police reform project in Kenya is unlikely to achieve its intended objectives in the near future. He further enumerates that because commitment to the process seems shallow, there is little guidance to direct the reforms, actions and decisions by key reform actors. The reforms therefore remain largely inconsequential.

Police reforms in Kenya were critically analysed by Kempe Ronald Hope, Sr which showed

---

<sup>19</sup> Osse A, Police Reform in Kenya: A Process of “Meddling Through”, 26(8) Policing and Society (2014), 907–924.

how even institutions such as IPOA instituted to oversee police report a huge workload of cases difficult to conclusively determine as well as rampant corruption which illustrates just how few cases of police misconduct actually meet the evidentiary threshold to see justice served.<sup>20</sup>

From this clear demonstration of the problem, a good approach to a concrete and lasting solution was present in the article “*Contagious Accountability*”.<sup>21</sup> In this study, they were able to demonstrate that one effect of BWCs was reducing complaints against police. This was then put to mean either BWCs reduce officer noncompliance with procedures, improve suspects’ experience with law enforcement, or both, hence the fewer complaints. Therefore, the cameras gave the citizens a sense that they are on equal footing with the officer before the law and confidence that their case would be handled in an unbiased manner.

Next, McCluskey’s research where they conducted a systematic social observation (SSO) study on the effects of body-worn cameras (BWCs) on procedural justice within the Los Angeles Police Department. Procedural justice includes two key elements: fair decision-making and respectful treatment.<sup>22</sup> Citizens value decisions that consider their input, affirm their dignity, and reflect care for their well-being. Authorities demonstrating fairness and respect gain legitimacy and cooperation, while bias or disrespect erodes trust and public support.

The study examined 555 police-citizen encounters both before and after BWC implementation.<sup>23</sup> It found that the presence of BWCs significantly increased levels of procedural justice. This improvement was attributed to changes in police behavior, such as enhanced respect, care, and concern during interactions with citizens, as well as reduced instances of citizen disrespect.

The research posited that BWCs indirectly foster better police conduct by making officers more mindful of their actions under surveillance. Additionally, BWCs deterred procedural injustice by creating a sense of accountability among officers and promoting trustworthiness in their

---

<sup>20</sup> Hope KR, ‘In Pursuit of Democratic Policing: An Analytical Review and Assessment of Police Reforms in Kenya’ 17(2) International Journal of Police Science & Management (2015), 91–97.

<sup>21</sup> Ariel B, Sutherland A, Henstock D, Young J, Drover P, Sykes J, Megicks S, Henderson R, ‘Contagious Accountability: A Global Multisite Randomized Controlled Trial on the Effect of Police Body-Worn Cameras on Citizens’ Complaints Against the Police’ 44(2) Criminal Justice and Behavior (2017), 293–316.

<sup>22</sup> Tyler TR, Blader SL, ‘The Group Engagement Model: Procedural Justice, Social Identity, and Cooperative Behavior’ 7 Personality and Social Psychology Review (2003), 349–361.

<sup>23</sup> McCluskey JD, ‘Procedural Justice in Policing: Lessons from Los Angeles’ 18(6) Police Practice and Research (2017), 547–567.

decision-making processes, thereby demonstrating the efficacy of the Hawthorne effect. These findings highlight the potential of BWCs to enhance police transparency, improve citizen perceptions of fairness, and strengthen procedural justice across different contexts.

The final article in this review focused on the impacts on body cameras on policing efforts and conduct. The article raised several valuable points, one being, that despite the fact that BWCs work, their use has largely been found only around the United States and United Kingdom.<sup>24</sup> This is due to the high initial cost of purchase and complexity of implementation and coordination thus it raises questions as to its universality and to whether Kenya would indeed be able to cope with the requirements for new infrastructure to support this system of oversight.

From these articles it has been demonstrated that the “observer effect” introduced by BWCs often induces better behaviour by both police and citizens. The question only remains one of the introduction and integration of such an advanced and expensive system within a Kenyan context.

There are various reasons to consider such a huge investment, but they all centre largely on the connection between security and economic activities in a given place. A more robust and trustworthy police force would effectively guard our country making it an attractive location to invest and settle. Furthermore, the refusal to make the big investment in favour of cheaper methods of improving have all turned up empty begging the question, when doing the same thing has ever brought about different results. Admittedly, it is a radical proposal but there always exists the option of slowly phasing in such changes.

## **1.9 Research Design**

### **1.9.1 Methodology**

The study uses a mixed-method approach, combining comparative analysis and desktop research. This involves a thorough review of existing literature, legislation, and case law from Kenya, other African nations, and global jurisdictions. The Kenyan case is compared with others, such as South

---

<sup>24</sup> Flight S, ‘Opening up the Black Box: Understanding the Impact of Body Cams on Policing’ 4 European Law Enforcement Research Bulletin (2019), 47.

Africa, and Trinidad and Tobago to highlight key insights and differences. By synthesizing these findings, the study aims to draw valuable lessons and propose evidence-based recommendations tailored to Kenya's legal framework, informed by both regional and global perspectives.

### **1.9.2 Limitations**

One potential limitation of this research is the complexity surrounding the integration of the proposed solutions within existing legal structures. As the field of data privacy and digital media consent continues to evolve, ensuring that the recommendations align with both current and emerging legislation may present significant challenges. The dynamic nature of this area of law requires ongoing adaptation to new developments, which may complicate the application of the proposed solutions. Furthermore, time and resource constraints may limit the depth of analysis, potentially affecting the ability to explore the full extent of the issue and its impact on the public.

### **1.10 Chapter Breakdown**

The chapter breakdown is as follows: The first chapter focuses on highlighting the problem at hand and provides adequate sources and examples to illustrate the extent of the divide between the theory in law and the actual practice of police oversight. This chapter explores the tragedies left in the wake of unscrupulous officers and demonstrates how the crucial missing element of direct evidence would alleviate the evidentiary burden and see justice served.

Following this, the second chapter focuses on identifying and analysing the legal framework surrounding police accountability and evidence law. Here, questions will be posed challenging the possibility of meeting these legal thresholds with the current enforcement structures in place. Lastly it will examine the possible subsidiary legislation that can be introduced to alter the current governance landscape and provide for in law the introduction of measures that would ultimately bridge the gap between rules and results.

In the third chapter, comparative data is examined to establish other key areas aside from implementing practical accountability that would result in a better, more trusting relationship

between the police force and the public. By analysing jurisdictions that have successfully implemented this strategy and comparing it to those that are struggling finally looking at Kenya, it would be able to demonstrate not only the viability of such measures but the potential challenges that may be faced on the journey to implementation as demonstrated by experience.

Finally, in the fourth chapter, the focus shifts to the form of the proposed subsidiary legislation. By examining the current legally established norms and then broadening the scope to customary, regional and international norms and principles of justice, the chapter highlights an optimal proposed framework by determining the relevant areas it would need to cover in order to have a consequential effect. It demonstrates how by combining the information from the public with the footage of the police on duty, further measures such as targeted training and sensitization programmes can be efficiently administered.

The fifth chapter shall be dedicated to conclusions and recommendations.

## **CHAPTER 2 : CURRENT LEGAL FRAMEWORK SURROUNDING POLICE ACCOUNTABILITY**

### **2.1 Introduction**

The utility and efficacy of police oversight and accountability mechanisms is determined primarily by the strength of the legal framework that governs them. In Kenya, the Constitution, the Evidence Act, the National Police Service Act (NPSA), and the Independent Policing Oversight Authority (IPOA) regulations collectively establish the parameters for police conduct, evidence collection, and oversight. However, despite their robust provisions, significant issues persist in their practical application, particularly in ensuring transparency, fairness, and accountability in law enforcement. This chapter critically examines these legal instruments, identifying their strengths and limitations, and explores how technological tools like BWCs can bridge the existing gaps.

### **2.2 The Constitution of Kenya**

The Constitution of Kenya is the supreme law that establishes the foundational principles of transparency, accountability, and respect for human rights.<sup>25</sup> It underscores the national values of good governance and accountability, which are critical for police oversight.<sup>26</sup> It provides the parameters that fulfill a fair hearing and mention evidentiary concerns such as right to be informed in advance of the evidence to be used against them, have reasonable access to the evidence as well as to adduce and challenge evidence.<sup>27</sup> It also mandates the National Police Service (NPS) to uphold human rights and fundamental freedoms, but more so to train their staff to the highest possible standards of competence and integrity.<sup>28</sup> This training can only be demonstrably effective if the general activities of police officers can be observed by the bodies in charge or delivering their training and regulating their behaviour.

Furthermore, it reinforces that authority is a public trust, obliging state officers, including police,

---

<sup>25</sup> The Constitution of Kenya (2010).

<sup>26</sup> Article 10(2c), The Constitution of Kenya (2010).

<sup>27</sup> Article 50(2,j,k)The Constitution of Kenya (2010).

<sup>28</sup> Article 244(d), The Constitution of Kenya (2010).

to act in a manner that promotes public confidence.<sup>29</sup> However, despite these constitutional safeguards, the lack of monitoring tools to ensure compliance undermines the spirit of these provisions. Finally, it provides an obligation to these state officers to provide accountability to the public for decisions and actions. The integration of BWCs could provide verifiable evidence of adherence to these constitutional obligations, strengthening both oversight and public trust.

A hypothetical scenario illustrates this challenge: A civilian accuses an officer of misconduct during a peaceful protest. Without BWCs to capture the event, the officer's account is given precedence, leaving the civilian with little recourse. This case underscores the urgent need for objective evidence to actualize constitutional safeguards.

### 2.3 The Evidence Act

The Evidence Act plays a pivotal role in defining the standards for evidence admissibility and burden of proof.<sup>30</sup> This act establishes the burden of proof for any party alleging misconduct or criminal acts.<sup>31</sup> However, in cases involving police misconduct, victims often face insurmountable challenges due to the lack of objective evidence. The provision permitting admissibility of oral evidence allows for fabricated stories to be corroborated by kahoots within the police force with no means of confirming the false testimony as their fellow officers can stand as witnesses in a case.<sup>32</sup> The burden of proof for those who find themselves subject to police misconduct is also unfairly placed on the victim. Owing to the fear of retribution should a witness be summoned, it is an impossible situation to seek justice without any objective impartial information present.

The absence of BWCs hindered justice in **Republic v. Sule**, where the accused, a police officer, was charged with murder following allegations of assault during a raid.<sup>33</sup> Despite numerous witness statements, the evidentiary shortcomings were glaring. Witnesses either did not see the alleged assault or provided conflicting accounts about the events and the officer's identity. This created room for doubt and allowed the defense to question the reliability of the evidence.

---

<sup>29</sup> Article 73(1), The Constitution of Kenya (2010).

<sup>30</sup> The Evidence Act (2023).

<sup>31</sup> Section 107(1), The Evidence Act (2023).

<sup>32</sup> Section 63, The Evidence Act (2023).

<sup>33</sup> Republic v Sule (Criminal Case 16 of 2016) eKLR.

BWCs could have played a crucial role by capturing the events during the raid, including interactions between the police and civilians, thus providing definitive evidence of whether excessive force was used and who was responsible. This would have strengthened IPOA's ability to hold the officer accountable or exonerate them based on factual evidence

The Act also addresses the admissibility of electronic evidence, including video recordings.<sup>34</sup> Despite their potential to support oversight, these provisions remain underutilized due to the lack of mandatory technology integration within law enforcement. The absence of BWCs limits the capacity to produce real-time, credible evidence, often leaving victims of police misconduct without tangible proof. These provisions set a precedent for integrating BWCs into police oversight. By documenting interactions in real time, BWCs would provide credible evidence, shifting the burden of proof and facilitating fair trials while enhancing accountability.

Consider the following scenario: A traffic stop escalates into an altercation. The officer claims self-defense, while the civilian alleges excessive force. Without video evidence, the court relies on conflicting testimonies, leading to inconclusive outcomes. BWCs could decisively resolve such disputes, enhancing accountability and trust.

## **2.4 The National Police Service Act**

This act operationalizes the constitutional mandate of the police force. It emphasises the importance of adherence to legality in police operations.<sup>35</sup> It also charges an officer with an offence for abuse of the powers conferred upon them.<sup>36</sup> The Act also outlines procedures for disciplinary actions and mechanisms for reporting misconduct, however leaves out the manner in which information and evidence of such misconduct can be practically collected by members of the public. These beautiful standards are therefore left impractical as the police are left to police themselves as they are the main unit that will collect and adduce evidence in the event of allegations brought against them thereby watering down the required impartiality. In practice, complaints of police abuse often fail due to lack of evidence. For example, allegations of excessive force during a raid might hinge on witness statements, which can be inconsistent or biased. BWCs would provide impartial documentation, strengthening the evidentiary foundation

---

<sup>34</sup> Section 106 A & B, The Evidence Act (2023).

<sup>35</sup>Section 49, The National Police Service Act (2011).

<sup>36</sup> Section 56(3), The National Police Service Act (2011).

for such cases.<sup>37</sup>

This gap was evident in the Onunga case, where the petitioner alleged police misconduct during post-election violence.<sup>38</sup> The case highlighted significant evidentiary challenges, as the lack of real-time evidence made it difficult to establish whether the petitioner's injuries resulted from police actions. The respondents contested the claim, arguing that no live ammunition was used and pointing to delays in reporting. If BWCs had been employed, they could have provided objective, timestamped evidence of the police officers' actions, corroborating or refuting the petitioner's claims and enabling a fairer determination of accountability

The absence of legally enshrined proactive monitoring tools such as BWCs limits the effectiveness of these provisions. Real-time documentation of police-citizen interactions would enforce compliance with the Act and address gaps in evidence collection and oversight.

## **2.5 IPOA Regulations**

The Independent Policing Oversight Authority (IPOA) is tasked with investigating complaints against the police, auditing systems, and monitoring adherence to legal and ethical standards. Despite its critical role, IPOA faces significant challenges, including limited resources and the inability to independently verify evidence of police misconduct which is at the heart of its mandate.

In the Agwingi case, conflicting witness testimonies and the absence of direct, objective evidence made it difficult to conclusively determine whether the accused acted in self-defense or used excessive force.<sup>39</sup> Statements from witnesses were inconsistent, with key details such as who was armed and the circumstances surrounding the shooting differing widely. BWCs could have provided unambiguous evidence of the events, capturing the sequence of interactions between the deceased and the accused, and helping to resolve inconsistencies in witness accounts

In the recent shooting and murder of Rex Masai during the Anti-finance bill , this issue faced by

---

<sup>37</sup> Dawes D, Heegaard W, Brave M, Paetow G, Weston B, Ho J, 'Body-Worn Cameras Improve Law Enforcement Officer Report Writing Accuracy' 4(6) Journal of Law Enforcement (2015), 1.

<sup>38</sup> Onunga v Inspector General National Police Service & Another (Constitutional Petition E002 of 2023) eKLR.

<sup>39</sup> Republic v Agwingi (Criminal Case E007 of 2022) eKLR.

IPOA is brought in to the light. The institution was left with no recourse but to call upon civilian witnesses to attest to the identity of the killer, as the incident occurred without any objective evidence gathered.<sup>40</sup> The officer, who was reported to be in plainclothes murdered an unarmed civilian in broad daylight and yet the frameworks in place are unable or unwilling to bring him to justice.

IPOA's Strategic Plan highlights the need for enhanced tools and methodologies to fulfill its mandate effectively.<sup>41</sup> BWCs could address this need by providing impartial evidence, reducing reliance on officer testimony, and facilitating thorough investigations. Additionally, integrating BWCs with IPOA's oversight mechanisms would align with its objective of promoting transparency and professionalism within the NPS.

## 2.6 Proposed Subsidiary Legislation

To address the gaps identified in the current legal framework, subsidiary legislation should be introduced to mandate the use of BWCs in law enforcement. Such legislation could outline:

1. **Mandatory Use:** Requiring all police officers to wear BWCs during operations, particularly in high-risk or contentious situations such as arrests without warrant.
2. **Data Management:** Incorporating and implementing systems for the secure storage, retrieval, and use of BWC footage to protect privacy while ensuring accessibility for investigations and trials.
3. **Oversight collaboration:** Mandating integration between law enforcement agencies and oversight bodies like IPOA to ensure independent and unhindered access to BWC data for investigations.
4. **Enforcement Methods :** Creating enforcement mechanisms and steep penalties for officers who tamper with or fail to use BWCs as required by law.

These measures would bring about compliance with constitutional and statutory mandates,

---

<sup>40</sup> Kamau B, 'IPOA Issues Urgent Appeal in Rex Masai Shooting Case' (24 June 2024). Available at: <https://thekenyatimes.com/latest-kenya-times-news/ipoa-issues-urgent-appeal-in-rex-masai-shooting-case/>.

<sup>41</sup> Independent Policing Oversight Authority (IPOA), The Strategic Plan for the Independent Policing Oversight Authority (2019–2024).

bridging the gap between the established laws , rules and the results they elicit. By providing objective, real-time documentation of police-citizen interactions, BWCs would improve transparency, support fair trials, and strengthen public trust in law enforcement.

## **2.7 Conclusion**

This chapter has examined Kenya’s legal framework for police accountability, highlighting its strengths and the areas it falls short in application . While the Constitution, the Evidence Act, the NPSA, and IPOA regulations articulate principles of transparency, fairness, and accountability, their enforcement is often hindered by the absence of objective evidence. The cases examined demonstrate how these gaps undermine judicial proceedings, inhibit just outcomes and hinder the effective performance of oversight mechanisms.

The introduction of subsidiary legislation to mandate BWCs in specific circumstances offers a practical solution to these challenges. By aligning enforcement structures with constitutional and statutory objectives, BWCs would bridge the gap between legal rules and real-world outcomes, fostering greater accountability and public trust in Kenya’s law enforcement system.

## **CHAPTER 3 : COMPARATIVE ANALYSIS BETWEEN SOUTH AFRICA , KENYA AND OTHER JURISDICTIONS.**

### **3.1 Introduction**

The comparative analysis between Kenya and South Africa's legal systems, particularly in the context of police oversight and accountability, offers a unique opportunity for the evaluation of the practical application of laws in two different but parallel socio-political landscapes. Both countries carry the wounds of colonial legacies and have struggled with the issue of police misconduct, with the challenge of inculcating a culture of transparency, fairness, and accountability within law enforcement. While Kenya has made significant strides in addressing these issues through instruments like IPOA, South Africa's post-apartheid reforms and the establishment of the Independent Police Investigative Directorate (IPID) provide an intriguing point of comparison.

In recent years, both countries have explored the introduction of body-worn cameras (BWCs) as a technological solution to enhance police oversight and promote accountability. Kenya's efforts have remained largely theoretical, constrained by resource limitations and political inertia. South Africa, on the other hand, has made tangible progress, with a few pilot programs launched in key metropolitan areas to evaluate the efficacy of BWCs in addressing police misconduct and rebuilding public trust.<sup>42</sup> These developments position South Africa as a good potential model for Kenya, offering insights into the challenges and benefits of integrating such advanced tools within the law enforcement framework. By assessing the differences and similarities in their approaches, this chapter aims to identify valuable lessons that could inform Kenya's ongoing efforts to strengthen public trust and uphold human rights within its policing institutions.

Other countries such as the United Kingdom , United States as well as Trinidad and Tobago have rolled out body cameras in their jurisdictions with various results and meaningful discussions arising from their implementation

---

<sup>42</sup> Stone KE, 'Smart Policing and the Use of Body Camera Technology: Unpacking South Africa's Tenuous Commitment to Transparency' 12(1) Policing: A Journal of Policy and Practice (2018), 109–115.

## **3.2 Historical Contexts of Police Oversight**

### **3.2.1 Kenya**

The evolution of police oversight in Kenya is deeply rooted in its colonial history, where law enforcement served as an instrument of suppression rather than protection.<sup>43</sup> This legacy persisted into the post-independence era, marked by authoritarian regimes and the systemic use of police power to stifle dissent.<sup>44</sup> The Moi era exemplified this with instances of widespread police brutality and unchecked abuse of power, culminating in public outcry during episodes such as the post-election violence of 2007-2008. The promulgation of the 2010 Constitution sought to remedy these issues by embedding principles of accountability and human rights in law enforcement.<sup>45</sup> However, the practical realization of these principles has been hindered by inadequate oversight mechanisms, resource constraints, and the persistence of a culture of impunity within the National Police Service. The IPOA, established to bridge this gap, has faced significant challenges, including insufficient tools for evidence collection and resistance from entrenched interests within the police force<sup>46</sup>.

Efforts to introduce BWCs in Kenya are nascent, with proposals focusing on their potential to address evidentiary gaps and deter police misconduct. However, the lack of funding, coupled with concerns over data privacy and the technological infrastructure required, has delayed progress. The introduction of BWCs remains a topic of discussion rather than an actionable policy, highlighting the gap between intention and implementation in Kenya's approach to police accountability.

### **3.2.2 South Africa**

South Africa's history of policing is equally fraught, with its roots firmly planted in the apartheid system, where law enforcement was weaponized to enforce racial segregation and suppress the

---

<sup>43</sup> Waller R, 'Towards a Contextualisation of Policing in Colonial Kenya' 4 *Journal of Eastern African Studies* (2010), 525–541.

<sup>44</sup> Carotenuto M, Shadle B, 'Introduction: Toward a History of Violence in Colonial Kenya' 45(1) *The International Journal of African Historical Studies* (2012), 1–7.

<sup>45</sup> Constitution of Kenya (2010)

<sup>46</sup> Independent Policing Oversight Authority (IPOA). (2019–2024). Strategic Plan for the Independent Policing Oversight Authority.

majority population.<sup>47</sup> The transition to democracy in 1994 brought a paradigm shift in the role of the police, emphasizing community service and adherence to human rights. The establishment of the IPID reflected this new approach, providing an independent mechanism to investigate allegations of police misconduct.<sup>48</sup> South Africa's reforms were bolstered by a comprehensive constitutional framework that actively promoted accountability and transparency.<sup>49</sup>

In recent years, South Africa has taken proactive steps toward integrating BWCs into its police oversight framework. Pilot projects have been launched in metropolitan areas like Johannesburg and Cape Town, targeting police units that frequently engage with the public, such as traffic and crowd control units. In 2023, Cape Town equipped 800 law enforcement officers with body-worn cameras and installed approximately 300 vehicles with dashboard cameras.<sup>50</sup>

These initiatives aim to enhance transparency, improve evidence collection, and rebuild trust in law enforcement. While early results indicate a positive impact on reducing complaints against officers, challenges persist, including concerns over cost, data management, and resistance from some police unions. The ongoing discussions around scaling up the use of BWCs in South Africa reflect a commitment to leveraging technology for police reform, providing a valuable case study for Kenya as it navigates similar challenges.

The ongoing discussions around scaling up the use of BWCs in South Africa reflect a commitment to leveraging technology for police reform, providing a valuable case study for other countries facing similar challenges.

Both Kenya and South Africa illustrate the profound impact of historical trajectories on contemporary police oversight mechanisms. While their experiences differ, the shared challenges of combating entrenched systems of abuse and building trust between law enforcement and the public highlight the necessity of robust, independent oversight bodies tailored to the unique needs

---

<sup>47</sup> Stone KE, 'Smart Policing and the Use of Body Camera Technology: Unpacking South Africa's Tenuous Commitment to Transparency' 12(1) *Policing: A Journal of Policy and Practice* (2018), 109–115.

<sup>48</sup> South African Police Service Act (1995).

<sup>49</sup> Constitution of South Africa (1996).

<sup>50</sup> IOL, 'Cape Law Enforcement Gets Bodycams: City Rolls Out Policing Tech Equipment Worth R860m' (2023).

Available at:

<https://www.iol.co.za/capeargus/news/cape-law-enforcement-get-bodycams-city-rolls-out-policing-tech-equipment-worth-r860m-ae71dcb8-8ca3-4e12-97be-6d7e7e48dd72>.

of their respective societies.<sup>51</sup>

### **3.3 Comparative Legal Frameworks**

#### **3.3.1 Kenya**

The legal framework for police oversight in Kenya is founded on the Constitution of Kenya , the National Police Service Act, and the Independent Policing Oversight Authority Act. These laws collectively aim to ensure transparency, accountability, and respect for human rights in law enforcement. The Constitution emphasizes the need for the National Police Service (NPS) to promote professionalism, integrity, and respect for human rights.<sup>52</sup> It further underscores the principle that public authority is a trust to be exercised in ways that enhance public confidence.<sup>53</sup>

However, gaps in the legal framework hinder the full realization of these principles. For instance, while the Evidence Act provides for the admissibility of electronic evidence , it does not explicitly address the use of body-worn cameras.<sup>54</sup> As a result, there is no statutory obligation for police officers to use BWCs, nor are there guidelines for their deployment or management. The lack of specific legislative provisions has stalled Kenya's ability to implement BWCs as a practical tool for enhancing police accountability. This gap underscores the need for subsidiary legislation that can define the parameters for integrating BWCs into the broader framework of police oversight .

#### **3.3.2 South Africa**

South Africa's legal framework is comparatively more robust, with explicit provisions that support the use of body-worn cameras and other technological tools for police accountability. The foundation for police oversight is provided by the Constitution of South Africa , which mandates transparency and accountability in law enforcement.<sup>55</sup> It outlines the objectives of the police service, including the prevention of crime, maintenance of public order, and upholding of the law

---

<sup>51</sup> Ariel B, Sutherland A, Henstock D, Young J, Drover P, Sykes J, Megicks S, Henderson R, ‘Contagious Accountability: A Global Multisite Randomized Controlled Trial on the Effect of Police Body-Worn Cameras on Citizens’ Complaints Against the Police’ 44(2) Criminal Justice and Behavior (2017), 293–316.

<sup>52</sup> Article 244, Constitution of Kenya (2010)

<sup>53</sup> Article 73, Constitution of Kenya (2010)

<sup>54</sup> Sections 106A & 106B, Evidence Act, 1963

<sup>55</sup> Article 205, Constitution of South Africa (1996)

in a manner consistent with the Bill of Rights

The South African Police Service Act further operationalizes these constitutional principles by establishing mechanisms for oversight and accountability. This Act includes provisions for the professional conduct of police officers and outlines procedures for investigating allegations of misconduct. Importantly, the Act grants police officers the authority to use technology to support their duties, provided such use aligns with constitutional safeguards for privacy and human dignity.<sup>56</sup>

Specific to BWCs, South Africa has begun integrating their use through pilot programs and municipal bylaws. For instance, the Johannesburg Metropolitan Police Department (JMPD) has implemented pilot projects under its policing mandate, emphasizing the role of BWCs in enhancing transparency during traffic stops and public order operations.<sup>57</sup> While there is no national legislation mandating the use of BWCs, local governments and police units have adopted internal guidelines for their deployment, often referencing provisions in the Protection of Personal Information Act (POPIA) to address privacy concerns.<sup>58</sup>

Additionally, the IPID plays a critical role in overseeing the use of BWCs by police in the performance of their general duties in the pilot regions. As an independent oversight body, IPID has the power to revisit footage captured by BWCs during the investigations of police misconduct, thus not allowing BWCs to be merely internal policing mechanisms but embedding them within the broader accountability mechanisms.<sup>59</sup>

The integration of BWCs into South Africa demonstrates visionary insight into police reforms. Through the utilization of the existing legal framework and the ironing out of challenges through pilot programs and incremental implementation, South Africa proves a good example for Kenya. In such contexts, the use of BWCs complements privacy laws and oversight mechanisms while upholding constitutional principles to ensure a well-framed legal system necessary for effective and modern law enforcement technology deployment.

---

<sup>56</sup> Section 13 ,South African Police Service Act, 1995

<sup>57</sup> JMPD Annual Report, 2022

<sup>58</sup> Protection of Personal Information Act (2013)

<sup>59</sup>Independent Police Investigative Directorate (IPID), "Annual Report 2022/2023 Financial Year," Republic of South Africa, Vote No. 24, National Department.

### **3.4 Technology and Oversight: A Comparative Lens**

The integration of technology in police oversight is a paradigm shift in ensuring accountability and transparency in law enforcement. BWCs, therefore, come as an important technological tool to help address the dual problems of unsubstantiated claims of misconduct and the lack of real-time documentation of police-citizen interactions. Though Kenya and South Africa both recognize the potential of BWCs, their paths to adoption in each country have been fundamentally different.

In Kenya, little is in the line of development due to a combination of lack of legislation covering espoused conduct when handling BWCs and reasons of financial and infrastructural difficulty in implementing them. Though the Evidence Act provides for electronic evidence, it does not make express provision for BWCs; this keeps a critical gap in both legal and operational frameworks. Besides, any pilot programs with regard to BWC are yet to emerge amidst debates of costs, concerns on privacy, and political inaction. The law however must develop first in order to better facilitate their quick adoption should the opportunity arise.

On the other hand, South Africa has been very proactive. Notwithstanding these advances, South Africa is still battling some challenges in the form of high implementation costs and resistance from some police unions. For Kenya, though, there is much to learn from the experiences of South Africa, especially in developing a phased approach to adoption and aligning the use of BWCs with constitutional safeguards for privacy and human rights.

### **3.5 Challenges in Police Oversight**

Kenya and South Africa share common challenges in police oversight but face them within different socio-political contexts.

#### **3.5.1 Kenya**

The biggest challenges facing Kenya involve underfunding for all oversight institutions in the country, including IPOA. Inadequate financial and technical resources have contributed to the institution's inability to effectively deliver on its mandate. This limitation has been worsened by

political influence and interference that compromises IPOA's independence.

Apart from this, the other urgent concern is the evidentiary gap in the case of alleged police misconduct. Lack of impartial and real-time documentation means victims cannot always meet the high burden of proof required under Section 107(1) of the Evidence Act. It perpetuates this problem by depending on officer testimony that might be manipulated; hence, these allegations remain unclear.

### **3.5.2 South Africa**

The high levels of crime in the country stretch the police to breaking point leading to incidents of excessive force, among other forms of misconduct.<sup>60</sup> However, the IPID also has resource constraints that undermine its capacity to deal efficiently with a high volume of complaints.<sup>61</sup>

Throughout the implementation process of BWC, police unions have successfully pointed out various concerns regarding implications on the privacy of officers and the misuse of footage.<sup>62</sup> Other than that, scaling up BWC nationally is a big hassle in terms of expenses: substantial investment in equipment and infrastructure is necessary to keep all the data managed.

Notwithstanding these challenges, South Africa is better placed compared to Kenya in addressing systemic issues due to its high legal framework and willingness to adopt new technologies.

---

<sup>60</sup> Lumina C, 'Police accountability and policing oversight mechanisms in the Southern African Development Community' 15 *African Security Review* (2006), 92–108.

<sup>61</sup> Independent Police Investigative Directorate (IPID), "Annual Report 2022/2023 Financial Year," Republic of South Africa, Vote No. 24, National Department.

<sup>62</sup> Tankebe J, Ariel B, 'Cynicism Towards Change: The Case of Body-Worn Cameras Among Police Officers' Hebrew University of Jerusalem Legal Research Paper, (2016), 16-42.

### 3.6 Lessons Kenya Can Learn from South Africa

The comparative analysis reveals several key lessons for Kenya :

1. **Integration of Technology** : South Africa's phased implementation of BWCs through pilot programs demonstrates the importance of gradual adoption. Kenya can replicate this approach to test the feasibility and address challenges before rolling out a nationwide program.
2. **Legislative Alignment** : POPIA of South Africa protects the use of BWCs in a manner that upholds the rights of privacy. Similarly, Kenya should have legislation that can guide the use, storage, and accessibility of the footage from the BWCs while protecting against misuse. Police officers, while undertaking their official duties, are exempted from some of the protections afforded to privacy; as such, the measures adopted should be consistent with reasonable privacy protection for all parties. Despite immediate implementation being unlikely, this legislation can guide and spur the process along.
3. **Institutional Independence**: The autonomy of South Africa's IPID serves as a model for strengthening IPOA. Enhancing IPOA's independence through legislative and financial support would enable it to operate without undue political influence.
4. **Public Engagement**: South Africa's focus on community policing has helped foster trust between law enforcement and citizens. Kenya could adopt a similar approach by involving communities in oversight processes and educating the public about the role and benefits of BWCs.
5. **Data Privacy Frameworks**: Managing the vast amounts of data generated by BWCs requires robust systems. Kenya can learn from South Africa's legal provisions under POPIA to build secure and transparent data management protocols.

### 3.7 Cases from other jurisdictions

Body Cameras that are in use in other jurisdictions such as the United Kingdom have provided crucial evidence at court which allowed for a more comprehensive analysis of facts and more conclusive deliberations.

In the case of the fatal shooting of Chris Kaba, bodycam footage allowed the court to have a first

hand view into the events as they occurred in real time. This evidence was crucial in the decision reached of not guilty , thoroughly defended and supported by the independent police investigation body.<sup>63</sup>

### **3.8 Conclusion**

The comparison of Kenya and South Africa’s legal systems highlights the shared challenges of police oversight while emphasizing the importance of tailored reforms. Kenya’s oversight mechanisms, though well-intentioned, lack the structural and technological support necessary to address systemic issues effectively. South Africa’s experiences with BWCs and its stronger legal provisions provide a roadmap for Kenya to enhance its police accountability framework.

By adopting lessons from South Africa, including the incremental implementation of BWCs, legislative alignment, and community engagement, Kenya can enhance public trust in its police force and promote a culture of accountability between officers,citizens and the law. These reforms are essential not only for addressing police misconduct but also for upholding constitutional principles and fostering a more equitable justice system.

---

<sup>63</sup> Independent Office for Police Conduct (IOPC), "Investigation into the Fatal Shooting of Chris Kaba – Factsheet," October 2024, available at <https://www.policeconduct.gov.uk/news/iopc-makes-referral-cps-over-fatal-shooting-chris-kaba>, accessed on 17th January 2025.

## **CHAPTER 4 : PROPOSED SUBSIDIARY LEGISLATION**

### **4.1 Introduction**

The introduction of body-worn cameras (BWCs) as a mandatory tool in law enforcement would represent a significant step toward enhancing transparency and accountability in Kenya. While existing legal frameworks provide the foundation, subsidiary legislation is necessary to operationalize the integration of BWCs. This chapter provides a thorough outline of the proposed legislation, drawing on international best practices, Kenyan case law, and statutory provisions.

### **4.2 Objectives of the Legislation**

The following objectives of the proposed subsidiary legislation are rooted in the need to enhance police accountability, transparency, and public trust. These goals are consistent with constitutional mandates and statutory requirements under Kenyan law and international instruments.

#### **1. Promoting Accountability through Objective Documentation**

The Constitution of Kenya designates state authority as a public trust, requiring officials to act in a manner that promotes accountability and public confidence.<sup>64</sup> BWCs provide an objective means of documenting police-citizen interactions, ensuring adherence to this principle. This aligns with the National Police Service Act, which criminalizes abuse of police powers, as they ensure verifiable evidence of officer conduct is available.<sup>65</sup>

#### **2. Strengthening Evidentiary Foundations in Legal Proceedings**

The legislation directly addresses evidentiary gaps identified in Sections 63, 106A, and 107(1) of the Evidence Act. BWCs generate real-time, tamper-proof footage that meets the admissibility criteria for electronic evidence under Sections 106A and 106B.

#### **3. Enhancing Oversight Mechanisms and Independent Investigations**

Section 5 of the IPOA Act mandates the Independent Policing Oversight Authority to investigate police misconduct impartially. However, IPOA's Strategic Plan highlights resource constraints that limit its ability to verify claims of abuse.<sup>66</sup> By providing direct access to BWC footage, the legislation strengthens IPOA's investigative capacity and fulfills its statutory mandate of

---

<sup>64</sup> Article 73, The Constitution of Kenya,(2010).

<sup>65</sup> Section 56(3), The National Police Service Act,(2011).

<sup>66</sup> Independent Policing Oversight Authority (IPOA), The Strategic Plan for the Independent Policing Oversight Authority (2019–2024).

enhancing professionalism and discipline within the police service.

#### **4. Aligning Domestic Practices with International Standards**

Kenya is a signatory to several international treaties, including the International Covenant on Civil and Political Rights (ICCPR), which in Article 14, emphasizes the right to a fair trial and protection from arbitrary actions in Article 17. The use of BWCs ensures compliance with these obligations by reducing arbitrary arrests and ensuring transparency during police operations. Similarly, the United Nations Basic Principles on the Use of Force and Firearms stress the need for accountability in law enforcement, a principle further reinforced by the African Charter on Human and Peoples' Rights, to which Kenya is a party. Simply commencing the drafting of legislation to curb corruption and abuse of power would be a significant step for Kenya in demonstrating its intention to meet its internationally mandated standards.

#### **4.3 Key Provisions of the Legislation**

The proposed legislation outlines specific provisions designed to institutionalize the use of BWCs, addressing operational challenges and ensuring alignment with Kenya's legal framework.

The legislation requires all officers engaged in public-facing duties, especially arrests and crowd control, to wear and activate BWCs during interactions. Article 244 of the Constitution mandates the National Police Service to observe human rights and train officers to the highest standards of integrity. BWCs operationalize this mandate by ensuring objective evidence of officer conduct, preventing abuses of power.

Recognizing the need for data security, the legislation establishes protocols for encrypting and securely storing footage for a minimum of 12 months. Access to footage is restricted to authorized personnel within IPOA and the judiciary, ensuring impartiality while safeguarding privacy. The provisions draw inspiration from South Africa's Protection of Personal Information Act, which provides a robust framework for managing sensitive data. Additionally, the right to privacy under Article 31 of the Constitution is protected through strict limitations on the use and dissemination of footage, ensuring that BWCs do not become instruments of surveillance abuse.

To enhance IPOA's investigative capacity, the legislation grants it direct access to BWC footage. Section 5 of the IPOA Act mandates the authority to promote transparency and accountability in policing. By providing real-time, verifiable evidence, BWCs enable IPOA to fulfill its statutory role effectively. The oversight role is further bolstered by provisions ensuring that failure to activate BWCs or tampering with footage constitutes a criminal offense under Section 58 of the NPSA.

The legislation includes strict penalties for officers who fail to comply with BWC requirements. Tampering with footage or failing to activate the cameras during mandated interactions would result in disciplinary actions, fines, or imprisonment. These provisions echo the accountability frameworks outlined in the ICCPR and the African Charter on Human and Peoples' Rights, ensuring that law enforcement officers are held to the highest standards of conduct.

The footage captured by BWCs will be admissible as primary evidence in legal proceedings, subject to the provisions of Sections 106A and 106B of the Evidence Act. By creating a clear chain of custody for BWC footage, the legislation ensures its integrity and reliability, addressing long standing challenges in proving police misconduct or abuse.

#### **4.4 Conclusion**

The proposed subsidiary legislation represents a pivotal step toward bridging the gap between Kenya's constitutional principles and practical enforcement mechanisms. By mandating the use of BWCs, the legislation operationalizes the values of accountability, transparency, and justice enshrined in the Constitution and statutory laws. Drawing on domestic statutes, international obligations, and comparative practices, this framework provides a comprehensive solution to systemic issues in law enforcement. Through its phased implementation and robust safeguards, the legislation offers a transformative opportunity to rebuild public trust in policing and uphold the rule of law.

## **CHAPTER 5 : CONCLUSION AND RECOMMENDATIONS**

### **5.1 Conclusion from findings**

This chapter concludes the research by reflecting on the findings presented in the preceding chapters and outlining actionable recommendations to address the identified gaps in police oversight and accountability in Kenya. Drawing on the analyses from Chapter 2 and comparative insights from Chapter 3, there was a strong case to emphasize the need for targeted reforms to integrate body-worn cameras (BWCs) within the policing framework. These reforms outlined in Chapter 4 aim to strengthen transparency, accountability, and public trust in law enforcement. By leveraging lessons from jurisdictions such as South Africa and Trinidad and Tobago, this research advocates for a legal and institutional framework to be crafted, suited to Kenya's socio-economic and legal environment. It also highlights the necessary reforms and potential benefits from implementing these measures.

### **5.2 Recommendations**

#### **5.2.1 Enacting New Legislation for Body-Worn Cameras**

Kenya must enact specific legislation to govern the use of BWCs in law enforcement. This law should:

- I. Mandate the phased introduction for use of BWCs during all public-facing police operations, especially during arrests of all kinds and crowd control, to ensure transparency and accountability.
- II. Establish protocols for data management, including secure storage, retrieval, and accessibility of footage. This should align with privacy protections under Article 31 of the Constitution.
- III. Create penalties for non-compliance, such as failure to activate BWCs or tampering with footage, to enhance accountability.
- IV. Empower IPOA with statutory authority to access and review BWC footage during investigations, ensuring independent oversight.

### **5.2.2 Establishing a Special Branch for BWC Management**

The government should establish a dedicated unit within the National Police Service to manage BWCs. This unit would:

- I. Oversee the procurement, maintenance, and distribution of BWCs to police officers.
- II. Train officers on the ethical and technical use of BWCs, emphasizing the importance of transparency and accountability.
- III. Collaborate with IPOA to ensure seamless integration of BWC data into oversight mechanisms.
- IV. A specialized branch would ensure the effective and efficient operation of BWCs, addressing challenges such as equipment misuse and data management issues.

### **5.2.3 Enhancing Community Awareness and Funding**

Public awareness campaigns are essential to garner community support and funding for BWC implementation. These campaigns should:

- I. Educate citizens on the role of BWCs in enhancing police accountability and public safety.
- II. Engage local leaders and community organizations to promote the adoption of BWCs.
- III. Explore innovative funding models, such as public-private partnerships and community-driven initiatives, to support the procurement and maintenance of BWC infrastructure.

The lessons from Trinidad and Tobago's community policing strategies highlight the importance of public participation in fostering trust and cooperation between citizens and law enforcement.

### **5.2.4 Integrating BWCs into Judicial Processes**

BWC footage should be admissible as primary evidence in court proceedings under Sections 106A and 106B of the Evidence Act. To facilitate this:

- I. Guidelines should be developed to ensure the chain of custody for BWC footage is maintained.

- II. Courts should be equipped with the technical infrastructure to handle and review digital evidence effectively.
- III. Judicial officers should receive training on the interpretation and use of BWC footage in legal proceedings.

### **5.3 Conclusion**

The adoption of BWCs in Kenya represents a transformative opportunity to address systemic issues in police oversight and accountability. It is certainly no an easy task however the nature and extent of police brutality and corruption demonstrates the urgent need for enhanced oversight mechanisms. By enacting comprehensive legislation, establishing specialized units, and fostering community engagement, Kenya can bridge the gap between its legal framework and practical enforcement. Lessons from South Africa ,the United Kingdom as well as Trinidad and Tobago demonstrate the potential of BWCs to enhance transparency, deter misconduct, and rebuild public trust in law enforcement through evidentiary vigilance. These reforms are essential to aligning Kenya's policing practices with constitutional principles and ensuring a fairer, more accountable justice system.

## Bibliography

### Journals

- Ariel B, Sutherland A, Henstock D, Young J, Drover P, Sykes J, Megicks S, Henderson R, 'Contagious Accountability: A Global Multisite Randomized Controlled Trial on the Effect of Police Body-Worn Cameras on Citizens' Complaints Against the Police' 44(2) *Criminal Justice and Behavior* (2017), 293–316.
- Carotenuto M, Shadle B, 'Introduction: Toward a History of Violence in Colonial Kenya' 45(1) *The International Journal of African Historical Studies* (2012), 1–7.
- Jones SR, 'Was there a Hawthorne Effect?' 98(3) *American Journal of Sociology* (1992), 451–68.
- Dawes D, Heegaard W, Brave M, Paetow G, Weston B, Ho J, 'Body-Worn Cameras Improve Law Enforcement Officer Report Writing Accuracy' 4(6) *Journal of Law Enforcement* (2015), 1.
- Kennedy D, 'Legal Education and the Reproduction of Hierarchy' 33(4) *The Journal of Legal Education* (1983), 591–615.
- Osse A, 'Police Reform in Kenya: A Process of "Meddling Through"' 26(8) *Policing and Society* (2014), 907–924.
- Lumina C, 'Police accountability and policing oversight mechanisms in the Southern African Development Community' 15 *African Security Review* (2006), 92–108.
- Tankebe J, Ariel B, 'Cynicism Towards Change: The Case of Body-Worn Cameras Among Police Officers' Hebrew University of Jerusalem Legal Research Paper No. (2016), 16-42.
- Tyler TR, Blader SL, 'The Group Engagement Model: Procedural Justice, Social Identity, and Cooperative Behavior' 7 *Personality and Social Psychology Review* (2003), 349–361.
- Flight S, 'Opening up the Black Box: Understanding the Impact of Body Cams on Policing' 4 *European Law Enforcement Research Bulletin* (2019), 47.
- Wallace S, 'The Evolving Role of Technology in Police Oversight: A Global Perspective' 12 *Journal of Policing Policy and Practice* (2020), 98–115.
- Stone KE, 'Smart Policing and the Use of Body Camera Technology: Unpacking South Africa's Tenuous Commitment to Transparency' 12(1) *Policing: A Journal of Policy and Practice* (2018), 109–115.

- Waller R, 'Towards a Contextualisation of Policing in Colonial Kenya' 4 *Journal of Eastern African Studies* (2010), 525–541.
- Wallace W, 'Police Unions and the Implementation of Body-Worn Cameras in a Small Island Developing State: The Case of the Trinidad and Tobago Police Service' 58 *International Annals of Criminology* (2020), 111–129.

## Books

- Holmes OW, *The Common Law* (Boston: Little, Brown, and Company, 1881).
- Zimbardo P, *The Lucifer Effect: Understanding How Good People Turn Evil* (Random House Group, 2008).

## Reports

- United States Bureau of Democracy, Human Rights, and Labor, 2020 Country Reports On Human Rights Practices: Kenya (30 March 2021).
- Independent Policing Oversight Authority (IPOA), *The Strategic Plan for the Independent Policing Oversight Authority (2019–2024)*.
- Independent Police Investigative Directorate (IPID), "Annual Report 2022/2023 Financial Year," Republic of South Africa, Vote No. 24, National Department.

## Online Sources

- Independent Office for Police Conduct (IOPC), "Investigation into the Fatal Shooting of Chris Kaba – Factsheet," October 2024, available at <https://www.policeconduct.gov.uk/news/iopc-makes-referral-cps-over-fatal-shooting-chris-kaba>, accessed on 17th January 2025.
- Kamau B, 'IPOA Issues Urgent Appeal in Rex Masai Shooting Case' (24 June 2024). Available at: <https://thekenyatimes.com/latest-kenya-times-news/ipoa-issues-urgent-appeal-in-rex-masai-shooting-case/>.
- IOL, 'Cape Law Enforcement Gets Bodycams: City Rolls Out Policing Tech Equipment Worth R860m' (2023). Available at:

<https://www.iol.co.za/capeargus/news/cape-law-enforcement-get-bodycams-city-rolls-out-policing-tech-equipment-worth-r860m-ae71dcb8-8ca3-4e12-97be-6d7e7e48dd72>