

**Strathmore**  
UNIVERSITY

**POLICE OVERSIGHT, FINANCIAL AUTONOMY, AND  
ACCOUNTABILITY: COMPARING KENYA AND THE UNITED  
KINGDOM.**

**SUBMITTED IN PARTIAL FULFILLMENT OF THE REQUIREMENTS  
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**BY**

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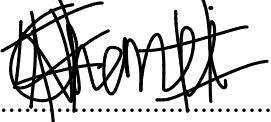
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## DECLARATION

I, LENA NAVALAYO CHEMEI, 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: 8th April 2025 .....

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

Signed:  .....

Date .....9<sup>th</sup> April, 2025.....

MR. MOSES ANTONY ODHIAMBO



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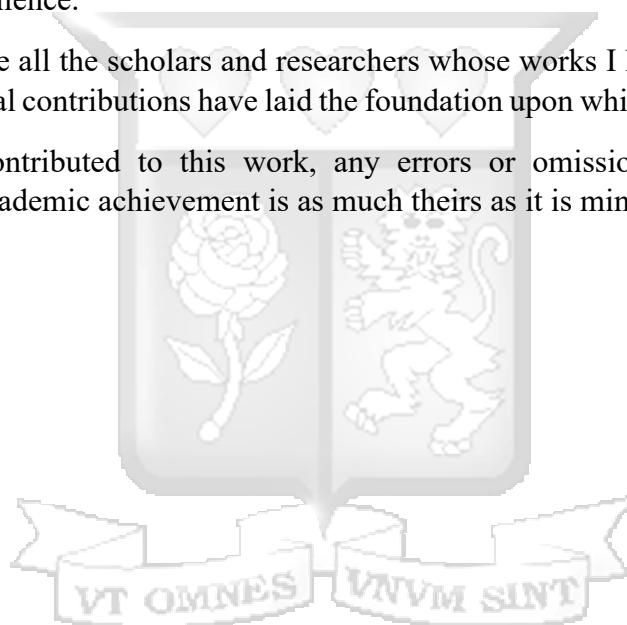
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Finally, I acknowledge all the scholars and researchers whose works I have referenced in this study. Their intellectual contributions have laid the foundation upon which this research stands.

While many have contributed to this work, any errors or omissions remain solely my responsibility. This academic achievement is as much theirs as it is mine.



## DEDICATION

To the unwavering advocates of justice and police accountability whose relentless pursuit of transparency inspires this work.

To my family, for their boundless support and patience throughout this academic journey.

And to the people of Kenya, in the hope that this research contributes to a more just and accountable policing system for all.



## ABSTRACT

*This study examines the critical roles of financial independence and command responsibility in strengthening independent police oversight, with a focus on Kenya's legal framework and a comparative analysis with the United Kingdom. The methodology combined doctrinal analysis of legal texts, case law, and comparative policy evaluation. Key findings revealed that while Kenya has robust legal frameworks, oversight bodies face chronic underfunding, political interference, and weak enforcement of command responsibility. Financial dependence on parliamentary allocations undermines IPOA's autonomy, while command liability principles suffer from institutional resistance and politicization. In contrast, the UK's ring-fenced funding Police Reform Act 2002 and decentralized accountability mechanisms ensure operational independence and systemic reforms. Conclusions highlight that effective oversight requires both legal safeguards and operational resilience. Kenya's gaps stem from structural flaws, whereas the UK's emphasis on organizational learning offers transferable best practices. . To address these gaps, the study recommends automating IPOA's funding to ensure financial autonomy.*



## LIST OF ABBREVIATIONS

DPP	Director of Public Prosecutions
EACC	Ethics and Anti- Corruption Commission
FRC	Financial Reporting Council
HMIC	His Majesty's Inspectorate of Constabulary
HMICFRS	His Majesty's Inspectorate of Constabulary and Fire & Rescue Services
IAU	Internal Affairs Unit
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IG	Inspector General
IOPC	Independent Office for Police Conduct
IPCC	Independent Police Complaints Commission
IPOA	Independent Policing Oversight Authority
NPS	National Police Service
OAG	Office of the Attorney General
ODPP	Office of the Director of Public Prosecutions
PCAOB	Public Company Accounting Oversight Board
PEEL	Police Effectiveness, Efficiency and Legitimacy
PPRA	Public Procurement Regulatory Authority
SEC	Securities and Exchange Commission
SOX	Sarbanes – Oxley Act
UK	United Kingdom
UNAC	United Nations Convention against Corruption.
WWII	World War 2

## LIST OF CASES

*Kenya Human Rights Commission & 8 others v Nchebere; Law Society of Kenya & 2 others (Interested Parties) (2024) eKLR*

*R (Miller) v Prime Minister (Miller II).*



## **LIST OF LEGAL INSTRUMENTS**

Constitution of Kenya, 2010.

The National Police Service Act, 2011.

Independent Police Oversight Authority Act, 2011.

Police Reform Act 2002.

Police (Conduct) Regulations 2020.

United Nations Convention against Corruption.



# CHAPTER 1: INTRODUCTION

## 1.1 INTRODUCTION

Financial independence and command responsibility are fundamental principles in governance, accountability, and institutional integrity. In Kenya, these concepts are particularly significant given the country's historical struggles with corruption, mismanagement of public funds, and weak enforcement of accountability mechanisms.<sup>1</sup> Financial independence refers to the ability of institutions, particularly oversight bodies, to operate without undue political or external influence, ensuring impartial decision-making and effective resource allocation.<sup>2</sup> Command responsibility, on the other hand, pertains to the legal and ethical obligation of leaders and superiors to ensure compliance with laws and regulations within their jurisdictions, holding them accountable for the actions (or inactions) of their subordinates.<sup>3</sup>

Kenya's governance framework has undergone significant reforms since the promulgation of the 2010 Constitution, which introduced robust provisions on fiscal decentralization, accountability, and leadership integrity. However, despite these legal advancements, challenges persist in ensuring that public institutions, particularly those tasked with financial oversight, operate independently and that leaders are held accountable for financial misconduct.<sup>4</sup>

### 1.1.1 Background

#### 1.1.1.1 Historical Background

Kenya's historical trajectory in financial governance has been marred by systemic corruption and weak accountability mechanisms, particularly in the post-independence era. The centralized governance model adopted after independence in 1963 allowed for minimal oversight, enabling political elites to exert significant control over public finances.<sup>5</sup> This lack of accountability was epitomized by high-profile corruption scandals, such as the Goldenberg scandal of the 1990s, where fraudulent compensation claims led to the loss of over KSh 50 billion, and the Anglo-Leasing scandal in the early 2000s, which involved inflated procurement contracts worth billions of shillings.<sup>6</sup> These scandals exposed deep-seated weaknesses in

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<sup>1</sup> Transparency International, Corruption Perceptions Index: Kenya Report, 2022.

<sup>2</sup> OECD, Principles for Independent Fiscal Institutions, 2021.

<sup>3</sup> Ambos K, Treatise on International Criminal Law: Volume I: Foundations and General Part, Oxford University Press, 2013.

<sup>4</sup> World Bank, Kenya Public Expenditure Review: Enhancing Accountability in Fiscal Management, 2020.

<sup>5</sup> Wrong M, It's Our Turn to Eat: The Story of a Kenyan Whistle-Blower, HarperCollins, 2009.

<sup>6</sup> KPMG Africa, Forensic Audit Report on Historical Corruption Scandals in Kenya, 2016.

Kenya's financial oversight systems, including collusion between government officials and private actors, inadequate auditing mechanisms, and a culture of impunity that shielded high-ranking officials from prosecution. The public outcry against these scandals fueled demands for constitutional reform, culminating in the promulgation of the 2010 Constitution, which sought to institutionalize transparency and accountability in public finance.<sup>7</sup> The new constitutional dispensation established independent institutions such as the Ethics and Anti-Corruption Commission (EACC), the Office of the Auditor-General (OAG), and the Public Procurement Regulatory Authority (PPRA), all mandated to enhance fiscal discipline and combat corruption.<sup>8</sup> However, despite these reforms, historical patterns of financial misconduct persist, suggesting that structural and cultural impediments remain unresolved.<sup>9</sup>

### **1.1.1.2 Legal Framework and Challenges**

Kenya's legal framework on financial independence and command responsibility is anchored in a combination of constitutional provisions, statutory laws, and institutional mechanisms designed to promote accountability. The Constitution of Kenya 2010 provides the foundational principles, with Article 201 emphasizing transparency and accountability in public finance, Article 226 mandating regular audits of public funds by the Auditor-General, and Article 252 safeguarding the independence of constitutional commissions from executive interference.<sup>10</sup> Complementing these constitutional provisions are key legislative instruments, including the Public Finance Management Act 2012, which outlines mechanisms for budget control and fiscal reporting, and the Leadership and Integrity Act 2012, which imposes ethical obligations on public officials, including asset declarations and conflict-of-interest regulations. Kenya's legal framework on financial accountability incorporates international standards through its ratification of the United Nations Convention against Corruption (UNCAC) in 2007, which obligates the state to implement preventive anti-corruption measures and strengthen institutional integrity.<sup>11</sup>

Despite this robust legal architecture, enforcement remains inconsistent due to several systemic challenges. Political interference in the operations of oversight institutions, such as the EACC

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<sup>7</sup> Githinji P and Aduda D, "Public Financial Management Reforms in Kenya: Progress and Challenges" (2018) African Journal of Public Administration.

<sup>8</sup> Githinji P and Aduda D, "Public Financial Management Reforms in Kenya: Progress and Challenges" (2018) African Journal of Public Administration.

<sup>9</sup> Institute of Economic Affairs (IEA), Kenya's Governance and Accountability Mechanisms: A Critical Review, 2021.

<sup>10</sup> Article 201, 226, 252, Constitution of Kenya, 2010.

<sup>11</sup> Article 6, United Nations Convention against Corruption, 2003

and the Office of the Director of Public Prosecutions ODPP, often undermines corruption investigations and prosecutions.<sup>12</sup> Institutional weaknesses, including chronic underfunding of key oversight bodies like the OAG, further limit their effectiveness.<sup>13</sup> Moreover, judicial delays in adjudicating corruption cases erode public trust in accountability mechanisms, while the principle of command responsibility is often narrowly applied, allowing senior officials to evade liability for systemic failures.<sup>14</sup> These challenges highlight the need for comprehensive reforms to strengthen financial independence and enforce hierarchical accountability in Kenya's public sector.

## 1.2 STATEMENT OF THE PROBLEM

Police misconduct remains a significant challenge globally, undermining public trust and violating fundamental human rights. In Kenya, despite establishing a robust legal framework for police oversight through the 2010 Constitution, the Independent Policing Oversight Authority (IPOA) there are no clear command responsibility principles hence systemic failures persist in achieving meaningful accountability. The oversight system faces three critical challenges: first, IPOA's financial dependence on discretionary parliamentary financial allocations leaves it vulnerable to political interference and chronic underfunding, regularly hampering its investigative capacity. Second, while legal precedents like *Kenya Human Rights Commission v. Nchebere* establish commanders' liability for subordinates' misconduct, weak enforcement mechanisms, institutional resistance, and political protection of senior officers render this principle ineffective in practice.

Lastly, operational fragmentation between IPOA and the Internal Affairs Unit creates accountability gaps that allow impunity to thrive. These structural deficiencies have created a paradox where progressive legal provisions exist alongside persistent police abuses, eroding public confidence in oversight institutions. Victims of police misconduct face institutional barriers to justice, while the lack of visible consequences for violations perpetuates a culture of impunity within law enforcement. This study examines how strengthening financial independence and command responsibility as foundational elements of effective oversight could address Kenya's accountability gaps, focusing on institutional reforms that would bridge the divide between the country's exemplary legal framework and its problematic implementation. The research aims to provide actionable recommendations for creating an

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<sup>12</sup> Ethics and Anti-Corruption Commission (EACC), Annual Report on Corruption Trends in Kenya, 2023.

<sup>13</sup> World Bank, Kenya Public Expenditure Review: Enhancing Accountability in Fiscal Management, 2020.

<sup>14</sup> Muigua K, Combating Corruption in Kenya: Legal and Policy Framework, University of Nairobi Press, 2022.

oversight system that ensures both operational independence and meaningful consequences for misconduct, ultimately restoring public trust in policing institutions

### **1.3 RESEARCH OBJECTIVES**

1. Evaluate the role of financial independence and command responsibility in police oversight.
2. Critically assess Kenya's legal framework for police accountability, identifying gaps in implementation.
3. Compare Kenya's oversight mechanisms with the UK's model to derive best practices.
4. Propose evidence-based reforms to enhance police accountability in Kenya.

### **1.4 RESEARCH QUESTIONS**

1. To investigate the utility of financial independence and command responsibility on independent police oversight.
2. To establish the extent to which Kenya's legal framework falls short on oversight of police misconduct.
3. To benchmark best practices on police oversight between Kenya and United Kingdom.
4. To recommend reforms that would strengthen financial independence and command responsibility for Kenya's police oversight bodies.

### **1.5 HYPOTHESIS.**

This research hypothesizes that Kenya's police oversight system will remain ineffective without guaranteed financial autonomy for IPOA and rigorous application of command responsibility, as these factors are critical for deterring misconduct and ensuring institutional accountability.

### **1.6 JUSTIFICATION/SIGNIFICANCE OF THE STUDY**

The study of police oversight procedures is important from a number of important angles. First, by addressing systematic impunity and persistent human rights abuses by police forces, it directly addresses the pressing need for accountability in law enforcement. The study highlights institutional shortcomings that let misbehaviour to continue while offering practical ways to improve accountability procedures by looking at supervision structures. Second, community safety and citizen-police cooperation are based on the restoration and maintenance of public faith in law enforcement institutions, which is made possible by efficient police monitoring. Third, the results have significant policy implications, offering evidence-based perspectives

that can direct institutional and legislative changes in Kenya and other countries dealing with comparable issues related to police accountability.

## **1.7 THEORETICAL FRAMEWORK**

### **1.7.1 Natural Rights Theory**

According to John Locke's Natural Rights Theory, people have the unalienable, innate right to life, liberty, and property regardless of the laws or political structures in place.<sup>15</sup> Locke's theories place a strong emphasis on personal liberty and self-determination, arguing that a social compact is used to establish governments in order to safeguard these rights. A government loses legitimacy and citizens have the right to overthrow it if it does not respect fundamental rights. This paradigm asserts that everyone has certain basic rights simply by virtue of being human, laying the groundwork for a fundamental conviction in equality and human dignity.

Deeply ingrained in idealist and metaphysical perspectives, the theory emphasizes each person's innate capacity for reasoning—a quality that all people possess just by virtue of being human.<sup>16</sup> This concept has been expanded upon by classical philosophers like Aristotle, Plato, and Cicero as well as contemporary theorists like John Finnis, who emphasize that each person is capable of differentiating between right and wrong. Human dignity, equality, virtue, goodness, justice, fairness, and freedom are among the ideals that are promoted by natural law theory.<sup>17</sup> These ideas are seen as fundamental rules that govern human conduct, especially in social situations.

Regarding human rights, the idea emphasizes that the state must uphold the inherent human dignity of all people, including victims of police misbehavior, by claiming that these natural rights apply to everyone equally. Like everyone else, victims are entitled to the same protections under their inherent rights, including the obligation of the state to uphold and not compromise their dignity. According to Locke's philosophy, these rights ought to be equally safeguarded for everyone.<sup>18</sup> This is a crucial connection between the idea and the requirement that the state and law enforcement protect and defend people's inherent rights, including those who are injured by police activities. Based on the idea that a government loses legitimacy if it

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<sup>15</sup> Locke J, *Two Treatises of Government*, ed Peter Laslett, Cambridge University Press, Cambridge, 1988.

<sup>16</sup> Locke J, *Two Treatises of Government*, ed Peter Laslett, Cambridge University Press, Cambridge, 1988.

<sup>17</sup> Locke J, *Two Treatises of Government*, ed Peter Laslett, Cambridge University Press, Cambridge, 1988.

<sup>18</sup> Locke J, *Two Treatises of Government*, ed Peter Laslett, Cambridge University Press, Cambridge, 1988.

fails to uphold fundamental rights, Locke's theory would support the demand for accountability and reparation when the state abuses these rights, as is the case in instances of police brutality.

However the hypothesis has been heavily criticized, especially for being unscientific and depending too much on metaphysical ideas. Critics contend that the idea of natural rights is too ambiguous and challenging to apply uniformly in various social or cultural circumstances. The universal idea of natural rights, according to philosophers like Karl Marx in *Critique of Hegel's Philosophy of Right* 1843, ignores the social and economic disparities that influence people's capacity to exercise their rights.<sup>19</sup> Furthermore, Jean-Jacques Rousseau's criticism of Locke's emphasis on individualism emphasizes how a focus on individual rights may compromise social responsibility and the well-being of the group.<sup>20</sup> The inability of natural rights theory to handle intricate problems like systematic inequity, which may hinder underprivileged people from effectively exercising their rights, is another area of contention. These objections underscore the limitations of Locke's theory in addressing contemporary challenges of social justice, equality, and the practical execution of rights.

### **1.7.2 Social Justice Theory**

On the other hand, John Rawls' Rawlsian Theory of Justice, which he outlined in *A Theory of Justice* 1971, offers a framework for dealing with injustices and guaranteeing justice in a community.<sup>21</sup> In order to ensure impartiality and fairness when drafting laws, Rawls presents the veil of ignorance, a thought experiment in which decision-makers must create social norms without being aware of their own positions. According to Rawls' Difference Principle, disparities are only acceptable if they improve the lives of the most disadvantaged people in society, giving their circumstances priority.<sup>22</sup> In order to guarantee that every person, regardless of background, has an equal chance to thrive, the theory also emphasizes fair equality of opportunity.

Rawlsian theory's critics argue that Rawls' idealized framework is very abstract and unrelated to contemporary issues, as stated by Amartya Sen in *The Idea of Justice* 2009.<sup>23</sup> In *Anarchy, State, and Utopia* 1974, libertarian philosophers such as Robert Nozick criticize Rawls for

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<sup>19</sup> Marx K, *Critique of Hegel's Philosophy of Right*, trans Annette Jolin and Joseph O'Malley, Cambridge University Press, Cambridge, 1978.

<sup>20</sup> Rousseau J-J, *The Social Contract and Other Later Political Writings*, ed Victor Gourevitch, Cambridge University Press, Cambridge, 1997.

<sup>21</sup> Rawls J, *A Theory of Justice*, rev ed, Harvard University Press, Cambridge MA, 1999.

<sup>22</sup> Rawls J, *A Theory of Justice*, rev ed, Harvard University Press, Cambridge MA, 1999.

<sup>23</sup> Sen A, *The Idea of Justice*, Harvard University Press, Cambridge MA, 2009.

defending government interference in private property and redistributive measures, which they perceive as violations of individual liberty.<sup>24</sup> Notwithstanding these objections, Rawls' method provides insightful guidance on how to guarantee justice for society's most marginalized citizens.

## 1.8 LITERATURE REVIEW

### 1.8.1 Financial Independence

The significance of financial independence for the effective functioning of oversight bodies is highlighted in various sources. Löhlein's study on independent audit oversight introduces the concept of material independence, which encompasses the funding of the oversight system.<sup>25</sup> The study points out that the UK's Financial Reporting Council (FRC) has a lower ranking in organizational independence partly due to the accounting profession funding half of its auditing and accounting costs.<sup>26</sup> This dependence on professional bodies is identified as an independence risk. Similarly, oversight systems situated within professional chambers often exhibit low material independence, suggesting a potential lack of financial autonomy.<sup>27</sup>

Piering's dissertation specifically addresses budgetary and financial independence as a crucial dimension for financial supervision and enforcement agencies.<sup>28</sup> It argues that agencies that generate their own funds, as opposed to relying on public resources, are generally less dependent on governmental and political principals.<sup>29</sup> However, Piering also cautions that even with financial independence, funding-related considerations might still influence review and enforcement decisions.<sup>30</sup>

In the context of the Sarbanes-Oxley Act (SOX) and the creation of the Public Company Accounting Oversight Board (PCAOB), the working paper by Pildes notes that separate funding from the SEC was intended as a means to ensure the PCAOB's independence from the

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<sup>24</sup> Nozick R, *Anarchy, State, and Utopia*, Basic Books, New York, 1974.

<sup>25</sup> Löhlein J, "Independent Audit Oversight: Evidence on Stakeholder Influence on Different Dimensions of SEC Independence", 2016.

<sup>26</sup> Löhlein J, "Independent Audit Oversight: Evidence on Stakeholder Influence on Different Dimensions of SEC Independence", 2016.

<sup>27</sup> Löhlein J, "Independent Audit Oversight: Evidence on Stakeholder Influence on Different Dimensions of SEC Independence", 2016.

<sup>28</sup> Piering L, *Evidence on Stakeholder Influence on Different Dimensions of SEC Independence*, Doctoral Dissertation, Universität Bayreuth, 2024.

<sup>29</sup> Piering L, *Evidence on Stakeholder Influence on Different Dimensions of SEC Independence*, Doctoral Dissertation, Universität Bayreuth, 2024.

<sup>30</sup> Piering L, *Evidence on Stakeholder Influence on Different Dimensions of SEC Independence*, Doctoral Dissertation, Universität Bayreuth, 2024.

accounting industry.<sup>31</sup> Furthermore, Karanicolas and Kwoka's paper on comparative oversight models identifies financial independence as a key factor in assessing the overall independence of an oversight body.<sup>32</sup> This is considered alongside other factors such as the appointment process, security of tenure for members, and the breadth of the body's mandate.<sup>33</sup>

### 1.8.2 Command Responsibility

There is a significant historical development of command responsibility, particularly in the context of war crimes. Parks provides a detailed historical overview, emphasizing the impact of the World War II trials, including those of General Yamashita, the High Command Case, the Hostage Case, and the Tokyo Trials, which served as critical precedents in shaping the doctrine.<sup>34</sup> Bonafe and Meloni also reference post-WWII developments, focusing on the jurisprudence of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR).

A central and debated theme is the fundamental nature of command responsibility. Meloni directly questions whether it represents liability for the crimes of subordinates or a distinct offense of dereliction of duty by the superior.<sup>35</sup> Bonafe notes its application by the ICTY and ICTR alongside direct liability.<sup>36</sup> Parks' historical analysis illustrates its emergence as a mechanism to hold commanders accountable for the actions of their troops.<sup>37</sup> Meloni highlights a potential shift in recent ICTY jurisprudence towards holding superiors responsible for failure to prevent or punish the crimes of subordinates, rather than directly for the crimes themselves, characterizing this as a "sui generis" responsibility.<sup>38</sup>

The mens rea (mental element) required for command responsibility is a complex and recurring theme. Bonafe points to the "knew or had reason to know" standard present in the ICTY and

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<sup>31</sup> Pildes R H, "Separation of Powers, Independent Agencies, and Financial Regulation: The Case of the Sarbanes-Oxley Act" (2010) New York University Public Law and Legal Theory Research Paper Series Working Paper No 10-01.

<sup>32</sup> Karanicolas M and Kwoka M B, "Overseeing Oversight" (2022) 54(3) New York University Public Law and Legal Theory Research Paper Series.

<sup>33</sup> Karanicolas M and Kwoka M B, "Overseeing Oversight" (2022) 54(3) New York University Public Law and Legal Theory Research Paper Series.

<sup>34</sup> Parks W H, "Command Responsibility for War Crimes" (1973) 62 Military Law Review Department of the Army.

<sup>35</sup> Meloni C, "Mode of Liability for the Crimes of Subordinates or Separate Offence of the Superior?" in Symposium: Command Responsibility Between Personal Culpability and Objective Liability.

<sup>36</sup> Bonafe B I, "Finding a Proper Role for Command Responsibility" in Symposium: Command Responsibility Between Personal Culpability and Objective Liability.

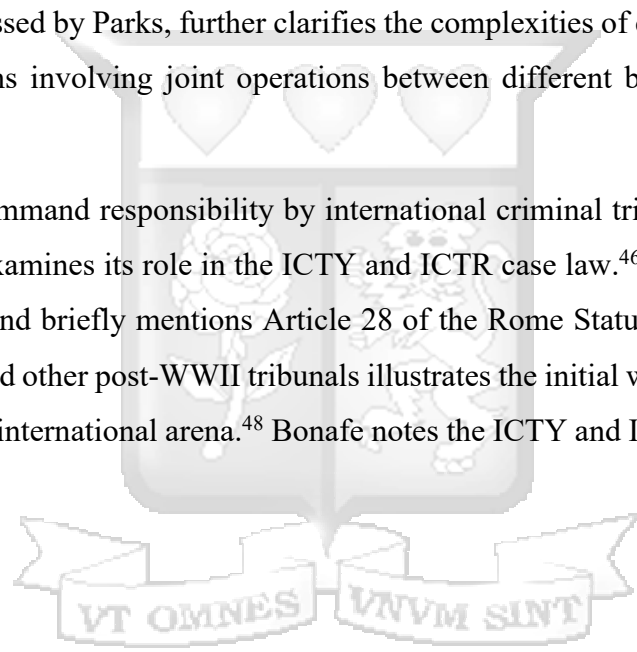
<sup>37</sup> Parks W H, "Command Responsibility for War Crimes" (1973) 62 Military Law Review Department of the Army.

<sup>38</sup> Meloni C, "Mode of Liability for the Crimes of Subordinates or Separate Offence of the Superior?" in Symposium: Command Responsibility Between Personal Culpability and Objective Liability.

ICTR statutes and the ongoing discussions around the "should have known" test.<sup>39</sup> Parks details how knowledge was considered in the WWII trials, including the concept of presumed knowledge in certain circumstances.<sup>40</sup> Meloni also addresses the subjective elements necessary for command responsibility. The debate revolves around the necessary degree of knowledge, the role of negligence, and concerns about the potential for strict liability.<sup>41</sup>

The existence of a superior-subordinate relationship and the commander's effective control over subordinates are fundamental prerequisites for the application of command responsibility, as emphasized. Bonafe explicitly states that the analysis often focuses on this relationship.<sup>42</sup> Meloni underscores the duty arising from the superior's power to control.<sup>43</sup> Parks discusses the commander's affirmative duty to control their troops, particularly to prevent war crimes.<sup>44</sup> The Toyoda trial, as discussed by Parks, further clarifies the complexities of command and control, especially in situations involving joint operations between different branches of the armed forces.<sup>45</sup>

The application of command responsibility by international criminal tribunals is a key focus. Bonafe specifically examines its role in the ICTY and ICTR case law.<sup>46</sup> Meloni also analyzes ICTY jurisprudence and briefly mentions Article 28 of the Rome Statute.<sup>47</sup> Parks' discussion of the Tokyo Trials and other post-WWII tribunals illustrates the initial widespread application of this doctrine in the international arena.<sup>48</sup> Bonafe notes the ICTY and ICTR's confinement of



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<sup>39</sup> Bonafe B I, "Finding a Proper Role for Command Responsibility" in Symposium: Command Responsibility Between Personal Culpability and Objective Liability.

<sup>40</sup> Parks W H, "Command Responsibility for War Crimes" (1973) 62 Military Law Review Department of the Army.

<sup>41</sup> Meloni C, "Mode of Liability for the Crimes of Subordinates or Separate Offence of the Superior?" in Symposium: Command Responsibility Between Personal Culpability and Objective Liability.

<sup>42</sup> Bonafe B I, "Finding a Proper Role for Command Responsibility" in Symposium: Command Responsibility Between Personal Culpability and Objective Liability.

<sup>43</sup> Meloni C, "Mode of Liability for the Crimes of Subordinates or Separate Offence of the Superior?" in Symposium: Command Responsibility Between Personal Culpability and Objective Liability.

<sup>44</sup> Parks W H, "Command Responsibility for War Crimes" (1973) 62 Military Law Review Department of the Army.

<sup>45</sup> Parks W H, "Command Responsibility for War Crimes" (1973) 62 Military Law Review Department of the Army.

<sup>46</sup> Bonafe B I, "Finding a Proper Role for Command Responsibility" in Symposium: Command Responsibility Between Personal Culpability and Objective Liability.

<sup>47</sup> Meloni C, "Mode of Liability for the Crimes of Subordinates or Separate Offence of the Superior?" in Symposium: Command Responsibility Between Personal Culpability and Objective Liability.

<sup>48</sup> Parks W H, "Command Responsibility for War Crimes" (1973) 62 Military Law Review Department of the Army.

command responsibility mainly to international crimes committed in typical military-like contexts.<sup>49</sup>

There is also a relationship between command responsibility and other forms of criminal liability. Bonafe discusses its interaction with "direct" liability, such as ordering, aiding and abetting, and joint criminal enterprise.<sup>50</sup> Meloni distinguishes command responsibility from other modes of complicity.<sup>51</sup> These distinctions highlight the unique aspects of command responsibility as a way of attributing criminal accountability to superiors for the actions of their subordinates, even without direct participation in the criminal acts. Bonafe observes a preference in the ICTY and ICTR case law for convicting superiors under forms of "direct" liability when possible.<sup>52</sup>

Finally, the fundamental principle of personal and culpable criminal responsibility are addressed. Meloni strongly emphasizes the need to uphold this principle when applying command responsibility to avoid punishing individuals for the actions of others.<sup>53</sup> Bonafe's discussion of the challenges in fitting commanders' actions into existing legal categories relates to ensuring individual accountability.<sup>54</sup> Parks' historical analysis of the war crimes trials reflects the overarching aim of holding individuals responsible for atrocities committed under their command.<sup>55</sup> The "sui generis" nature of command responsibility, as highlighted by Meloni, underscores its distinct place within the framework of international criminal law while still adhering to principles of culpability.<sup>56</sup>

## **1.9 RESEARCH METHODOLOGY**

The research proposal takes a doctrinal approach to investigating legal remedies for victims of police misconduct. This technique, which focuses on the research of legal texts, statutes, case

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<sup>49</sup> Bonafe B I, "Finding a Proper Role for Command Responsibility" in Symposium: Command Responsibility Between Personal Culpability and Objective Liability.

<sup>50</sup> Bonafe B I, "Finding a Proper Role for Command Responsibility" in Symposium: Command Responsibility Between Personal Culpability and Objective Liability.

<sup>51</sup> Meloni C, "Mode of Liability for the Crimes of Subordinates or Separate Offence of the Superior?" in Symposium: Command Responsibility Between Personal Culpability and Objective Liability.

<sup>52</sup> Bonafe B I, "Finding a Proper Role for Command Responsibility" in Symposium: Command Responsibility Between Personal Culpability and Objective Liability.

<sup>53</sup> Meloni C, "Mode of Liability for the Crimes of Subordinates or Separate Offence of the Superior?" in Symposium: Command Responsibility Between Personal Culpability and Objective Liability.

<sup>54</sup> Bonafe B I, "Finding a Proper Role for Command Responsibility" in Symposium: Command Responsibility Between Personal Culpability and Objective Liability.

<sup>55</sup> Parks W H, "Command Responsibility for War Crimes" (1973) 62 Military Law Review Department of the Army.

<sup>56</sup> Meloni C, "Mode of Liability for the Crimes of Subordinates or Separate Offence of the Superior?" in Symposium: Command Responsibility Between Personal Culpability and Objective Liability.

law, and legal theories, is appropriate for thoroughly reviewing existing laws and regulations. The study attempts to provide a detailed understanding of the legal landscape surrounding police misbehaviour and viable remedies by thoroughly researching legal sources, including precedents and relevant legal ideas. The doctrinal methodology's emphasis on legal analysis is precisely aligned with the research aims, making it the best tool for this study.

## **1.10 LIMITATIONS OF THE STUDY**

Time and budgetary restrictions place limitations on this study. Therefore, rather than using a situational study, it will use a desktop research technique to provide a theoretical analysis of the implementation of financial independence and command responsibility to ensuring police oversight in Kenya.

## **1.11 CHAPTER BREAKDOWN**

### **1.11.1 Chapter 1: Introduction**

Chapter one as already covered above will be seen to touch on the following: background, problem statement, objectives, research questions, and hypothesis, and justification of the study.

### **1.11.2 Chapter 2: The Utility of Financial Independence and Command Responsibility on Independent Police Oversight**

Defines financial independence as critical for oversight bodies' autonomy and credibility. Analyzes command responsibility's evolution in international law and its role in deterring police misconduct. Highlights systemic barriers (e.g., political interference) undermining both principles.

### **1.11.3 Chapter 3: A Critical Review of Kenya's Legal Framework on Oversight of Police Misconduct**

Reviews Kenya's robust constitutional and statutory frameworks for police oversight. Notes implementation gaps, including underfunding and delayed justice, despite progressive jurisprudence.

### **1.11.4 Chapter 4: Comparing Police Oversight between Kenya and the United Kingdom**

Contrasts Kenya's ad hoc funding and punitive command responsibility with the UK's ring-fenced budgets (IOPC) and reform-oriented accountability

### 1.11.5 Chapter 5: Conclusion and Recommendations

Synthesizes findings: Kenya's legal frameworks are strong but poorly implemented.



# **CHAPTER 2: THE UTILITY OF FINANCIAL INDEPENDENCE AND COMMAND RESPONSIBILITY ON INDEPENDENT POLICE OVERSIGHT**

## **2.1 INTRODUCTION**

In order to ensure the efficacy, legitimacy, and accountability of independent police oversight systems, this chapter's research aims to investigate the crucial roles that command responsibility and financial independence play. This chapter starts out by going over the idea of police oversight and how crucial it is to preserving public confidence and law enforcement accountability. After that, it explores the importance of financial independence for oversight organisations, emphasising how it protects decision-making independence, guards against undue influence, and guarantees enough funding for efficient operations all the while tackling issues like resource constraints and political interference.

The chapter then examines the concept of command responsibility, following its development via international law and its use to hold superiors responsible for the deeds of their subordinates, especially when there has been grave misconduct or a violation of human rights. Through an analysis of these two fundamental ideas, the chapter seeks to show how command responsibility and financial independence work together to improve independent police oversight and promote accountability, openness, and public trust in law enforcement agencies. The results highlight the need to address issues related to these principles in order to improve the overall efficacy of police oversight systems.

## **2.2 POLICE OVERSIGHT**

The processes or procedures in place to deal with instances of police wrongdoing and guarantee that police organisation, policies, and actions are kept accountable to the public are referred to as police oversight. It entails the involvement of non-law enforcement individuals in holding the police force accountable for their conduct. The objective is to guarantee that police uphold the rule of law, respect human rights, and function with accountability and integrity while preserving public trust. It is also viewed as a means of improving the police's professionalism and effectiveness in providing services.

## **2.3 FINANCIAL INDEPENDENCE**

### **2.3.1 What Is Financial Independence?**

The independence of oversight bodies in safeguarding and managing their financial resources without undue influence from political entities, other stakeholders, or the bodies they monitor is referred to as financial independence.<sup>57</sup> It is an essential component of their total independence, allowing them to efficiently fulfil their mandates without worrying about financial limitations or manipulation impacting their operations and choices.<sup>58</sup> Formal financial independence is a crucial aspect of an oversight entity's organisational profile that adds to its overall independence.<sup>59</sup> In particular it distinguishes financial and budgetary independence as a separate aspect of agency independence, which includes autonomy in the financing and expenditure of financial concerns.<sup>60</sup>

### 2.3.2 Why Is Financial Independence Important For Oversight Bodies?

Ensuring Decision-Making Autonomy: Independence is the capacity of an entity to make its own decisions.<sup>61</sup> Dependency on financing can lead to weaknesses where the oversight body may be reluctant to take steps that could endanger its funding.<sup>62</sup> A reliable financing source that is independent of the people it is overseeing can help the body deal with challenging and important issues more quickly.<sup>63</sup> Guarding Against Inappropriate Influence: Reliance on the funding of political organisations or the organisations under supervision may result in apparent or real bias, undermining the oversight body's capacity to carry out impartial investigations and uphold public confidence.<sup>64</sup> Reliance on professional organisations for funding might pose a risk to independence, as the Financial Reporting Council (FRC) has pointed out.<sup>65</sup>

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<sup>57</sup> Akinyi M, 'Influence of Independent Policing Oversight Authority on the Performance of Police Officers in Kenya: A Case of Nairobi City Sub-county' Unpublished Master's Research Project Report, University of Nairobi, Nairobi, 2017.

<sup>58</sup> Piering L, 'Independence of Financial Oversight: Evidence on Stakeholder Influence on Different Dimensions of SEC Independence' Unpublished PhD Dissertation, University of Bayreuth, Bayreuth, 2024.

<sup>59</sup> Mokoena L and van Eck BP, 'The Impact of Corporate Governance on Financial Performance: Evidence from South Africa' 8 Accounting Research Journal 2, 2016.

<sup>60</sup> Piering L, 'Independence of Financial Oversight: Evidence on Stakeholder Influence on Different Dimensions of SEC Independence' Unpublished PhD Dissertation, University of Bayreuth, Bayreuth, 2024.

<sup>61</sup> Mokoena L and van Eck BP, 'The Impact of Corporate Governance on Financial Performance: Evidence from South Africa' 8 Accounting Research Journal 2, 2016.

<sup>62</sup> Akinyi M, 'Influence of Independent Policing Oversight Authority on the Performance of Police Officers in Kenya: A Case of Nairobi City Sub-county' Unpublished Master's Research Project Report, University of Nairobi, Nairobi, 2017.

<sup>63</sup> Pildes RH, 'Separation of Powers, Independent Agencies, and Financial Regulation: The Case of the Sarbanes-Oxley Act' New York University School of Law, Public Law & Legal Theory Research Paper Series Working Paper No 10-01, January 2010.

<sup>64</sup> Akinyi M, 'Influence of Independent Policing Oversight Authority on the Performance of Police Officers in Kenya: A Case of Nairobi City Sub-county' Unpublished Master's Research Project Report, University of Nairobi, Nairobi, 2017.

<sup>65</sup> Mokoena L and van Eck BP, 'The Impact of Corporate Governance on Financial Performance: Evidence from South Africa' 8 Accounting Research Journal 2, 2016.

Sustaining Credibility: The public and other stakeholders view the oversight body as more credible when it is perceived to be financially independent. The conclusions and suggestions of an oversight committee may be regarded with suspicion if it is perceived that the people it is supposed to examine control its finances.<sup>66</sup>

Sufficient Resources for Effective Oversight: The oversight body's ability to secure the resources it needs to perform its duties efficiently is made possible by its financial independence. Funding for personnel, enquiries, data analysis, and other operational requirements are included in this.<sup>67</sup> A lack of funding may make it more difficult for an oversight body to carry out its assigned responsibilities as effectively as possible.<sup>68</sup>

### **2.3.3 What Possible Obstacles Exist for Financial Independence?**

Although financial independence is essential to oversight committees' efficacy, it does not remove all difficulties. Political interference is a significant barrier since governments may try to weaken these institutions' independence by influencing their budgetary allocations or threatening to cut financing.<sup>69</sup> Furthermore, in order to ensure openness and responsible governance, oversight organisations must carefully balance preserving their financial independence with continuing to be answerable for how they use public monies.<sup>70</sup> Resource limitations may nonetheless restrict the breadth and depth of oversight operations, making it more difficult for them to carry out in-depth investigations or carry out systemic changes, even in cases when financial autonomy has been established.<sup>71</sup> These challenges highlight the need for not only financial self-sufficiency but also strong legal safeguards, operational resilience, and a culture of accountability to ensure that oversight bodies can fulfill their mandates effectively.

## **2.4 COMMAND RESPONSIBILITY**

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<sup>66</sup> Akinyi M, 'Influence of Independent Policing Oversight Authority on the Performance of Police Officers in Kenya: A Case of Nairobi City Sub-county' Unpublished Master's Research Project Report, University of Nairobi, Nairobi, 2017.

<sup>67</sup> Piering L, 'Independence of Financial Oversight: Evidence on Stakeholder Influence on Different Dimensions of SEC Independence' Unpublished PhD Dissertation, University of Bayreuth, Bayreuth, 2024.

<sup>68</sup> Piering L, 'Independence of Financial Oversight: Evidence on Stakeholder Influence on Different Dimensions of SEC Independence' Unpublished PhD Dissertation, University of Bayreuth, Bayreuth, 2024.

<sup>69</sup> Akinyi M, 'Influence of Independent Policing Oversight Authority on the Performance of Police Officers in Kenya: A Case of Nairobi City Sub-county' Unpublished Master's Research Project Report, University of Nairobi, Nairobi, 2017.

<sup>70</sup> Piering L, 'Independence of Financial Oversight: Evidence on Stakeholder Influence on Different Dimensions of SEC Independence' Unpublished PhD Dissertation, University of Bayreuth, Bayreuth, 2024.

<sup>71</sup> Piering L, 'Independence of Financial Oversight: Evidence on Stakeholder Influence on Different Dimensions of SEC Independence' Unpublished PhD Dissertation, University of Bayreuth, Bayreuth, 2024.

### 2.4.1 What Is Command Responsibility?

A principle of international criminal law known as "command responsibility" holds military leaders and maybe civilian superiors criminally accountable for war crimes and other major transnational crimes carried out by their subordinates.<sup>72</sup> This accountability results from a failure to exercise control over subordinates rather than from actually committing the acts.<sup>73</sup> It is a mechanism used to hold officials who have control over atrocity perpetrators accountable for international crimes.<sup>74</sup> The severity of the offences committed by the subordinates determines the culpability.<sup>75</sup> The idea necessitates determining the superior-subordinate relationship as well as the superior's necessary mental condition (*mens rea*).<sup>76</sup> It differs from other types of direct culpability, such directing criminal activity.<sup>77</sup>

### 2.4.2 Who is Responsible?

Many people in positions of power can be held accountable for their actions, but this is especially true for local or national leaders of nations whose political, military, or administrative systems are complicit in major international crimes.<sup>78</sup> In the past, it was obviously seen as a means of assigning accountability to senior officers.<sup>79</sup> The formal "de jure" (legal) stance of the ad hoc tribunals for Rwanda (ICTR) and the former Yugoslavia (ICTY) has given way to a more fact-sensitive standard of effective control of the superior over their subordinates.<sup>80</sup> This implies that not only people in official positions but also individuals using "de facto" (real) powers of control are subject to accountability.<sup>81</sup> Another name for the idea is

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<sup>72</sup> Beatrice I Bonafé, 'Finding a Proper Role for Command Responsibility' 5 *Journal of International Criminal Justice* 3, 2007, 599.

<sup>73</sup> Beatrice I Bonafé, 'Finding a Proper Role for Command Responsibility' 5 *Journal of International Criminal Justice* 3, 2007, 599.

<sup>74</sup> Beatrice I Bonafé, 'Finding a Proper Role for Command Responsibility' 5 *Journal of International Criminal Justice* 3, 2007, 599.

<sup>75</sup> Beatrice I Bonafé, 'Finding a Proper Role for Command Responsibility' 5 *Journal of International Criminal Justice* 3, 2007, 599.

<sup>76</sup> Beatrice I Bonafé, 'Finding a Proper Role for Command Responsibility' 5 *Journal of International Criminal Justice* 3, 2007, 599.

<sup>77</sup> Beatrice I Bonafé, 'Finding a Proper Role for Command Responsibility' 5 *Journal of International Criminal Justice* 3, 2007, 599.

<sup>78</sup> Beatrice I Bonafé, 'Finding a Proper Role for Command Responsibility' 5 *Journal of International Criminal Justice* 3, 2007, 599.

<sup>79</sup> Beatrice I Bonafé, 'Finding a Proper Role for Command Responsibility' 5 *Journal of International Criminal Justice* 3, 2007, 599.

<sup>80</sup> Beatrice I Bonafé, 'Finding a Proper Role for Command Responsibility' 5 *Journal of International Criminal Justice* 3, 2007, 599.

<sup>81</sup> Chantal Meloni, 'Command Responsibility: Mode of Liability for the Crimes of Subordinates or Separate Offence of the Superior?' 5 *Journal of International Criminal Justice* 3, 2007, 619.

"superior responsibility," which is occasionally favoured since it includes both military leaders and civilian superiors.<sup>82</sup>

### **2.4.3 When Did Command Responsibility Emerge and Evolve?**

For many years, customary international law has acknowledged the notion of command responsibility.<sup>83</sup> With trials like the Nuremberg and Tokyo trials following World War II, its development accelerated significantly.<sup>84</sup> The goal of these post-World War II prosecutions was to make it easier to hold commanders criminally accountable for the deeds of their subordinates.<sup>85</sup> Nonetheless, the implementation of command responsibility in these early instances was heavily criticised for being ambiguous and occasionally questionable.<sup>86</sup>

An important stage in the development of command responsibility was the creation of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR).<sup>87</sup> The burden of defining the components of this type of liability and applying it in a way that was generally accepted fell to these tribunals.<sup>88</sup> Defining command responsibility, resolving issues over time, and clarifying its components under customary international law have all benefited greatly from the ad hoc courts' jurisprudence.<sup>89</sup> More recently, clauses on superior responsibility have also been included to the Rome Statute of the International Criminal Court.<sup>90</sup>

### **2.4.4 Why Is Command Responsibility Important?**

One of the most crucial instruments at the accessibility of international tribunals is command responsibility.<sup>91</sup> It accomplishes the vital goal of holding leaders criminally accountable for

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<sup>82</sup> Chantal Meloni, 'Command Responsibility: Mode of Liability for the Crimes of Subordinates or Separate Offence of the Superior?' 5 *Journal of International Criminal Justice* 3, 2007, 619.

<sup>83</sup> Chantal Meloni, 'Command Responsibility: Mode of Liability for the Crimes of Subordinates or Separate Offence of the Superior?' 5 *Journal of International Criminal Justice* 3, 2007, 619.

<sup>84</sup> Chantal Meloni, 'Command Responsibility: Mode of Liability for the Crimes of Subordinates or Separate Offence of the Superior?' 5 *Journal of International Criminal Justice* 3, 2007, 619.

<sup>85</sup> Beatrice I Bonafé, 'Finding a Proper Role for Command Responsibility' 5 *Journal of International Criminal Justice* 3, 2007, 599.

<sup>86</sup> Beatrice I Bonafé, 'Finding a Proper Role for Command Responsibility' 5 *Journal of International Criminal Justice* 3, 2007, 599.

<sup>87</sup> Beatrice I Bonafé, 'Finding a Proper Role for Command Responsibility' 5 *Journal of International Criminal Justice* 3, 2007, 599.

<sup>88</sup> Beatrice I Bonafé, 'Finding a Proper Role for Command Responsibility' 5 *Journal of International Criminal Justice* 3, 2007, 599.

<sup>89</sup> Beatrice I Bonafé, 'Finding a Proper Role for Command Responsibility' 5 *Journal of International Criminal Justice* 3, 2007, 599.

<sup>90</sup> Beatrice I Bonafé, 'Finding a Proper Role for Command Responsibility' 5 *Journal of International Criminal Justice* 3, 2007, 599.

<sup>91</sup> Beatrice I Bonafé, 'Finding a Proper Role for Command Responsibility' 5 *Journal of International Criminal Justice* 3, 2007, 599.

major transnational crimes carried out by people they control.<sup>92</sup> This is especially crucial because, even if these leaders may not have been personally involved in the crimes, their refusal to stop or punish them shows a serious lack of responsibility.<sup>93</sup> By requiring superiors to maintain control over their subordinates and guarantee adherence to international humanitarian law, the doctrine seeks to enhance the preventative and deterrent effect of principles of international law.<sup>94</sup> It aims to address a specific pathology of human organisation where atrocities can be carried out on a wide scale under a hierarchical framework by holding commanders accountable.<sup>95</sup> Additionally, it is viewed as a means of distancing international tribunals from the controversial concepts of command responsibility that were used in several post-World War II trials.<sup>96</sup>

#### **2.4.5 How Does Command Responsibility Function?**

The jurisprudence of ad hoc tribunals has established several essential elements for the doctrine of command responsibility to apply effectively. First, a superior-subordinate relationship must be proven by demonstrating that the accused possessed effective control over the perpetrators, meaning they had the actual authority to prevent or punish criminal conduct.<sup>97</sup> This assessment is highly fact-sensitive, focusing on the superior's real—rather than merely formal—power.

Second, the mental state (*mens rea*) of the superior must be established, requiring proof that they either knew or had reason to suspect that their subordinates were committing or about to commit crimes.<sup>98</sup> Unlike strict liability, command responsibility does not impose automatic guilt; instead, the superior's awareness or negligent failure to act must be demonstrated.<sup>99</sup> The "should have known" standard imposes a duty of vigilance, obliging commanders to actively monitor their forces and investigate potential violations. However, there is jurisprudential debate over whether this standard equates to constructive knowledge ("had reason to know," based on available information) or a stricter negligence-based duty to inquire. Recent ICTY

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<sup>92</sup> Beatrice I Bonafé, 'Finding a Proper Role for Command Responsibility' 5 *Journal of International Criminal Justice* 3, 2007, 599.

<sup>93</sup> Chantal Meloni, 'Command Responsibility: Mode of Liability for the Crimes of Subordinates or Separate Offence of the Superior?' 5 *Journal of International Criminal Justice* 3, 2007, 619.

<sup>94</sup> Chantal Meloni, 'Command Responsibility: Mode of Liability for the Crimes of Subordinates or Separate Offence of the Superior?' 5 *Journal of International Criminal Justice* 3, 2007, 619.

<sup>95</sup> 'A Justification of Command Responsibility' 28 *Criminal Law Forum*, 2017, 633.

<sup>96</sup> Beatrice I Bonafé, 'Finding a Proper Role for Command Responsibility' 5 *Journal of International Criminal Justice* 3, 2007, 599.

<sup>97</sup> Beatrice I Bonafé, 'Finding a Proper Role for Command Responsibility' 5 *Journal of International Criminal Justice* 3, 2007, 599.

<sup>98</sup> 'A Justification of Command Responsibility' 28 *Criminal Law Forum*, 2017, 633.

<sup>99</sup> Chantal Meloni, 'Command Responsibility: Mode of Liability for the Crimes of Subordinates or Separate Offence of the Superior?' 5 *Journal of International Criminal Justice* 3, 2007, 619.

rulings have leaned toward the former, requiring concrete indicators that should have alerted the superior.<sup>100</sup>

Finally, the physical element (*actus reus*) demands that the superior failed to take all necessary and reasonable measures to prevent or punish crimes.<sup>101</sup> This constitutes a form of liability for omission, where inaction in the face of known or foreseeable violations becomes culpable.<sup>102</sup> Together, these components ensure that command responsibility remains a balanced yet powerful tool for holding leaders accountable for systemic abuses under their authority.

## 2.5 CONCLUSION

This chapter's objective was to assess the ways in which command responsibility and financial independence support the efficacy and legitimacy of independent police oversight systems. Although obstacles like political interference and resource constraints still exist, the results showed that financial independence is essential for maintaining credibility, protecting against improper influence, guaranteeing decision-making autonomy, and providing enough resources for efficient oversight. Similar to command responsibility, which has evolved via international tribunals that have clarified its components and application, command responsibility makes superiors accountable for the deeds of their subordinates, encouraging accountability, discouraging misconduct, and guaranteeing adherence to international humanitarian law. By encouraging accountability, honesty, and public trust, these principles work together to promote independent police oversight. However, resolving the issues they raise is crucial to improving law enforcement's transparency and fairness.

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<sup>100</sup> A Justification of Command Responsibility' 28 *Criminal Law Forum*, 2017, 633.

<sup>101</sup> A Justification of Command Responsibility' 28 *Criminal Law Forum*, 2017, 633.

<sup>102</sup> Chantal Meloni, 'Command Responsibility: Mode of Liability for the Crimes of Subordinates or Separate Offence of the Superior?' 5 *Journal of International Criminal Justice* 3, 2007, 619.

## **CHAPTER 3: A CRITICAL REVIEW OF KENYA'S LEGAL FRAMEWORK ON OVERSIGHT OF POLICE MISCONDUCT**

### **3.1 INTRODUCTION**

To guarantee accountability, openness, and respect for human rights in law enforcement, police wrongdoing must be closely monitored. This chapter aims to evaluate the efficacy of Kenya's police misconduct oversight legal framework in addressing these principles. The study focusses on the 2010 Constitution, which creates fundamental provisions like Articles 244, 245, 47, 50, and 238; and statutory frameworks like the Independent Policing Oversight Authority Act, 2011 and the National Police Service Act, 2011 that establish oversight mechanisms like the Independent Policing Oversight Authority (IPOA) and the Internal Affairs Unit (IAU).

The study also looks at jurisprudence, such as the *Kenya Human Rights Commission & 8 Others v. Nchebere* case, which upholds judicial monitoring and command responsibility. Notwithstanding these strong frameworks, problems including insufficient funding, interference, and hold-ups in handling complaints nonetheless exist. The study intends to identify gaps and offer suggestions for enhancing police oversight in Kenya by examining these factors.

### **3.2 CONSTITUTION**

The fundamental framework for monitoring police wrongdoing is provided by the 2010 Kenyan Constitution. It creates the fundamental tenets of openness, accountability, and human rights respect all of which are necessary for efficient law enforcement in a democracy. A number of provisions are especially relevant to police oversight. The Constitution's Article 244 lists the goals of the national police force, which include protecting Kenyans' safety and security, promoting public trust in the force, and combating corruption and wrongdoing.<sup>103</sup> It requires the police force to adhere to the fundamental freedoms and human rights outlined in the constitution. Article 245 establishes the office of the Inspector-General (IG) of the National Police Service (NPS), who is appointed by the President with parliamentary approval for a single four-year term and is ineligible for re-appointment.<sup>104</sup> The IG exercises independent command over the NPS and performs functions prescribed by national legislation, with the Kenya Police Service and Administration Police Service each headed by a Deputy Inspector-

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<sup>103</sup> Article 244, *Constitution of Kenya*, 2010.

<sup>104</sup> Article 245, *Constitution of Kenya*, 2010.

General appointed by the President on the recommendation of the National Police Service Commission.<sup>105</sup>

Article 47 protects the right to just administrative action, which is important when people accuse police personnel of wrongdoing.<sup>106</sup> It mandates that all administrative actions, including those taken by police, be legal, reasonable, and equitable in the process.<sup>107</sup> Article 50 guarantees the right to a fair trial, which is essential when allegations of police wrongdoing are made.<sup>108</sup> It ensures that victims of police misconduct have access to justice and that officers accused of misconduct are given a fair opportunity to defend themselves.<sup>109</sup> Article 238 highlights how crucial it is to seek national security while abiding by the law and respecting human rights.<sup>110</sup> It emphasises the need for law enforcement and other security forces to work within the bounds of the law.<sup>111</sup>

### **3.3 STATUTES**

The constitutional framework is supplemented by a number of statutes that offer comprehensive procedures for monitoring police wrongdoing. Among the important statutes are:

#### **3.3.1 The National Police Service Act, 2011**

The constitutional provisions pertaining to the police service are made practical by the NPS Act. The Internal Affairs Unit (IAU) will be established inside the police force in accordance with Section 87.<sup>112</sup> In order to provide an internal process for addressing wrongdoing, the IAU is entrusted with receiving and looking into complaints against police officers. Police officer disciplinary processes, including sanctions for wrongdoing, are outlined in Section 132.<sup>113</sup> This section makes sure that officers who break the law or act unethically face the proper consequences.

#### **3.3.2 Independent Police Oversight Authority Act, 2011**

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<sup>105</sup> Article 245, *Constitution of Kenya*, 2010.

<sup>106</sup> Article 47, *Constitution of Kenya*, 2010.

<sup>107</sup> Article 47, *Constitution of Kenya*, 2010.

<sup>108</sup> Article 50, *Constitution of Kenya*, 2010.

<sup>109</sup> Article 50, *Constitution of Kenya*, 2010.

<sup>110</sup> Article 238, *Constitution of Kenya*, 2010.

<sup>111</sup> Article 238, *Constitution of Kenya*, 2010.

<sup>112</sup> Section 87, *National Police Service Act*, 2011.

<sup>113</sup> Section 132, *National Police Service Act*, 2011.

The Independent Policing Oversight Authority is created and its duties and authority are delineated in the IPOA Act. Section 6 outlines the duties of the IPOA, including the investigation of fatalities and severe injuries brought on by police action, the receipt and examination of police-related complaints, and the oversight and evaluation of police operations.<sup>114</sup> According to Section 32, the Authority's funding will come from funds allotted by Parliament as well as any additional funds that are legally given, donated, or lent to the Authority with the consent of the Cabinet Secretary and the Cabinet Secretary for Finance.<sup>115</sup> Notwithstanding these clauses, the Authority is specifically forbidden from taking any payment from the National Police Service.<sup>116</sup>

### 3.4 JURISPRUDENCE / CASE LAW

#### 3.4.1 Command Responsibility

In a number of incidents, top police officers have been held responsible for the conduct of their subordinates by using the idea of command responsibility. This philosophy is predicated on the idea that superiors bear accountability for their subordinates' actions if they knew or should have known about the wrongdoing and did nothing about it.

In the case of *Kenya Human Rights Commission & 8 others v Nchebere; Law Society of Kenya & 2 others (Interested Parties)*, Inspector General Japhet Koome Nchebere's decision to suspend the medics' constitutional rights to strike, assemble, and picket under Articles 36, 37, and 41 on April 14, 2024, was declared illegal, illogical, and procedurally incorrect by the court, which granted the judicial review application against him.<sup>117</sup> The judicial review application brought by the Kenya Human Rights Commission and eight other applicants against former Inspector General of Police Japhet Koome Nchebere presented a significant constitutional challenge regarding police conduct and command responsibility. The case stemmed from two critical incidents: first, the unlawful police violence against Kenya Medical Practitioners, Pharmacists and Dentists Union (KMPDU) members during their peaceful demonstration at Afya House in February 2024, which resulted in KMPDU secretary general Dr. Davji Atela being injured by a teargas canister; and second, Mr. Nchebere's controversial April 14, 2024 press statement that purported to suspend constitutional rights to freedom of

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<sup>114</sup> Section 6, *Independent Police Oversight Authority Act*, 2011.

<sup>115</sup> Section 32, *Independent Police Oversight Authority Act*, 2011.

<sup>116</sup> Section 32, *Independent Police Oversight Authority Act*, 2011

<sup>117</sup> *Kenya Human Rights Commission & 8 others v Nchebere; Law Society of Kenya & 2 others (Interested Parties)*, 2024, High Court, Nairobi, eKLR.

association, peaceful assembly, and the right to strike under Articles 36, 37 and 41 of the Constitution. The applicants argued that these actions demonstrated a pattern of impunity, with the respondent failing to investigate or discipline officers for excessive force while showing apparent bias in handling different protests. The court determined that Nchebere had breached procedural fairness by denying the medics a hearing and had acted beyond the bounds of the law by unilaterally suspending fundamental rights without valid basis under Article 24.<sup>118</sup> He was held personally accountable for the illegal use of force by police at a nonviolent protest in February 2024, underscoring his leadership responsibilities under Article 245 and the National Police Service Act.<sup>119</sup> The court deemed Nchebere accountable for his unconstitutional conduct, granted the petitioners costs, and issued orders of prohibition and certiorari to restrain and revoke his judgement.<sup>120</sup> Citing inadequate evidence, it refused to provide Dr. Atela with a structural interdict or compensation for her injuries. The Inspector General's obligation to protect constitutional rights while preserving peace and order was reiterated in the ruling.<sup>121</sup>

### 3.5 CONCLUSION

This chapter sets out to critically examine whether Kenya's legal framework for police misconduct oversight effectively ensures the principles of command responsibility and financial independence in law enforcement operations. Through comprehensive analysis of constitutional provisions, statutory mechanisms, and judicial precedents, the chapter has demonstrated that while Kenya has established a robust legal architecture for police oversight, significant implementation gaps undermine its effectiveness.

The research question was addressed through three key findings: First, the 2010 Constitution provides a strong foundational framework through Articles 244, 245, 47, 50 and 238, which collectively mandate professional policing standards, independent command structures, fair administrative action, due process protections, and human rights compliance. Second, the statutory framework comprising the National Police Service Act (2011) and Independent Policing Oversight Authority Act (2011) creates complementary oversight mechanisms through the Internal Affairs Unit and IPOA respectively, though resource constraints and

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<sup>118</sup> *Kenya Human Rights Commission & 8 others v Nchebere; Law Society of Kenya & 2 others (Interested Parties)*, 2024, High Court, Nairobi, eKLR.

<sup>119</sup> *Kenya Human Rights Commission & 8 others v Nchebere; Law Society of Kenya & 2 others (Interested Parties)*, 2024, High Court, Nairobi, eKLR.

<sup>120</sup> *Kenya Human Rights Commission & 8 others v Nchebere; Law Society of Kenya & 2 others (Interested Parties)*, 2024, High Court, Nairobi, eKLR.

<sup>121</sup> *Kenya Human Rights Commission & 8 others v Nchebere; Law Society of Kenya & 2 others (Interested Parties)*, 2024, High Court, Nairobi, eKLR.

operational limitations hamper their effectiveness. Third, judicial interpretation as seen in *Kenya Human Rights Commission v Nchebere* has reinforced constitutional accountability through the doctrine of command responsibility, though such interventions remain reactive rather than systemic solutions.

The chapter reveals that Kenya's oversight framework remains largely theoretical, with practical challenges including inadequate funding for IPOA, political interference in police operations, delayed complaint resolution mechanisms, and inconsistent application of disciplinary measures. The *Kenya Human Rights Commission v. Nchebere* case affirmed the principle of command responsibility under Article 245 of the Constitution, but statutory reforms are needed to codify this doctrine clearly



## **CHAPTER 4: COMPARING POLICE OVERSIGHT BETWEEN KENYA AND THE UNITED KINGDOM**

### **4.1 INTRODUCTION**

In this section, the study's goal is to compare police oversight in Kenya with the UK, paying special attention to two crucial aspects: command responsibility and financial independence. The study question investigates the ways in which these operational and structural elements affect the efficiency of police accountability systems in both jurisdictions. The Independent Policing Oversight Authority (IPOA) and the National Police Service Act serve as the foundation for Kenya's oversight system, which will be compared to the multi-agency structure of the United Kingdom, which includes the Independent Office for Police Conduct (IOPC), Police and Crime Commissioners, and Her Majesty's Inspectorate of Constabulary. The comparative analysis will assess accountability frameworks and financial safeguards. The study intends to demonstrate how police oversight outcomes in these disparate policing environments are impacted by this analysis.

### **4.2 LEGAL FRAMEWORK OF THE UNITED KINGDOM**

#### **4.2.1 Constitutional Foundations**

The United Kingdom's approach to police oversight operates within a distinctive constitutional framework that balances operational independence with accountability. Three foundational constitutional doctrines shape this system: the Rule of Law, Parliamentary Sovereignty, and the Separation of Powers. These principles interact with key statutes and case law to create a framework for financial independence in oversight bodies and command responsibility in police leadership.

##### **4.2.1.1 The Rule of Law**

The case of *R v Dytham* established that a police officer's deliberate failure to perform a legal duty can constitute the common law offense of misconduct in public office.<sup>122</sup> The officer had lawfully arrested individuals during a disturbance but unlawfully released them without processing them.<sup>123</sup> The Court of Appeal ruled that his omission—despite having a duty to act—amounted to a criminal offense, reinforcing that police accountability extends not only to

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<sup>122</sup> *R v Dytham* (1979) QB 722.

<sup>123</sup> *R v Dytham* (1979) QB 722.

wrongful acts but also to culpable failures to fulfill responsibilities. This precedent remains crucial in police oversight, influencing modern disciplinary frameworks such as the Police (Conduct) Regulations 2020 and underscoring that command responsibility includes both action and inaction where duties exist.<sup>124</sup> The case affirms that public officials, particularly police, can face criminal liability for neglecting their obligations.<sup>125</sup> It also shows equality before the law and that police officers are not above the law. The principle of the Rule of Law safeguards the financial independence of police oversight bodies by ensuring that their funding and operations remain free from arbitrary interference.

#### **4.2.1.2 Parliamentary Sovereignty**

The doctrine of parliamentary sovereignty has traditionally represented the absolute legal supremacy of Parliament to legislate on any matter without being subject to override by any higher authority, ensuring that Acts of Parliament take precedence over all other legal sources, including common law, prerogative powers, and subordinate legislation.<sup>126</sup> Historically understood in purely formal terms—where Parliament’s legislative authority was legally unrestricted while political considerations such as electoral pressures remained beyond judicial scrutiny—this principle has been reinterpreted in recent jurisprudence, most notably in *R (Miller) v Prime Minister (Miller II)*, which reframed sovereignty in functional terms by emphasizing that Parliament must not only possess legislative power in theory but also be able to exercise it effectively in practice.<sup>127</sup> The Supreme Court’s ruling in *Miller II* established that executive actions (such as prorogation) that obstruct Parliament’s ability to legislate or hold the government accountable could be deemed unlawful, even if technically legal, thereby expanding the concept of sovereignty to encompass not just legal authority but also practical governance and reinforcing Parliament’s central role in the constitutional order.<sup>128</sup> This mirrors how parliamentary sovereignty itself protects legislative authority from external constraints.

#### **4.2.1.3 Separation of Powers.**

The separation of powers is a fundamental constitutional principle designed to maintain balance between the three branches of state – the legislature, executive, and judiciary – by

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<sup>124</sup> R v Dytham (1979) QB 722.

<sup>125</sup> R v Dytham (1979) QB 722.

<sup>126</sup> Foran M, “Parliamentary Sovereignty and the Politics of Law-Making”, UK Constitutional Law Association Blog, 18 October 2021.

<sup>127</sup> Foran M, “Parliamentary Sovereignty and the Politics of Law-Making”, UK Constitutional Law Association Blog, 18 October 2021.

<sup>128</sup> Foran M, “Parliamentary Sovereignty and the Politics of Law-Making”, UK Constitutional Law Association Blog, 18 October 2021.

allocating distinct functions and powers to each, thereby preventing any single branch from becoming overly dominant.<sup>129</sup> In the UK system, the legislature is responsible for making laws through debate, amendment, and approval, with royal assent being a ceremonial formality.<sup>130</sup> Parliament also scrutinizes the executive through mechanisms like debates, committee inquiries, and Prime Minister's Questions.<sup>131</sup> The executive develops policies, proposes legislation, and implements laws. The judiciary, headed by the Supreme Court and operating across three distinct legal systems, interprets laws, adjudicates disputes, and ensures legal compliance through judicial review – a critical check on executive power.<sup>132</sup> While the UK does not maintain a strict separation of powers important checks and balances exist. These include parliamentary scrutiny of the executive, an independent judiciary, and the courts' authority to review government actions for legality.<sup>133</sup> This interlocking system aims to prevent power concentration while accommodating the UK's unique constitutional traditions of parliamentary sovereignty and responsible government, where executive authority derives from legislative confidence but remains subject to both parliamentary and judicial oversight.<sup>134</sup>

## **4.2.2 Statutory Framework**

### **4.2.2.1 Police Reform Act 2002**

The Police Reform Act 2002 established the Independent Police Complaints Commission (IPCC, now IOPC) as an independent statutory body overseeing police conduct in England and Wales. Section 9 creates the Commission with a chairman and members appointed by the Crown and Home Secretary, excluding current/former police personnel to ensure impartiality.<sup>135</sup> Section 10 grants it powers to: maintain complaint systems; ensure their

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<sup>129</sup> British Institute of Human Rights, “Separation of Powers, Parliamentary Sovereignty & the Rule of Law”, <https://www.bihhr.org.uk/get-informed/legislation-explainers/separation-of-powers-parliamentary-sovereignty-the-rule-of-law>.

<sup>130</sup> British Institute of Human Rights, “Separation of Powers, Parliamentary Sovereignty & the Rule of Law”, <https://www.bihhr.org.uk/get-informed/legislation-explainers/separation-of-powers-parliamentary-sovereignty-the-rule-of-law>.

<sup>131</sup> British Institute of Human Rights, “Separation of Powers, Parliamentary Sovereignty & the Rule of Law”, <https://www.bihhr.org.uk/get-informed/legislation-explainers/separation-of-powers-parliamentary-sovereignty-the-rule-of-law>.

<sup>132</sup> British Institute of Human Rights, “Separation of Powers, Parliamentary Sovereignty & the Rule of Law”, <https://www.bihhr.org.uk/get-informed/legislation-explainers/separation-of-powers-parliamentary-sovereignty-the-rule-of-law>.

<sup>133</sup> British Institute of Human Rights, “Separation of Powers, Parliamentary Sovereignty & the Rule of Law”, <https://www.bihhr.org.uk/get-informed/legislation-explainers/separation-of-powers-parliamentary-sovereignty-the-rule-of-law>.

<sup>134</sup> British Institute of Human Rights, “Separation of Powers, Parliamentary Sovereignty & the Rule of Law”, <https://www.bihhr.org.uk/get-informed/legislation-explainers/separation-of-powers-parliamentary-sovereignty-the-rule-of-law>.

<sup>135</sup> Section 9, Police Reform Act 2002.

independence and effectiveness; build public trust; recommend police reforms; and investigate complaints, misconduct cases, and deaths/serious injuries involving police.<sup>136</sup> The Act mandates cooperation with police inspectors while excluding oversight of operational command decisions, creating a balanced framework for civilian-led police accountability.

#### **4.2.2.2 Police (Conduct) Regulations 2020.**

Schedule 2 of the Police (Conduct) Regulations 2020 establishes the Standards of Professional Behaviour that all police officers must uphold, requiring them to demonstrate honesty and integrity; exercise authority with respect, courtesy and without discrimination; use only necessary and proportionate force; follow lawful orders diligently; maintain confidentiality appropriately; remain fit for duty; avoid discreditable conduct; and actively challenge and report any improper behaviour by colleagues, with these standards applying both on and off duty to maintain public trust in policing.<sup>137</sup>

#### **4.2.3 Institutional Framework**

The UK employs a multi-layered oversight system.

##### **4.2.3.1 Independent Office for Police Conduct (IOPC)**

The Independent Office for Police Conduct (IOPC) serves as the independent police complaints watchdog for England and Wales, overseeing the police complaints system and investigating serious incidents including deaths following police contact.<sup>138</sup> Formerly known as the Independent Police Complaints Commission (IPCC), the IOPC operates entirely independently of police, government and interest groups, with leadership requirements ensuring no former police officers hold key decision-making roles.<sup>139</sup> The organization handles the most serious complaints against all police forces - including specialist forces like the British Transport Police - as well as certain other law enforcement bodies including the National Crime Agency and HMRC.<sup>140</sup> Led by an interim Director General since 2022, the IOPC is structured with six regional investigative teams and governed by a unitary board responsible for strategic

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<sup>136</sup> Section 10, Police Reform Act 2002.

<sup>137</sup> Schedule 2, Police Reform Act 2002.

<sup>138</sup> Independent Police Complaints Authorities' Network, "Independent Office for Police Conduct", <https://ipcan.org/members/independent-police-complaints-commission>.

<sup>139</sup> Independent Police Complaints Authorities' Network, "Independent Office for Police Conduct", <https://ipcan.org/members/independent-police-complaints-commission>.

<sup>140</sup> Independent Police Complaints Authorities' Network, "Independent Office for Police Conduct", <https://ipcan.org/members/independent-police-complaints-commission>.

oversight.<sup>141</sup> Funded through Home Office grants (£72.5 million in 2018/19), the IOPC works to improve policing standards through case investigations, thematic reviews of issues like domestic abuse and mental health, and its "Learning the Lessons" publication which disseminates recommendations to forces.<sup>142</sup> The organization also maintains jurisdiction over criminal allegations against Police and Crime Commissioners while focusing on both accountability for misconduct and systemic improvements to enhance public confidence in policing.

#### **4.2.3.2 His Majesty's Inspectorate of Constabulary (HMIC)**

His Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS) conducts comprehensive inspections of all 43 territorial police forces in England and Wales through its PEEL (Police Effectiveness, Efficiency and Legitimacy) assessments, evaluating and comparing force performance to drive improvements and highlight best practices.<sup>143</sup> The inspectorate also examines non-territorial and specialist policing bodies, including the British Transport Police, National Crime Agency, and international forces, while collaborating with other oversight bodies like Ofsted and the Care Quality Commission on cross-agency issues such as child protection.<sup>144</sup> Through both routine force inspections and thematic national analyses - some commissioned by the Home Secretary - HMICFRS identifies areas requiring reform, makes evidence-based recommendations, and monitors progress, while publicly reporting findings to inform citizens and policymakers about policing standards and performance.<sup>145</sup>

#### **4.2.3.3 Police and Crime Commissioners (PCCs).**

Police and Crime Commissioners (PCCs) are directly elected officials responsible for overseeing policing in England and Wales, established under the 2011 Police Reform Act.<sup>146</sup> Their core duties include setting police budgets, appointing chief constables, and developing

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<sup>141</sup> Independent Police Complaints Authorities' Network, "Independent Office for Police Conduct", <https://ipcan.org/members/independent-police-complaints-commission>.

<sup>142</sup> Independent Police Complaints Authorities' Network, "Independent Office for Police Conduct", <https://ipcan.org/members/independent-police-complaints-commission>.

<sup>143</sup> His Majesty's Inspectorate of Constabulary and Fire & Rescue Services, "Police Forces", <https://hmicfrs.justiceinspectorates.gov.uk/police-forces/>.

<sup>144</sup> His Majesty's Inspectorate of Constabulary and Fire & Rescue Services, "Police Forces", <https://hmicfrs.justiceinspectorates.gov.uk/police-forces/>.

<sup>145</sup> His Majesty's Inspectorate of Constabulary and Fire & Rescue Services, "Police Forces", <https://hmicfrs.justiceinspectorates.gov.uk/police-forces/>.

<sup>146</sup> Downs W, Police and Crime Commissioners, House of Commons Library Research Briefing, UK Parliament, 9 October 2024.

strategic police and crime plans while maintaining operational independence for police forces.<sup>147</sup> PCCs also commission victim services and crime prevention programs, with some opting to oversee fire services and police complaints.<sup>148</sup> Accountability is maintained through quadrennial elections, scrutiny by police and crime panels, and Home Secretary intervention powers. However, public awareness remains low (42% unaware according to ONS data), reflected in record-low 23.2% turnout at the 2024 elections.<sup>149</sup> In six areas including London and Greater Manchester, PCC functions are performed by elected mayors through delegated arrangements.

## **4.2 FINANCIAL INDEPENDENCE.**

### **4.2.1 Kenya.**

A number of issues with Kenya's Independent Policing Oversight Authority's (IPOA) financial structure make it less effective as a police watchdog. Because the Authority is financed by yearly parliamentary allocations, it is prone to resource instability and political interference. A disturbing pattern of budget cuts that coincide with sensitive investigations into police wrongdoing has been highlighted by Amnesty International 2020.<sup>150</sup> This suggests that financial pressure may be used to deter effective supervision. Furthermore, the Open Society Justice Initiative (2017) discovered that IPOA regularly has delays in obtaining the monies allotted to it, occasionally having to wait months for disbursements that ought to occur on a quarterly basis.<sup>151</sup> Operating planning is seriously hampered by this unpredictable financial flow, which forces IPOA to halt investigations or reduce monitoring efforts during cash-flow emergencies.

### **4.2.2 United Kingdom.**

Strong financial protections for the UK's police oversight agencies guarantee its efficacy and independence. The Police Reform Act of 2002 created the ring-fenced funding arrangement that the Independent Office for Police Conduct (IOPC) uses, legally shielding its budget from arbitrary cuts or political interference.<sup>152</sup> This indicates that even when looking into delicate

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<sup>147</sup> Downs W, Police and Crime Commissioners, House of Commons Library Research Briefing, UK Parliament, 9 October 2024.

<sup>148</sup> Downs W, Police and Crime Commissioners, House of Commons Library Research Briefing, UK Parliament, 9 October 2024.

<sup>149</sup> Downs W, Police and Crime Commissioners, House of Commons Library Research Briefing, UK Parliament, 9 October 2024.

<sup>150</sup> Amnesty International, Kenya: Police Oversight under Threat, 2020.

<sup>151</sup> Open Society Justice Initiative, Funding Police Accountability in Africa, 2017.

<sup>152</sup> Smith G, Understanding Police Oversight in the UK, 2019.

issues involving influential people, the government cannot simply cut the IOPC's budget because it is pre-secured<sup>153</sup>. Similar to this, the grant-in-aid arrangement used to pay Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS) shields it from political pressure and permits it to carry out unbiased inspections without worrying about financial retaliation.<sup>154</sup> Because of these financial safeguards, oversight organisations can function in a stable environment free from budgetary swings, guaranteeing that they have the resources necessary to conduct in-depth investigations into police misbehaviour.

### **4.2.3 Comparison.**

The Independent Office for Police Conduct (IOPC) in the UK enjoys financial stability thanks to a ring-fenced, legally protected budget created by the Police Reform Act of 2002. The IOPC can function with true independence thanks to this arrangement, which guarantees steady, regular funding free from political interference. The Independent Policing Oversight Authority (IPOA) of Kenya, on the other hand, has an ad hoc funding approach, with yearly parliamentary approval and discretionary appropriations governing its budget. Due to this system, IPOA is prone to political interference; there are documented instances when money has been cut or delayed just as the Authority was looking into delicate situations involving high-ranking police officers or influential political leaders. Due to budgetary restrictions imposed by the very organisations it is supposed to supervise, IPOA's ability to operate as an independent monitoring body is seriously compromised by its lack of financial autonomy.

## **4.3 COMMAND RESPONSIBILITY.**

### **4.3.1 Kenya.**

A strong concept of command responsibility is part of Kenya's legal framework for police accountability, and it is specifically stated in the National Police Service Act 2011. According to this legal theory, senior officers who knew or should have known about misconduct by their subordinates and did not take preventive or corrective action, such as the Inspector General of Police and regional commanders, could be held personally accountable. Kenya's High Court upheld this principle in the Nchebere ruling, holding the Inspector General personally liable for police brutality during protests and stating that his failure to discipline officers or stop

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<sup>153</sup> Smith G, Understanding Police Oversight in the UK, 2019.

<sup>154</sup> Smith G, Understanding Police Oversight in the UK, 2019.

abuses constituted a violation of his constitutional duty under Article 245.<sup>155</sup> Even with this solid legal basis, command responsibility is still not effectively enforced in Kenya. Even in cases of widespread police violations like extrajudicial murders or torture, few high-ranking officials ever face trial or significant consequences, according to Human Rights Watch and other watchdogs.<sup>156</sup> There are several reasons for this implementation gap: Despite the existence of legal frameworks establishing command responsibility in Kenya, its practical application remains inconsistent due to systemic barriers. A pervasive culture of institutional resistance within police leadership often shields senior officers from accountability, with disciplinary actions treated as exceptional rather than standard practice.<sup>157</sup> This resistance manifests in weak investigative follow-through, where the Internal Affairs Unit (IAU) and Independent Policing Oversight Authority (IPOA) struggle to gather sufficient evidence against commanders due to police obstruction, witness intimidation, and a lack of cooperation from within the force.<sup>158</sup>

Compounding these challenges is the issue of political protection, where high-ranking officers with political connections evade accountability.<sup>159</sup> Prosecutions often stall due to reliance on the judiciary and the Directorate of Public Prosecutions (DPP), which face pressure or reluctance to pursue cases against influential figures.<sup>160</sup> Additionally, while legislation outlines liability for commanders, the absence of clear operational guidelines on supervision and disciplinary enforcement leads to uneven application. Without standardized procedures, accountability becomes discretionary, allowing negligent or complicit commanders to avoid consequences.<sup>161</sup>

As a result, while Kenya's legal system theoretically upholds command responsibility, its enforcement in practice remains weak. Without addressing these structural and cultural obstacles through stronger whistle-blower protections, independent prosecutorial mechanisms, and explicit operational directives—the principle of command accountability will continue to exist more on paper than in reality.

#### **4.3.2 United Kingdom.**

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<sup>155</sup> Kenya Human Rights Commission & 8 others v Nchebere; Law Society of Kenya & 2 others (Interested Parties), 2024, High Court, Nairobi, eKLR.

<sup>156</sup> Human Rights Watch, High Stakes: Political Interference in Kenya's Police Reforms, 2013.

<sup>157</sup> Human Rights Watch, High Stakes: Political Interference in Kenya's Police Reforms, 2013.

<sup>158</sup> Human Rights Watch, High Stakes: Political Interference in Kenya's Police Reforms, 2013.

<sup>159</sup> Human Rights Watch, High Stakes: Political Interference in Kenya's Police Reforms, 2013.

<sup>160</sup> Human Rights Watch, High Stakes: Political Interference in Kenya's Police Reforms, 2013.

<sup>161</sup> Human Rights Watch, High Stakes: Political Interference in Kenya's Police Reforms, 2013.

Kenya and the United Kingdom have quite different approaches to police command responsibility, both in terms of the legal system and actual application. Under the Police (Conduct) Regulations 2020, the UK system mostly uses administrative and disciplinary procedures rather than seeking criminal liability for command violations, as is the case in Kenya.<sup>162</sup> Through professional conduct procedures rather than criminal charges, this regulatory structure places a strong emphasis on holding senior officers and chief constables accountable for systemic inadequacies within their commands.<sup>163</sup> The UK approach places more emphasis on systemic change and organisational learning than on harsh individual penalties. Instead of pursuing criminal charges against specific commanders, the reaction to command failures whether they be related to institutional racism, the excessive use of force, or other misconduct patterns usually consists of organisational assessments, policy changes, and retraining. The "learning not blaming" mentality that has directed recent reforms in police oversight is an example of this strategy. Her Majesty's Inspectorate of Constabulary and the Independent Office for Police Conduct (IOPC) concentrate on finding structural flaws and putting corrective measures in place; disciplinary charges are only taken in circumstances of egregious negligence or obvious personal misconduct.

### **4.3.3 Comparison**

Kenya and the UK have very distinct accountability ideologies that are based on their respective policing histories, as seen by their legal and operational approaches to command responsibility. Kenya's National Police Service Act (2011) creates a clear, punitive framework that holds commanders directly criminally liable for the infractions of their subordinates. This system is supported by court decisions such as Nchebere, but it is hindered by weak enforcement and few senior officer prosecutions. The Police (Conduct) Regulations 2020 in the UK, on the other hand, use an implicit accountability model that prioritises organisational learning over individual punishment.<sup>164</sup> When command failures occur, systemic reforms and procedural improvements are used instead of criminal sanctions.<sup>165</sup> The UK's professional self-regulation model places a higher priority on ongoing institutional improvement within an established policing tradition, whereas Kenya's stringent legal framework, which arose from

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<sup>162</sup> Smith G, *Understanding Police Oversight in the UK*, 2019.

<sup>163</sup> Smith G, *Understanding Police Oversight in the UK*, 2019.

<sup>164</sup> Savage S, *Police Reform: Forces for Change*, 2013.

<sup>165</sup> Newburn T, *Handbook of Policing*, 2015.

decades of police impunity, represents a constitutional attempt to enforce accountability. These divergent approaches are indicative of their respective contexts.

Both systems' enforcement methods draw attention to a recurring conflict between theoretical frameworks and real-world results. The pattern of high-ranking officers avoiding consequences despite blatant command failures shows how statutory provisions alone cannot guarantee accountability in the absence of strong institutional will and capacity, even though Kenya's punitive model seems stronger legislatively. On the other hand, the UK's reform-oriented strategy runs the danger of being seen as less rigorous when significant command flaws emerge, even though it may be more successful at promoting organisational change due to its "learning not blaming" mentality. Effective police accountability necessitates both clear legal foundations and operational systems that can translate principles into consistent practice, as this comparative analysis shows that neither the explicit criminalisation of command responsibility (as in Kenya) nor its implicit treatment as a professional standard (as in the UK) provides a comprehensive solution.

#### **4.4 KEY TAKEAWAYS**

Kenya can significantly enhance its police accountability mechanisms by drawing key lessons from the United Kingdom's well-established oversight system. First, Kenya should adopt UK-style statutory protections to bolster the operational autonomy of the Independent Policing Oversight Authority (IPOA). Currently, IPOA faces challenges of political interference and resource constraints, which undermine its effectiveness. By enshrining stronger legal safeguards—such as fixed-term appointments for commissioners, restrictions on arbitrary removal, and explicit prohibitions against serving security officials holding oversight roles—Kenya could insulate IPOA from external pressures. Additionally, the UK's direct parliamentary funding model for the Independent Office for Police Conduct (IOPC) offers a viable solution to IPOA's chronic underfunding. Rather than relying on discretionary executive allocations, Kenya could mandate that IPOA's budget be ring-fenced and approved by Parliament, ensuring financial stability and reducing executive influence over investigations.

A multi-layered oversight approach, akin to the UK's system, would further strengthen accountability. Kenya lacks a robust complementary institution equivalent to His Majesty's Inspectorate of Constabulary (HMIC), which conducts regular, independent inspections of police forces in the UK. Establishing a similar body in Kenya tasked with evaluating police compliance with human rights standards, operational efficiency, and disciplinary systems

would provide an additional check on misconduct. Moreover, Kenya should devolve oversight functions to county-level structures, enhancing local accountability. The UK's Police and Crime Commissioners (PCCs), who are directly elected to oversee regional policing, demonstrate how decentralised oversight can improve transparency and public trust. On command accountability, Kenya's legal framework currently lacks the precision of the UK's Police (Conduct) Regulations 2020, which explicitly define misconduct and impose strict personal liability on senior officers for failures in supervision. *The Kenya Human Rights Commission v. Nchebere* case affirmed the principle of command responsibility under Article 245 of the Constitution, but statutory reforms are needed to codify this doctrine clearly. Kenya should introduce provisions mirroring the UK's standards, ensuring that police commanders face disciplinary or criminal consequences for systemic abuses under their watch, including negligence in investigating subordinates' misconduct.

Finally, Kenya's complaint resolution mechanisms require urgent reform to address delays and perceived bias. The UK's IOPC operates under statutory timelines for completing investigations, a model Kenya should replicate to prevent indefinite delays in justice for victims of police abuse.

By integrating these UK-inspired reforms such as enhanced independence, multi-tiered oversight, stringent command responsibility, and efficient complaint resolution Kenya can transform IPOA into a more effective institution, capable of curbing police impunity and restoring public trust in law enforcement. These measures would align Kenya's framework with international best practices while addressing its unique operational challenges.

#### **4.5 CONCLUSION**

Referring back to the original research question, which asked how police oversight differed in Kenya and the UK, the results of this study show significant variations in methodology and efficacy. Although Kenya's system has robust legislative frameworks for command responsibility and financial independence in theory, political meddling, unstable funding, and lax enforcement cause implementation gaps. Ring-fenced budgets, decentralised monitoring mechanisms, and a reform-oriented approach to command responsibility, on the other hand, demonstrate the UK model's higher operational performance, even though it might not have enough punitive measures in extreme situations. The main conclusion is that, although Kenya has put in place admirable legal frameworks for police supervision, the UK system shows how multi-layered accountability, organisational learning mechanisms, and financial safeguards can

all work together to produce more reliable and long-lasting oversight. The comparisons imply that in order to establish meaningful accountability, effective police monitoring necessitates both robust legislative frameworks (as in Kenya) and well planned operational processes (as in the UK). In the end, the study emphasises how institutional culture, implementation ability, and contextual factors influence how successful police oversight measures are in the real world.



## CHAPTER 5: CONCLUSIONS AND RECOMMENDATIONS.

### 5.1 INTRODUCTION

This study investigated the efficacy of police oversight mechanisms in Kenya by focusing on the critical roles of financial independence and command responsibility in ensuring accountability, transparency, and public trust in law enforcement, addressing three key research questions: how these principles contribute to effective oversight, the extent to which Kenya's legal framework upholds them, and how Kenya's system compares with the UK model regarding financial safeguards and command accountability. Using a comparative legal methodology, the research analyzed constitutional provisions, statutes, case law, and institutional structures in both countries, testing the hypothesis that while strong financial independence and enforceable command responsibility are essential for effective oversight, Kenya faces significant implementation gaps despite robust legal frameworks. The doctrinal analysis examined Kenya's 2010 Constitution, IPOA Act (2011), and National Police Service Act (2011), along with pivotal cases like *Kenya Human Rights Commission v. Nchebere*, while the UK comparison focused on the Police Reform Act 2002, Police (Conduct) Regulations 2020, and institutions like the IOPC and HMIC, ultimately confirming that Kenya's oversight system, though legally comprehensive, suffers from operational deficiencies in financial autonomy and consistent enforcement of command responsibility that undermine its effectiveness compared to the UK's more established model.

### 5.2 SUMMARY OF THE FINDINGS.

The findings of Chapter Two show that command responsibility and financial independence are essential components of efficient police supervision. The former protects oversight bodies from political meddling and guarantees operational autonomy and resource stability, while the latter creates a clear hierarchy of accountability by holding superiors accountable for stopping or dealing with the misconduct of their subordinates. The analysis shows that although both principles are well-established in theory financial independence allowing for credible investigations and command responsibility discouraging abuses through chain-of-command accountability they face major obstacles in practice, such as institutional cultures that are resistant to reform, political opposition to independent oversight, and ongoing resource limitations. The chapter emphasises the interdependence of these mechanisms, which together create an ecosystem that raises professional standards, discourages misconduct, and increases public trust in law enforcement institutions. Robust financial safeguards enable oversight

bodies to thoroughly investigate command failures, while properly enforced command responsibility guarantees the ethical use of oversight resources.

The findings of Chapter Three critically review Kenya's police oversight framework revealing a robust constitutional and statutory foundation anchored in the 2010 Constitution's Articles 244, 245, 47, 50 and 238, complemented by the National Police Service Act (2011) and IPOA Act (2011) which establishes mechanisms like the Internal Affairs Unit and Independent Policing Oversight Authority, yet despite this progressive legal architecture featuring clear command responsibility principles affirmed in jurisprudence like the Nchebere case, the system suffers from significant implementation gaps including chronic underfunding of oversight bodies, political interference in investigations, duplication of functions between IPOA and IAU, slow complaint resolution processes, and weak enforcement of recommendations, demonstrating that while Kenya has developed comprehensive legal safeguards for police accountability on paper, persistent structural and operational challenges - particularly regarding financial independence and institutional will - continue to undermine their effectiveness in practice, necessitating reforms to strengthen implementation mechanisms, ensure sustainable funding, and enhance coordination between oversight entities to bridge the gap between legal provisions and tangible police accountability.

This comparative analysis of police oversight in Kenya and the United Kingdom in Chapter Four reveals significant differences in both structure and effectiveness, particularly regarding financial independence and command responsibility. Kenya's system, anchored in the Independent Policing Oversight Authority (IPOA) and the National Police Service Act, demonstrates strong legal frameworks but suffers from chronic underfunding, political interference, and weak enforcement of command responsibility, despite progressive constitutional provisions and jurisprudence like the Nchebere case. In contrast, the UK's multi-agency model comprising the Independent Office for Police Conduct (IOPC), Police and Crime Commissioners (PCCs), and Her Majesty's Inspectorate of Constabulary ensures greater operational independence through statutory ring-fenced funding and a decentralized, reform-oriented approach to accountability. While Kenya's explicit punitive framework for command responsibility struggles with implementation gaps, the UK's emphasis on systemic learning over individual sanctions fosters consistent organizational accountability, albeit with potential shortcomings in addressing egregious misconduct.

### **5.3 RECOMMENDATIONS.**

To strengthen police oversight in Kenya, several key reforms should be implemented to address systemic weaknesses in both financial independence and command responsibility.

1. First, Section 32 of the IPOA Act 2011 should be amended to guarantee automatic allocation of 0.75% of the National Police Service budget, following the successful model of Kenya's Judiciary Fund under Article 173, while introducing UK-style budget protection clauses from the Police Reform Act to prevent arbitrary mid-year funding cuts.
2. Regarding command responsibility, Section 87 of the NPS Act 2011 requires amendment to incorporate clear operational guidelines for investigating command failures, drawing inspiration from the UK's Police (Conduct) Regulations 2020, alongside mandatory disciplinary hearings for negligent commanders complemented by the creation of a dedicated Police Accountability Division within the ODPP under Article 157(6) to handle command responsibility cases.
3. Institutionally, the system would benefit from implementing annual ethical training programs for senior officers similar to the UK's College of Policing curriculum, while decentralizing oversight functions through county-level accountability mechanisms inspired by the UK's Police and Crime Commissioners model, thereby creating a more robust, multi-layered system of police accountability that addresses current gaps in both resourcing and enforcement.

#### **5.4 CONCLUSION**

This study confirms that financial independence and command responsibility are fundamental to effective police oversight, but Kenya's system remains hampered by implementation gaps, political interference, and weak enforcement. While Kenya's legal framework is robust on paper, the UK's model demonstrates how structural safeguards, multi-layered oversight, and reform-oriented accountability enhance effectiveness. The findings support the hypothesis that strong legal frameworks alone are insufficient without operational independence, consistent funding, and enforcement mechanisms. To bridge this gap, Kenya must adopt UK-inspired reforms, including ring-fenced budgets, decentralized oversight, and codified command accountability. By doing so, Kenya can transform its police oversight system into one that ensures genuine accountability, deters misconduct, and restores public trust in law enforcement. Thus, this study successfully addresses the research problem, proving that both financial independence and command responsibility are indispensable—but only when backed

by enforceable legal and institutional safeguards. Future research should explore the role of civil society and technology in enhancing police oversight in Kenya.



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