

ALTERNATIVE MEANS TO A METHOD: INTRODUCING INFORMAL METHODS OF
POLICING IN KENYA TO IMPROVE POLICE ACCOUNTABILITY AND
TRANSPARENCY.

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DECLARATION

I, KARANJA LYNETTE MUTHONI 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.

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

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List of legal instruments

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National Police Service Act 2011.

National Police Service Commission Act 2014.

Independent Police Oversight Authority Act 2011.

Security Laws Amendment Act 2014.

Private Security Regulations Act 2016.

Law on Military Organisations 1936.

List of abbreviations

CKRC	Constitution of Kenya Review Committee
DAPC	Death After Police Contact
DCI	Director of Criminal Investigations
DUI	Driving Under the Influence
ECHR	European Convention on Human Rights
IG	Inspector-General
IPCC	Independent Police Complaints Commission
IPOA	Independent Police Oversight Authority
KPF	Kenya Police Force
NARC	National Rainbow Coalition
NPS	National Police Service
SMS	Short Message Service
PRGC	Policy Reforms Governance Committee
PRSC	Policy Reforms Steering Committee
UK	United Kingdom

Abstract

The Constitution of Kenya 2010 clearly posits that members of the National Police Service have the mandate to prevent corruption and beyond practicing, promote the notions of accountability and transparency. The transformation of the police sector began in 2002 during President Kibaki's regime. However, even with the laws put in place and the formation of relevant commissions and authorities such as the Independent Police Oversight Authority, some of the members of the police service still continue being corrupt by asking for bribes from the general public amongst other vices. Additionally, as seen in the media and news reports, some still mistreat the citizens of Kenya and infringe of fundamental rights and freedoms such as freedom from physical or mental maltreatment and inhumane treatment. From this analysis, there is a gap seen when it comes to enforcement of the concepts of police accountability and transparency. Using the Constitution of Kenya, relevant academic articles and journals, news reports, an assessment of the informal methods of policing used in the Netherlands, this paper seeks to acknowledge positive efforts put in place to achieve the two aforementioned concepts and will introduce informal methods of policing which shall seek solely to assist the regular policing methods of achieving accountability and transparency.

Chapter One: Introducing informal methods of policing in Kenya to improve police accountability and transparency

1.1 Introduction

After the election of President Kibaki in 2002, in his political agenda, he set out to reform the police sector and those reforms have brought about positive but gradual progress and respect of human rights by the police. Looking at the history of police in Kenya, before the Kibaki regime, the police service was used as a tool for political oppression by those who were in power and authority. Over the past decade, police reforms has involved improving accountability and transparency amongst police members. Relevant commissions and authorities have been formed and various laws amended to enforce police accountability and transparency.¹ However, still, it is observed through media and news reports that some members of the National Police Service continue to be corrupt by asking for bribes and infringe human rights and fundamental freedoms such as inhumane treatment² and as a result lead to the loss of human dignity of a person.³ Even with the progress made to ensure the enforcement of police accountability and transparency, there is a gap that still needs to be addressed in order to make this enforcement more sufficient. This paper seeks to show that informal methods of policing as extracted from the Netherlands policing system which, theoretically, should help improve our current notion of transparency and accountability. The paper shall use the Constitution of Kenya 2010, academic journals, news and media reports. The informal policing system should aim to solely assist members of the NPS in their daily roles and functions.

1.2 Background

The National Rainbow Coalition (NARC) government after winning the 2002 December elections took into account the recommendations given by Constitution of Kenya Review Commission (CKRC), who finalized their report in October the same year.⁴ This report contained police reforms and methods of ensuring accountability and transparency.⁵ This Commission was established in 2001 and gave momentum to the structure of police reforms

¹ Article 244(b), *Constitution of Kenya* (2010).

² Article 25 (a), *Constitution of Kenya* (2010).

³ Article 28, *Constitution of Kenya* (2010).

⁴ Commonwealth Human Rights Initiative and Kenya Human Rights Commission, *The Police, The People, The Politics: Police Accountability In Kenya*, 2006, 8.

⁵ Commonwealth Human Rights Initiative and Kenya Human Rights Commission, *The Police, The People, The Politics: Police Accountability In Kenya*, 2006, 8.

which included a strategy of achieving police accountability and transparency.⁶ However, this was not a new concept as there were previous attempts in the early on-set years to have a structure for police reforms.⁷ The report mainly discussed the public perception of police as corrupt and brutal, a citation of United Nation standards of police power and recommended for the constitution to include police dependence.⁸ CKRC handed in a proposed constitution called the Bomas draft⁹ to the sitting NARC government.¹⁰ This government then amended it and called it Kilifi Draft¹¹ and it was put up for referendum in 2005 which was not successful.¹² In March 2006, President Kibaki established a committee to review why the referendum failed.¹³ Eventually NARC developed a range of new strategies for police reform and set up a task to evaluate role of police.¹⁴

The police reform agenda has been enabled under three successive governments since 2002 and most have been enforced. However, more is yet to be done.¹⁵ With the rise in security threats, there is pressure on the NPS where there are a manifold of demands and yet they are expected to meet and exceed public expectation.¹⁶ There is a 2015-2018 programme document providing a policy framework to implement reforms in the NPS.¹⁷ Up to date, several task forces¹⁸ have been formed to oversee police reforms.¹⁹ In 2013, the Ministry of Interior

⁶ Commonwealth Human Rights Initiative and Kenya Human Rights Commission, *The Police, The People, The Politics: Police Accountability In Kenya*, 2006, 8.

⁷ Commonwealth Human Rights Initiative and Kenya Human Rights Commission, *The Police, The People, The Politics: Police Accountability In Kenya*, 2006, 1.

⁸ Commonwealth Human Rights Initiative and Kenya Human Rights Commission, *The Police, The People, The Politics: Police Accountability In Kenya*, 2006, 8.

⁹ Commonwealth Human Rights Initiative and Kenya Human Rights Commission, *The Police, The People, The Politics: Police Accountability In Kenya*, 2006, 8.

¹⁰ Commonwealth Human Rights Initiative and Kenya Human Rights Commission, *The Police, The People, The Politics: Police Accountability In Kenya*, 2006, 8.

¹¹ Commonwealth Human Rights Initiative and Kenya Human Rights Commission, *The Police, The People, The Politics: Police Accountability In Kenya*, 2006, 8.

¹² Commonwealth Human Rights Initiative and Kenya Human Rights Commission, *The Police, The People, The Politics: Police Accountability In Kenya*, 2006, 8.

¹³ Commonwealth Human Rights Initiative and Kenya Human Rights Commission, *The Police, The People, The Politics: Police Accountability In Kenya*, 2006, 8.

¹⁴ Commonwealth Human Rights Initiative and Kenya Human Rights Commission, *The Police, The People, The Politics: Police Accountability In Kenya*, 2006, 8.

¹⁵ Ministry of Interior and Coordination of National Government, *Revised Police Reforms Program Document 2015-2018*, August 2015, 2.

¹⁶ Ministry of Interior and Coordination of National Government, *Revised Police Reforms Program Document 2015-2018*, August 2015, 2.

¹⁷ Ministry of Interior and Coordination of National Government, *Revised Police Reforms Program Document 2015-2018*, August 2015, 2.

¹⁸ Ministry of Interior and Coordination of National Government, *Revised Police Reforms Program Document 2015-2018*, August 2015, 2.

¹⁹ Ministry of Interior and Coordination of National Government, *Revised Police Reforms Program Document 2015-2018*, August 2015, 2.

established the Police Reforms Steering Committee (PRSC) to provide policies for coordinating the ongoing police reforms in the NPS to warrant the sustainability agenda.²⁰

All these reform documents include police accountability and transparency to the people as part of the reform agenda and through the years, laws have been amended and commissions and authorities formed to see the enforceability of these two principles.²¹

1.3 Statement of the problem

The evolution of the concepts of police transparency and accountability through police reforms has been positive and proved to be working, however, there is need to address the gap where some of the police officers fail to adhere to these principles and violate the fundamental freedom from torture of any kind.

1.4 Research objectives

They include:

- a) To study the current legal framework of police accountability and transparency.
- b) To assess how informal methods of policing have worked for the Netherlands.
- c) To recommend the adoption of informal methods of policing to the National Police Service.

1.5 Hypothesis

There is a need to address the present gap where some of the police members fail to adhere and uphold police accountability and transparency which is seen through violation of fundamental freedom from inhumane treatment.

1.6 Research questions

- a) What is the current legal framework of police accountability and transparency?
- b) How have informal methods of policing worked for the Netherlands?
- c) What informal methods of policing can the National Police Service adopt?

²⁰ Ministry of Interior and Coordination of National Government, *Revised Police Reforms Program Document 2015-2018*, August 2015, 2.

²¹ Ministry of Interior and Coordination of National Government, *Revised Police Reforms Program Document 2015-2018*, August 2015, 2.

1.7 Justification for the study

The importance of this study is to recommend the introduction of informal forms of policing methods to improve the current existing policing framework and close the present gap where some of the police members fail to adhere and uphold police accountability and transparency which is seen through violation of fundamental freedom from inhumane treatment on news and media reports.

1.8 Assumptions

- a) This study assumes that in theory, the informal policing methods extracted from the comparative study are the only solutions to close the gap pointed out in the problem statement.
- b) This study assumes that the existing literature sources will be enough to explain and critically assess this research study.

1.9 Limitations

- a) This paper shall face time constraints as it is to be researched in 9 months.
- b) The research methodology is a constraint in itself as it is purely theoretical and does not consider the practical aspect of the NPS.

1.10 Duration and chapter breakdown

This research study will be done over a period of 9 months.

Chapter 1

It shall include an introduction and background to this dissertation, problem statement that the paper intends to solve, justification and proposed scope of the study, the duration of the study, statement of objectives, research questions, hypothesis and limitations for this study.

Chapter 2

This chapter shall include a theoretical framework and an explanation of the research methodology to be used in this dissertation.

Chapter 3

It shall cover an analysis of the current legal framework of police accountability in Kenya by assessing the existing laws, regulations and policies by looking at the law and policing journals and relevant reports.

Chapter 4

This chapter shall include how informal methods of policing have worked for the Netherlands and a depiction of how violations of human rights have continued and police instances of failing to adhere to the principles of accountability and transparency seen in news and media reports.

Chapter 5

This chapter shall conclude the study and recommend the adoption of informal methods of policing to the NPS.

1.11 Literature review

1.11.1 Western View of Accountability and Transparency (England & Wales, US and Britain)

In USA, Walker²² in his article states accountability as fundamental concept underlying police reforms.²³ It entails the functions and performance of members of police.²⁴ This concept is two-tier and includes agent (ability of police to control crime and disorder in public)²⁵ and individual (police behavior in relation to the respect of the law and equal treatment of citizens)²⁶ level accountability. The article summarized accountability as a fundamental element and gave its importance as to enhance lawfulness and legitimacy in order to minimize crime and improve communities life and serve citizens.²⁷

In comparison to Kenya, the law generally speaks on the national police service who are mandated to aim for the highest level of accountability and transparency and prevent

²² Walker S, 'Police Accountability: Current Issues and Research Needs' National Institute of Justice (NIJ) Policy Research Workshop: Planning for the Future, Washington D.C, 28-29 November 2006, 1.

²³ Walker S, 'Police Accountability: Current Issues and Research Needs' National Institute of Justice (NIJ) Policy Research Workshop: Planning for the Future, 1.

²⁴ Walker S, 'Police Accountability: Current Issues and Research Needs' National Institute of Justice (NIJ) Policy Research Workshop: Planning for the Future, 1.

²⁵ Walker S, 'Police Accountability: Current Issues and Research Needs' National Institute of Justice (NIJ) Policy Research Workshop: Planning for the Future, 1.

²⁶ Walker S, 'Police Accountability: Current Issues and Research Needs' National Institute of Justice (NIJ) Policy Research Workshop: Planning for the Future, 1.

²⁷ Walker S, 'Police Accountability: Current Issues and Research Needs' National Institute of Justice (NIJ) Policy Research Workshop: Planning for the Future, 1.

corruption²⁸ The constitution brought into light other acts of parliament²⁹ with regard to the NPS and its accountability. This is mainly Independent Policing Oversight Authority³⁰ whose main function is to provide civilian oversight over police work in Kenya.³¹ This paper acknowledges the efforts the government of Kenya together with laws and policies have come a long way to enforce and implement strategies relating to accountability and transparency and recommends informal methods of policing to the regular mode of policing to make these principles more efficient and sufficient. This aims to continue reducing the violations of fundamental freedoms and unfairness caused by the NPS members.

With regard to accountability in Britain, an example is given of a forty year old black man, Sean Rigg who died in police custody on 21 August 2008.³² He was an artist and had released a CD of his music and many people considered him charming and intelligent. He had been diagnosed with schizophrenia and used to take medicine to control and manage it. He lived in a community mental health hostel in South London and was always in contact with his family especially his sister Marcia who also took care of him.³³ He was generally considered healthy and fit by his consultant from South London and Maudsley Trust (SLaM). SLaM was responsible for Sean and on 11th August 2008, said that he needed treatment for his condition and he was a danger to the community he was living in. Two weeks prior to his death, SLaM failed to respond to numerous requests made by the hostel who required the trust to meet with Sean. The hostel had previously called them five times over a period of three hours on 21st August to request for officers to manage him since he relapsed in his condition which subsequently caused an extreme psychotic episode. The police did not respond to the hostel but to a member of the public who reported after seeing Sean acting in an odd manner and was halfway dressed outside a residential area. Later, four police men arrived and did not recognize that he was mentally ill.³⁴ They arrested him at 1940 hours for allegedly assaulting a police officer, disrupting public order and passport theft.³⁵ Afterwards, he was detained for a long time in handcuffs. The passport was his, that he would keep for identification. He was put in a

²⁸ Article 244(b), *Constitution of Kenya* (2010).

²⁹ *Security Laws Amendment Act 2014, National Police Service Act 2011, National Police Service Commission Act 2014.*

³⁰ *Independent Policing Oversight Authority*, 2011.

³¹ <https://www.ipoa.go.ke/> on 28 August 2019.

³² Baker D, *Death After Police Contact, Constructing Accountability in the 21st Century*, Palgrave Macmillan UK, London, 2016, 1.

³³ Baker D, *Death After Police Contact, Constructing Accountability in the 21st Century*, 1.

³⁴ Baker D, *Death After Police Contact, Constructing Accountability in the 21st Century*, 2.

³⁵ Baker D, *Death After Police Contact, Constructing Accountability in the 21st Century*, 2.

police vehicle and taken to Brixton Police Station. They arrived at 1953 hours where he was in collapsed state and was left in the van for 10 minutes. He was then removed at 2003 hours and placed in a metallic structure known as the “cage”. This cage was in an external area from the police station. A Forensic Medical Examiner attended to Sean at 2024 hours where he asked for an ambulance to be called. The police did not treat it as an emergency. Some officers tried to resuscitate him without success. Sean died in less than an hour in police custody.³⁶ It was noted that it took thirty minutes before anyone could assist him.

This is one of many example that show how reckless the police can be. In England and Wales, from 2004 to 2015, 1,539 people have died in police custody.³⁷ The book uses ‘Death after Police Contact (DAPC)’ which adopts a criterion used by the Independent Police Complaints Commission(IPCC).³⁸ This criteria used by IPCC covers all categories of DAPC which include fatal shootings³⁹, deaths in and following police custody, apparent suicides following police custody and others. It is a rarity that a police officer is taken to court to face a criminal trial yet under the European Court of Human Rights, the state is legally obligated to investigate cases of DAPC using an independent commission. In England, the IPCC and the coronal system are responsible for investigating DAPC. In Kenya, it is IPOA that plays the same role and functions. This is a step England and Wales which is similar to the Kenya context where IPOA plays an oversight role of regular policing and encourages community policing. The steps to ensure accountability in England is as follows: When a person is a victim of DAPC, the case is promptly given to the Professional Standard Department (PSD). The PSD then gives the case to the IPCC who decides how the case shall be investigated. The IPCC examine the death scene, gathers evidence and interviews relevant witnesses. After investigations are completed, a report is written to give details on how events unfolded up to the death of the DAPC victim. The report includes recommendations in order to improve police practices.⁴⁰ After the IPCC concluded their work, the report is concluded by coroner’s court where it is typically done in front of a public jury. The coroner takes an inquisitorial methodology to find facts and might be able to ascribe guilty or not guilty or liability. Inquests are specifically aimed at examining unexplained or suspicious death in order to prevent such a case again. This inquest calls upon relevant witnesses.⁴¹ Once the report is heard, the jury consider the coroner’s directions and

³⁶ Baker D, *Death After Police Contact, Constructing Accountability in the 21st Century*, 9.

³⁷ Baker D, *Death After Police Contact, Constructing Accountability in the 21st Century*, 9.

³⁸ Baker D, *Death After Police Contact, Constructing Accountability in the 21st Century*, 9.

³⁹ Baker D, *Death After Police Contact, Constructing Accountability in the 21st Century*, 10.

⁴⁰ Baker D, *Death After Police Contact, Constructing Accountability in the 21st Century*, 10.

⁴¹ Baker D, *Death After Police Contact, Constructing Accountability in the 21st Century*, 11.

come up with a verdict they feel describes the death accurately. This system involves the police, the state and the society creating a symbiotic relationship that restores sanity and order within the society and police are held accountable.⁴² It has incorporated community policing similar to Kenya. To further their accountability agenda, they have a Computer aided Dispatch (CAD) which makes information available to the police on their mobile data terminals.

Additionally, in the USA, the nature of the work the police does exposes them to numerous risks and liabilities making them susceptible to civil litigation.⁴³ In three decades, this susceptibility has continuously increased and looking at 2003 alone in Los Angeles and New York City police departments paid 70 million dollars in settlements for police misconduct.⁴⁴ Police managers recognized this incredible increase in civil litigation and decided to take action to minimize exposure to these liability and risks. This book⁴⁵ mainly focuses on police legal advising by law enforcement agents to reduce these risks and liability.⁴⁶ To have police organizations with high levels of professionalism and accountability there is need for management tools. It was recommended in a report in 2001 written by the U.S. Department of Justice, that to enhance and increase police accountability and effective management in police organizations there should be increased supervision over police officers especially when there are involved in use of force, search and seizure scenarios, acquiring feedback of police services from the public and community groups which is similar to community policing in Kenya, establishing mechanisms where citizens are able to participate in evaluating police services and programs which includes civilian review boards and oversight agencies and implementing information management systems which include early warning systems.⁴⁷

⁴² Baker D, *Death After Police Contact, Constructing Accountability in the 21st Century*, 11.

⁴³ Archbold C, *Police Accountability, Risk Management and Legal Advising*, 1 ed, LFB Scholarly Publishing LLC, New York, 2004, 1.

⁴⁴ Archbold C, *Police Accountability, Risk Management and Legal Advising*, 1.

⁴⁵ Archbold C, *Police Accountability, Risk Management and Legal Advising*, 1.

⁴⁶ Archbold C, *Police Accountability, Risk Management and Legal Advising*, 2.

⁴⁷ Archbold C, *Police Accountability, Risk Management and Legal Advising*, 2.

1.11.2 Accountability and transparency in Kenya

The levels of crime in the urban areas have risen exponentially since the 1980s.⁴⁸ These include bank robberies, car-jackings and burglaries.⁴⁹ These crimes have been attributed to many factors which include rapid population growth in these urban areas, acute housing shortages, declining economic prosperity, high levels of unemployment and inefficient policing.⁵⁰ A common perception before the implementation of the new 2010 constitution and subsequent policing laws (post 2002 elections- pre 2010 era) was that KPF was unable tracking crime in an effective manner.⁵¹ It was noted police would ignore particularized threats and victims of police misconduct would not bother to report the police who they perceived to be inefficient and corrupt.⁵² Some would even participate in these crimes and they handled citizens insensitively with excessive force.⁵³ Corruption is still prevalent to date as bribes are still taken for misdemeanors such as Driving Under the Influence (DUIs) and traffic offences.⁵⁴ However, recently the office of the Inspector- General launched digital Occurrence Books at Kasarani Police Station in Nairobi⁵⁵ and removed ‘alcoblow’ checks⁵⁶ on major roads (this is where they would take bribes) in the country with the aim of enhancing accountability.

⁴⁸ Migai A, ‘Public Law Values and the Politics of Criminal (In)Justice: Creating a Democratic Framework for Policing in Kenya’ Oxford University Commonwealth Law Journal, 2005, 225 <https://doi.org/10.1080/14729342.2005.11421458> on 11th December 2019.

⁴⁹ Migai A, ‘Public Law Values and the Politics of Criminal (In)Justice: Creating a Democratic Framework for Policing in Kenya’ Oxford University Commonwealth Law Journal, 2005, 225 <https://doi.org/10.1080/14729342.2005.11421458> on 11th December 2019.

⁵⁰ Migai A, ‘Public Law Values and the Politics of Criminal (In)Justice: Creating a Democratic Framework for Policing in Kenya’ Oxford University Commonwealth Law Journal, 2005, 225 <https://doi.org/10.1080/14729342.2005.11421458> on 11th December 2019.

⁵¹ Migai A, ‘Public Law Values and the Politics of Criminal (In)Justice: Creating a Democratic Framework for Policing in Kenya’ Oxford University Commonwealth Law Journal, 2005, 225 <https://doi.org/10.1080/14729342.2005.11421458> on 11th December 2019.

⁵² Migai A, ‘Public Law Values and the Politics of Criminal (In)Justice: Creating a Democratic Framework for Policing in Kenya’ Oxford University Commonwealth Law Journal, 2005, 225 <https://doi.org/10.1080/14729342.2005.11421458> on 11th December 2019.

⁵³ Migai A, ‘Public Law Values and the Politics of Criminal (In)Justice: Creating a Democratic Framework for Policing in Kenya’ Oxford University Commonwealth Law Journal, 2005, 225 <https://doi.org/10.1080/14729342.2005.11421458> on 11th December 2019.

⁵⁴ Achuka V, ‘Withdrawal of alcoblow ends police bosses’ income from bribes’ Daily Nation 3rd December 2019 <https://www.nation.co.ke/news/Vicious-fight-for-alcoblow-cash/1056-5370846-2qdtpw/index.html> on 11th December 2019.

⁵⁵ Mireri J, ‘IG launches digital OB in a bid to guarantee transparency in police service’ Standard Digital 22 November 2019 <https://www.standardmedia.co.ke/article/2001350391/mutyambai-launches-digital-occurrence-book> on 11th December 2019.

⁵⁶ Achuka V, ‘Withdrawal of alcoblow ends police bosses’ income from bribes’ Daily Nation 3rd December 2019 <https://www.nation.co.ke/news/Vicious-fight-for-alcoblow-cash/1056-5370846-2qdtpw/index.html> on 11th December 2019.

After the implementation of the 2010 Constitution, community policing was introduced under the National Police Service Act and there was a heated debate to determine the efficacy in tackling police misconduct.⁵⁷ Over the decades, many researchers have argued in favour of a holistic approach to police oversight.⁵⁸ This is a combination of traditional reactive functions such as tackling police individual cases of misconduct and a proactive approach which promotes organizational changes that may reduce the aforementioned misconduct.⁵⁹ Advocates and legislators believed that to achieve police reforms and police review and change, the proactive approach was the better option.⁶⁰ This approach has been seen in action looking at the current legal framework with regard to policing.

This article⁶¹ acknowledges that previously Kenya was lagging behind with police reforms.⁶² Historically it notes that after independence before the 2002 elections, the constitution at that time has provisions for the establishment of a neutral KPF.⁶³ However that was just on paper and during President Moi's regime, KPF was used to promote political agenda, repress political opponents and oppress the people.⁶⁴ Before 2010, Kenya struggled with reforming the NPS where some of its members have been seen to be corrupt, be part of extra-judicial killings and lacking professionalism all round.⁶⁵ These crimes are still prevalent to date as shall be discussed in the subsequent chapters.⁶⁶ Some challenges facing the NPS include poor housing, lack of modern crime fighting equipment among others.⁶⁷ The post 2010 policing laws required structural and welfare reforms in the NPS.⁶⁸ This article as does this dissertation acknowledges that the present culture of police impunity in the NPS has majorly contributed to numerous cases of insecurity, gross violation of human rights, mistrust by the society and derailment of key achievement of democratic governance.⁶⁹

⁵⁷ Harris F, 'Holding Police Accountability Theory to Account' 6 Policing 3, 2012, 240.

⁵⁸ Harris F, 'Holding Police Accountability Theory to Account', 240.

⁵⁹ Harris F, 'Holding Police Accountability Theory to Account', 240.

⁶⁰ Harris F, 'Holding Police Accountability Theory to Account', 240.

⁶¹ Kivoi D, Mbae C, 'The Achilles' heel of police reforms in Kenya' 2 *Social Sciences* 6, 2013, 189.

⁶² Kivoi D, Mbae C, 'The Achilles' heel of police reforms in Kenya', 189.

⁶³ Kivoi D, Mbae C, 'The Achilles' heel of police reforms in Kenya', 189.

⁶⁴ Kivoi D, Mbae C, 'The Achilles' heel of police reforms in Kenya', 190.

⁶⁵ Kivoi D, Mbae C, 'The Achilles' heel of police reforms in Kenya', 190.

⁶⁶ Kivoi D, Mbae C, 'The Achilles' heel of police reforms in Kenya', 191.

⁶⁷ Kivoi D, Mbae C, 'The Achilles' heel of police reforms in Kenya', 191.

⁶⁸ Kivoi D, Mbae C, 'The Achilles' heel of police reforms in Kenya', 193.

⁶⁹ Kivoi D, Mbae C, 'The Achilles' heel of police reforms in Kenya', 192.

Saferworld and Usalama Forum commenced a program which ended in 2015 whose aim was to increase service delivery by the police to the citizens.⁷⁰ Saferworld and Usalama is a Kenya-based security sector reforms lobby group with membership from international, national and community level organisations that promotes the inclusion of citizen-centered priorities in ongoing reforms – in the security sector generally and the police sub- sector specifically – through evidence-based policy research and advocacy.⁷¹ This was done through two ways, that is, to help envision the current reforms, and establish the scope of civil societies and the public with the intention of increasing service delivery by the citizens. The objectives set out by this programme included the contribution to the enhancement of professionalism, integrity and accountability in the police sector. This programme stemmed from the reforms that seemed to have a challenge when it came to implementation. This paper agrees with the programme’s objectives, however, there is a gap seen from media reports that “accountability” has not yet fully been implemented but there is gradual positive change in that regard. The programme mainly focused on other major challenges faced in the police sector.⁷²

Omeje and Githigaro in their article⁷³ briefly discuss the history and development of policing. It analyzes the challenges and problems policing has faced during the colonial period.⁷⁴ Notably, it has recognized the improvement the police reformation sector has had since the colonial times to date.⁷⁵ Kenya is seen borrowing some of the methods used in USA and England and Wales as aforementioned. During the colonial period, the Kenya Police Force (KPF) was referred to as a colonial constabulary and it was used to subjugate the colonized native populations.⁷⁶ It was an instrument used by the British to repress, aiming at political dominion and resource extraction.⁷⁷ This was also seen in other African states.⁷⁸ This led to rise of activists of nationalist movements for independence such as the MAUUAU freedom fighters.⁷⁹ The article emphasizes on the greatest but rarely appreciated challenges of Kenyan independence and Africa at large and the need to transform the colonial police force from an

⁷⁰ Saferworld, *Institutionalising police reforms in Kenya: Lessons from 2012-2015*, 8 June 2015, 1.

⁷¹ Saferworld, *Institutionalising police reforms in Kenya: Lessons from 2012-2015*, 1.

⁷² Saferworld, *Institutionalising police reforms in Kenya: Lessons from 2012-2015*, 1.

⁷³ Omeje K, Githigaro J, ‘The Challenges of State Policing in Kenya’ 7 *Peace and Conflict Review* 1, 2012, 64.

⁷⁴ Omeje K, Githigaro J, ‘The Challenges of State Policing in Kenya’, 64.

⁷⁵ Omeje K, Githigaro J, ‘The Challenges of State Policing in Kenya’, 64.

⁷⁶ Omeje K, Githigaro J, ‘The Challenges of State Policing in Kenya’, 65.

⁷⁷ Omeje K, Githigaro J, ‘The Challenges of State Policing in Kenya’, 65.

⁷⁸ Omeje K, Githigaro J, ‘The Challenges of State Policing in Kenya’, 65.

⁷⁹ Omeje K, Githigaro J, ‘The Challenges of State Policing in Kenya’, 64.

anti-people organization to a legitimate police organization driven to protect the life and property of citizens.⁸⁰ New models of governance and security have taken shape in Kenya. This includes the privatization of state security.⁸¹ This emerging security model, which is seen to be a trend in most parts of the world, has been conceptualized as multi-choice policing which means responsible public and private security agencies⁸² provide security and on the other hand militia and vigilante groups⁸³ which form as a response where they feel that Kenya has failed as a state.⁸⁴ This dissertation shall focus on the introduction informal policing methods which include private security institutions solely to assist the KPF in enhancing accountability and transparency in the state.

⁸⁰ Omeje K, Githigaro J, 'The Challenges of State Policing in Kenya', 64.

⁸¹ Omeje K, Githigaro J, 'The Challenges of State Policing in Kenya', 66.

⁸² Omeje K, Githigaro J, 'The Challenges of State Policing in Kenya', 66.

⁸³ Omeje K, Githigaro J, 'The Challenges of State Policing in Kenya', 66.

⁸⁴ Omeje K, Githigaro J, 'The Challenges of State Policing in Kenya', 66.

Chapter Two: Theoretical Framework

2.1 Introduction

This chapter will discuss a theory which is in line with the subsequent findings that are concerned with the research objectives set out in the previous chapter. This theory follows a modern school of thought, grey policing by Bob Hoogenboom⁸⁵ from the Netherlands.

2.2 Grey policing

The theory of grey policing connotes the non-formal means of co-operation between various social control agencies where traditional mechanisms of accountability are outdated.⁸⁶ These traditional methods involve the control of unreasonable use of police powers, exchange of legally protected information and distribution of technological gadgets.⁸⁷ Hoogenboom⁸⁸ posits that the blue uniform in the Western world, to the public, is a clear depiction of police visibility and continues to say that policing is more than the visibility aspect.⁸⁹ This whole idea of visibility is a characteristic of police transparency.⁹⁰ Transparency in a political system involves concepts like accountability, control and limited power over the police.⁹¹ Criminal law and the criminal code (what is known in Kenya as the penal code of 2010⁹²) have been used to shape various forms of policing.⁹³ Additionally, in the local context, the Constitution and other laws together with several commissions and authorities have been used to shape what we have as policing today.⁹⁴ In theory, policing in Western autonomy is influenced and controlled through different political agencies at the state, regional and local levels which is all dependent

⁸⁵ Hoogenboom B, 'Grey Policing: A Theoretical Framework' *Policing and Society* 1991, 17 <http://dx.doi.org/10.1080/10439463.1991.9964629> on 2 November 2019.

⁸⁶ Hoogenboom B, 'Grey Policing: A Theoretical Framework' *Policing and Society* 1991, 17 <http://dx.doi.org/10.1080/10439463.1991.9964629> on 2 November 2019.

⁸⁷ Hoogenboom B, 'Grey Policing: A Theoretical Framework' *Policing and Society* 1991, 17 <http://dx.doi.org/10.1080/10439463.1991.9964629> on 2 November 2019.

⁸⁸ Hoogenboom B, 'Grey Policing: A Theoretical Framework' *Policing and Society* 1991, 17 <http://dx.doi.org/10.1080/10439463.1991.9964629> on 2 November 2019.

⁸⁹ Hoogenboom B, 'Grey Policing: A Theoretical Framework' *Policing and Society* 1991, 18 <http://dx.doi.org/10.1080/10439463.1991.9964629> on 2 November 2019.

⁹⁰ Hoogenboom B, 'Grey Policing: A Theoretical Framework' *Policing and Society* 1991, 18 <http://dx.doi.org/10.1080/10439463.1991.9964629> on 2 November 2019.

⁹¹ Hoogenboom B, 'Grey Policing: A Theoretical Framework' *Policing and Society* 1991, 18 <http://dx.doi.org/10.1080/10439463.1991.9964629> on 2 November 2019.

⁹² *Penal Code* (2010).

⁹³ Hoogenboom B, 'Grey Policing: A Theoretical Framework' *Policing and Society* 1991, 18 <http://dx.doi.org/10.1080/10439463.1991.9964629> on 2 November 2019.

⁹⁴ Hoogenboom B, 'Grey Policing: A Theoretical Framework' *Policing and Society* 1991, 19 <http://dx.doi.org/10.1080/10439463.1991.9964629> on 2 November 2019.

on the structure of the policing system in a country.⁹⁵ Through this, the exercise of policing at those different levels is said to be transparent.⁹⁶ Police accountability and transparency have been seen to be recurrent themes on every political agenda throughout the world.⁹⁷ On the international plane, it is not only under discussion within specific countries but also gives due regard to international police co-operation through agreements and treaties.⁹⁸ In Europe, there is the Schengen Treaty⁹⁹ and Trevi- Agreement.¹⁰⁰ This theory acknowledges the existence of all these forms of regular policing and suggests grey policing to make the regular policing methods more sufficient and improved.¹⁰¹ It also broadens police transparency and accountability from the regular scope and introduces regulatory bodies (social control agencies) and private security to assist in enhancement of those two principles.¹⁰² These two methods are quite informal and their sole purpose is to assist regular policing with the main objective of making the current methods of achieving police accountability and transparency more enforceable and coherent.¹⁰³

Grey policing involves three approaches which are purely hypothetical as stated by the author.¹⁰⁴ Additionally, grey policing involves individuals who act as private detectives for regular police to assist them.¹⁰⁵

2.2.1 Extensive power

Regulatory bodies and private security have extensive administrative and civil powers and Hoogenboom gives an example of a fiscal and economic investigation department who hold a

⁹⁵ Hoogenboom B, 'Grey Policing: A Theoretical Framework' *Policing and Society* 1991, 19 <http://dx.doi.org/10.1080/10439463.1991.9964629> on 2 November 2019.

⁹⁶ Hoogenboom B, 'Grey Policing: A Theoretical Framework' *Policing and Society* 1991, 19 <http://dx.doi.org/10.1080/10439463.1991.9964629> on 2 November 2019.

⁹⁷ Hoogenboom B, 'Grey Policing: A Theoretical Framework' *Policing and Society* 1991, 20 <http://dx.doi.org/10.1080/10439463.1991.9964629> on 2 November 2019.

⁹⁸ Hoogenboom B, 'Grey Policing: A Theoretical Framework' *Policing and Society* 1991, 20 <http://dx.doi.org/10.1080/10439463.1991.9964629> on 2 November 2019.

⁹⁹ *Schengen Agreement*, 20 May 1995, 435 EC.

¹⁰⁰ *Trevi Agreement*, 21 October 1993, 9568/93.

¹⁰¹ Hoogenboom B, 'Grey Policing: A Theoretical Framework' *Policing and Society* 1991, 22 <http://dx.doi.org/10.1080/10439463.1991.9964629> on 2 November 2019.

¹⁰² Hoogenboom B, 'Grey Policing: A Theoretical Framework' *Policing and Society* 1991, 23 <http://dx.doi.org/10.1080/10439463.1991.9964629> on 2 November 2019.

¹⁰³ Hoogenboom B, 'Grey Policing: A Theoretical Framework' *Policing and Society* 1991, 23 <http://dx.doi.org/10.1080/10439463.1991.9964629> on 2 November 2019.

¹⁰⁴ Hoogenboom B, 'Grey Policing: A Theoretical Framework' *Policing and Society* 1991, 23 <http://dx.doi.org/10.1080/10439463.1991.9964629> on 2 November 2019.

¹⁰⁵ Hoogenboom B, 'Grey Policing: A Theoretical Framework' *Policing and Society* 1991, 25 <http://dx.doi.org/10.1080/10439463.1991.9964629> on 2 November 2019.

right to examine under scrutiny accounting figures for private individuals and companies.¹⁰⁶ These powers are strictly limited to registered regulatory bodies.¹⁰⁷ The regular police personnel, to do such a thing, need a court order and power is somewhat limited.¹⁰⁸ These bodies can also search employees and visitors of private property where a regular police man cannot.¹⁰⁹

2.2.2 Multi-agency approach to private policing

This approach has brought different arrangements in which these regulatory bodies join resources and knowledge.¹¹⁰ This favours development and with one instrumental policy objective in mind, this approach is called for because of the high crime rates.¹¹¹ An advantage of this method is an increased emphasis on prevention and encourages community policing where the general public is concerned with prevent crime by police officers and other members of the public.¹¹²

Information collected through grey policing is called grey information.¹¹³ Its sole purpose is to guide in an investigation being carried out by regular police.¹¹⁴ An example is given where a private detective receives information about an insurance company being accused of fraud and grey information will solely determine how regular police will proceed with the investigations.¹¹⁵ To make grey information somewhat legal, a police officer can use it during an interrogation.¹¹⁶

¹⁰⁶ Hoogenboom B, 'Grey Policing: A Theoretical Framework' *Policing and Society* 1991, 25 <http://dx.doi.org/10.1080/10439463.1991.9964629> on 2 November 2019.

¹⁰⁷ Hoogenboom B, 'Grey Policing: A Theoretical Framework' *Policing and Society* 1991, 26 <http://dx.doi.org/10.1080/10439463.1991.9964629> on 2 November 2019.

¹⁰⁸ Hoogenboom B, 'Grey Policing: A Theoretical Framework' *Policing and Society* 1991, 25 <http://dx.doi.org/10.1080/10439463.1991.9964629> on 2 November 2019.

¹⁰⁹ Hoogenboom B, 'Grey Policing: A Theoretical Framework' *Policing and Society* 1991, 24 <http://dx.doi.org/10.1080/10439463.1991.9964629> on 2 November 2019.

¹¹⁰ Hoogenboom B, 'Grey Policing: A Theoretical Framework' *Policing and Society* 1991, 22 <http://dx.doi.org/10.1080/10439463.1991.9964629> on 2 November 2019.

¹¹¹ Hoogenboom B, 'Grey Policing: A Theoretical Framework' *Policing and Society* 1991, 24 <http://dx.doi.org/10.1080/10439463.1991.9964629> on 2 November 2019.

¹¹² Hoogenboom B, 'Grey Policing: A Theoretical Framework' *Policing and Society* 1991, 23 <http://dx.doi.org/10.1080/10439463.1991.9964629> on 2 November 2019.

¹¹³ Hoogenboom B, 'Grey Policing: A Theoretical Framework' *Policing and Society* 1991, 23 <http://dx.doi.org/10.1080/10439463.1991.9964629> on 2 November 2019.

¹¹⁴ Hoogenboom B, 'Grey Policing: A Theoretical Framework' *Policing and Society* 1991, 22 <http://dx.doi.org/10.1080/10439463.1991.9964629> on 2 November 2019.

¹¹⁵ Hoogenboom B, 'Grey Policing: A Theoretical Framework' *Policing and Society* 1991, 24 <http://dx.doi.org/10.1080/10439463.1991.9964629> on 2 November 2019.

¹¹⁶ Hoogenboom B, 'Grey Policing: A Theoretical Framework' *Policing and Society* 1991, 24 <http://dx.doi.org/10.1080/10439463.1991.9964629> on 2 November 2019.

2.3 Limitations under this theory

Since this theory is purely theoretical, the rule of law is in conflict with the objectives of criminal law and commercial interests.¹¹⁷ The right to privacy may also be overstepped. After actual implementation, private security and regulatory bodies have the freedom to choose how and what is the most appropriate course of action to take when it comes to acquisition of grey information. This may create a certain positive or negative prejudice.¹¹⁸ The methods to be used may lack impartiality. Additionally, they may overstep authority, regulations and laws.¹¹⁹ This theory is a mere suggestion to an already established method rather than an attempt to override the rule of law. The actors using these informal methods are meant to understand the balance between respecting the rule of law and carrying out their activities to assist the regular police, bearing in mind that the rule of law is supreme.

2.4 Local policing reality

The relationship between this theory and research topic comes in where Kenya has seen positive gradual changes in the police sector on accountability and transparency. Using this framework, there are tentative solutions to improve the standards of accountability and transparency and make them more efficient.¹²⁰ There are laws amended and formation of relevant commissions and authorities to oversee the notions of accountability and transparency. From the post-election violence (PEV) in 2007, international agencies such as Amnesty International¹²¹ were seen playing an oversight role to check police brutality during that time and commented on their accountability and transparency. However, regarding the grey policing theory, Kenya has not seen regulatory bodies and private security such as G4S¹²² and KK Security¹²³ among others assist the NPS in make more efficient the concepts of accountability and transparency within the regular policing sector. This theory and this paper seek to show

¹¹⁷ Hoogenboom B, 'Grey Policing: A Theoretical Framework' *Policing and Society* 1991, 27 <http://dx.doi.org/10.1080/10439463.1991.9964629> on 2 November 2019.

¹¹⁸ Hoogenboom B, 'Grey Policing: A Theoretical Framework' *Policing and Society* 1991, 28 <http://dx.doi.org/10.1080/10439463.1991.9964629> on 2 November 2019.

¹¹⁹ Hoogenboom B, 'Grey Policing: A Theoretical Framework' *Policing and Society* 1991, 28 <http://dx.doi.org/10.1080/10439463.1991.9964629> on 2 November 2019.

¹²⁰ Hoogenboom B, 'Grey Policing: A Theoretical Framework' *Policing and Society* 1991, 30 <http://dx.doi.org/10.1080/10439463.1991.9964629> on 2 November 2019.

¹²¹ Hoogenboom B, 'Grey Policing: A Theoretical Framework' *Policing and Society* 1991, 30 <http://dx.doi.org/10.1080/10439463.1991.9964629> on 2 November 2019.

¹²² <https://www.g4s.com/en-ke> on 2 November 2019.

¹²³ <https://kksecurity.garda.com> on 2 November 2019.

the importance of introducing grey policing to improve the concepts of accountability and transparency.

2.5 Conclusion

This chapter concludes with Hoogenboom's words,

*“Until now this development has been analyzed within the traditional state framework, in which the state (police, criminal justice system) is exclusively responsible for crime control. Evidently, this framework is no longer sufficient: beside the criminal justice system an ever growing number of social control agencies deal with an increasing amount of deviant behavior. Instead of the classic state-oriented framework it is better to use a continuum of social control: 'a spectrum of 'formal' to 'informal' institutions of rule enforcement, investigation, adjudication and discipline”.*¹²⁴

This exact statement goes to show that recommending these informal methods have a high possibility of helping the present notions of accountability and transparency to make them more efficient.

2.6 Research methodology

This study shall undertake an explanatory qualitative approach and use the Netherlands as logical justification to explain the phenomenon in this study because the Netherlands should recommend a method for the hypothesis. This approach shall primarily use the Constitution, academic journals, news and media reports, case law and reports by specific policing commissions to critically assess and examine the phenomenon in this study. These authorities shall be used to advance the arguments in the study. The study relates to the aforementioned research questions. This design is applicable within the allotted time and resources can be accessed through the internet and hard copy documents.

¹²⁴ Hoogenboom B, 'Grey Policing: A Theoretical Framework' *Policing and Society* 1991, 30 <http://dx.doi.org/10.1080/10439463.1991.9964629> on 2 November 2019.

Chapter Three: Current legal framework of police accountability and transparency

3.1 Introduction

Chapter three shall analyze the current framework in Kenya of police accountability and transparency in the Constitution, Security Laws Amendment Act 2014, National Police Service Act 2011, National Police Service Commission Act 2014, Independent Policing Oversight Authority Act, 2011. It also describes the current situation, which shall be demonstrated through case law and recent media reports.

3.2 Current laws

Looking at Kenya's current laws regarding policing, there is the Constitution¹²⁵ and four other acts¹²⁶ that expound on the principles of accountability and transparency. The Constitution gives an objective to NPS members to enhance these two principles and prevent corruption.¹²⁷ The NPS Act gives powers to the deputy Inspector-General to improve the two principles.¹²⁸ It also allows the DCI to carry out the same function.¹²⁹ Additionally, the County Policing Authority ensures accountability to the citizens.¹³⁰ Community policing together with the NPS members are mandated to improve the two principles through community policing initiatives.¹³¹ The NPS Commission read together with the 2010 Constitution¹³² gives a service standard where accountability and transparency should be improved and upheld.¹³³ This commission has been given powers and steps to take with regard to the principles aforementioned and provide checks and balances when it comes to appointment of NPS members and implement policies and procedures.¹³⁴ The IPOA Act holds NPS accountable to the citizens of Kenya with regard to their performance¹³⁵ and give effect to the proviso of the principles in the 2010 Constitution.¹³⁶ It plays an oversight role providing enough checks to

¹²⁵ Article 244(b), *Constitution of Kenya* (2010).

¹²⁶ *Security Laws Amendment Act 2014, National Police Service Act 2011, National Police Service Commission Act 2014, Independent Policing Oversight Authority Act, 2011.*

¹²⁷ Lumumba P and Franceschi L, *An Introductory Commentary: The Constitution of Kenya*, Strathmore University Press, Nairobi, 2014, 633.

¹²⁸ Section 23(j), *National Police Service Act* (2011).

¹²⁹ Section 34, *National Police Service Act* (2011).

¹³⁰ Section 41, *National Police Service Act* (2011).

¹³¹ Section 41, *National Police Service Act* (2011).

¹³² Article 244(b), *Constitution of Kenya* (2010).

¹³³ Section 12, *National Police Service Commission Act* (2014).

¹³⁴ Section 11, *National Police Service Commission Act* (2014).

¹³⁵ Section 5(a), *Independent Policing Oversight Authority* (2011).

¹³⁶ Section 5(b), *Independent Policing Oversight Authority* (2011).

avoid bias within the service.¹³⁷ The powers vested on this authority include investigating an offence or complaint made against an NPS member and recommend disciplinary action if said person is found guilty.¹³⁸

3.3 Recent policy formation

Several policies have been developed to see through accountability and transparency in policing by various institutions.¹³⁹ These institutions share common values which include integrity, respect, diversity, team work, transparency and accountability.¹⁴⁰

Several objectives have been documented where the aim is to increase scope for internal and external accountability and transparency¹⁴¹ and prevent corruption through developing corruption prevention guidelines and a work plan for NPS, enforcing those guidelines, constant reviewal of the NPS Code of Conduct, launching an SMS platform for reporting corruption cases by NPS officers and other members of the general public.¹⁴²

Policy- making and administrative procedures are essential to enhancing accountability and transparency and with this process constantly continuing, checks and balances are provided to reduce prejudice against the general consensus and also those in authority.

3.4 The present-day regulators of policing

3.4.1 National Police Service Headquarters

This institution has its headquarters in Nairobi¹⁴³ and its main objective is to strengthen sustainable organizational structures regarding the NPS through development, adoption and implementation of regulatory and policy framework.¹⁴⁴ All the steps it has undertaken is to see through accountability and transparency. Since its establishment, this institution has achieved some of its mandates which include the following:

¹³⁷ Section 5(c), *Independent Policing Oversight Authority* (2011).

¹³⁸ Section 6(a), *Independent Policing Oversight Authority* (2011).

¹³⁹ Ministry of Interior and Coordination of National Government, *Revised Police Reforms Program Document 2015-2018*, August 2015, 17.

¹⁴⁰ Ministry of Interior and Coordination of National Government, *Revised Police Reforms Program Document 2015-2018*, August 2015, 17.

¹⁴¹ Ministry of Interior and Coordination of National Government, *Revised Police Reforms Program Document 2015-2018*, August 2015, 19.

¹⁴² Ministry of Interior and Coordination of National Government, *Revised Police Reforms Program Document 2015-2018*, August 2015, 19.

¹⁴³ <http://www.nationalpolice.go.ke/contact-us.html> on 2 November 2019.

¹⁴⁴ Ministry of Interior and Coordination of National Government, *Revised Police Reforms Program Document 2015-2018*, August 2015, 7.

1. Amended several clauses in the NPS Act 2011.¹⁴⁵
2. Structuring of the organization and job designations were established and enforced. The office of the IG has 5 directorates i.e. Police Reforms, Administration, Planning and Finance, Human Capital Development, Operations Audit and Chief of Staff.¹⁴⁶
3. Appointing of County Coordinating Commanders of the NPS¹⁴⁷ under the Security Laws amendment Act¹⁴⁸
4. Developing the NPS strategic plan of 2014–2018.¹⁴⁹
5. Developing a national policy and the Nyumba Kumi Initiative on Community Policing.¹⁵⁰
6. Organizing the County Command structure and appointing Coordinating Commanders in those counties.¹⁵¹

3.4.2 Internal Affairs Unit

This Institution was established in the NPS Act¹⁵² and has the mandate to carry out an audit of the then existing internal accountability mechanisms in NPS, develop a policy with regard to internal affairs, deploy NPS officers and put in place standard operating methods for this institution.¹⁵³ It also works hand in hand with other institutions such as IPOA to foresee accountability and transparency procedures.¹⁵⁴

¹⁴⁵ Ministry of Interior and Coordination of National Government, *Revised Police Reforms Program Document 2015-2018*, August 2015, 7.

¹⁴⁶ Ministry of Interior and Coordination of National Government, *Revised Police Reforms Program Document 2015-2018*, August 2015, 7.

¹⁴⁷ Ministry of Interior and Coordination of National Government, *Revised Police Reforms Program Document 2015-2018*, August 2015, 7.

¹⁴⁸ Section 85, *Security Laws Amendment Act* (2014).

¹⁴⁹ Ministry of Interior and Coordination of National Government, *Revised Police Reforms Program Document 2015-2018*, August 2015, 7.

¹⁵⁰ Ministry of Interior and Coordination of National Government, *Revised Police Reforms Program Document 2015-2018*, August 2015, 8.

¹⁵¹ Ministry of Interior and Coordination of National Government, *Revised Police Reforms Program Document 2015-2018*, August 2015, 8.

¹⁵² Section 87, *National Police Service Act* (2011).

¹⁵³ Ministry of Interior and Coordination of National Government, *Revised Police Reforms Program Document 2015-2018*, August 2015, 8.

¹⁵⁴ Ministry of Interior and Coordination of National Government, *Revised Police Reforms Program Document 2015-2018*, August 2015, 8.

3.4.3 Director of Criminal Investigations

The DCI has been established in the NPS Act¹⁵⁵ and is under the control of the IG. It forms a part of NPS and performs very specific functions, with the aim of enhancing accountability and transparency, such as gathering criminal intelligence, investigating serious crimes, carrying out forensic analysis and coordinating county Interpol affairs amongst other functions.¹⁵⁶

3.4.4 NPS Commission

This Commission is established in the 2010 Constitution¹⁵⁷ and gave effect to a subsequent act¹⁵⁸. The Commission plays supervisory and oversight roles of the NPS.¹⁵⁹ The Commission's mission is to ensure efficient and effective delivery of policing services.¹⁶⁰ Its objectives with relation to accountability and transparency is to set out policies through adopting the NPS Act and manage human capital in NPS.¹⁶¹ This way they are able to monitor policing in Kenya.

3.4.5 Independent Policing Oversight Authority (IPOA)¹⁶²

The IPOA has been operational since 2012¹⁶³ and continues to provide a framework for some of the police reforms institutions with regard to NPS to enhance and support service delivery that is accountable, transparent and professional.¹⁶⁴ This is also reiterated in the Constitution.¹⁶⁵ IPOA developed a Strategic Plan for 2014-2018¹⁶⁶ and have hired enough investigators and

¹⁵⁵ Section 28, *National Police Service Act* (2011).

¹⁵⁶ Ministry of Interior and Coordination of National Government, *Revised Police Reforms Program Document 2015-2018*, August 2015, 9.

¹⁵⁷ Article 246, *Constitution of Kenya* (2010).

¹⁵⁸ *National Police Service Commission Act* (2011).

¹⁵⁹ Ministry of Interior and Coordination of National Government, *Revised Police Reforms Program Document 2015-2018*, August 2015, 10.

¹⁶⁰ Ministry of Interior and Coordination of National Government, *Revised Police Reforms Program Document 2015-2018*, August 2015, 10.

¹⁶¹ Ministry of Interior and Coordination of National Government, *Revised Police Reforms Program Document 2015-2018*, August 2015, 10.

¹⁶² Ministry of Interior and Coordination of National Government, *Revised Police Reforms Program Document 2015-2018*, August 2015, 11.

¹⁶³ Ministry of Interior and Coordination of National Government, *Revised Police Reforms Program Document 2015-2018*, August 2015, 10.

¹⁶⁴ Ministry of Interior and Coordination of National Government, *Revised Police Reforms Program Document 2015-2018*, August 2015, 11.

¹⁶⁵ Article 244 (b), *Constitution of Kenya* (2010).

¹⁶⁶ Ministry of Interior and Coordination of National Government, *Revised Police Reforms Program Document 2015-2018*, August 2015, 11.

complaint management officers and other officers to see through accountability and transparency in policing.¹⁶⁷

3.4.6 Government formulation with regard to police reforms¹⁶⁸

The government invests in police reforms and the national treasury has continually given financial resources to the aforementioned institutions carry out their objectives.¹⁶⁹ As a result, the two principles are enhanced through the actual functioning of NPS with these allocated resources.

3.4.7 Development Partners¹⁷⁰

These key development partners include several governments such as UK, USA, Sweden, Netherlands and Israel and they have invested approximately KSH 1.45 billion¹⁷¹ for police reforms and have channeled some resources through “Basket Fund Arrangement”¹⁷² and they are managed by United Nations Office on Drugs and Crime.¹⁷³

3.4.8 Policy Reforms Steering Committee (PRSC)¹⁷⁴

The Policy Reforms Steering Committee established by the Cabinet Secretary in relation to accountability and transparency carries out a review, monitors and evaluates police activities focusing on delivery outputs.¹⁷⁵

¹⁶⁷ Ministry of Interior and Coordination of National Government, *Revised Police Reforms Program Document 2015-2018*, August 2015, 11.

¹⁶⁸ Ministry of Interior and Coordination of National Government, *Revised Police Reforms Program Document 2015-2018*, August 2015, 11.

¹⁶⁹ Ministry of Interior and Coordination of National Government, *Revised Police Reforms Program Document 2015-2018*, August 2015, 11.

¹⁷⁰ Ministry of Interior and Coordination of National Government, *Revised Police Reforms Program Document 2015-2018*, August 2015, 11.

¹⁷¹ Ministry of Interior and Coordination of National Government, *Revised Police Reforms Program Document 2015-2018*, August 2015, 11.

¹⁷² Ministry of Interior and Coordination of National Government, *Revised Police Reforms Program Document 2015-2018*, August 2015, 11.

¹⁷³ Ministry of Interior and Coordination of National Government, *Revised Police Reforms Program Document 2015-2018*, August 2015, 11.

¹⁷⁴ Ministry of Interior and Coordination of National Government, *Revised Police Reforms Program Document 2015-2018*, August 2015, 33.

¹⁷⁵ Ministry of Interior and Coordination of National Government, *Revised Police Reforms Program Document 2015-2018*, August 2015, 33.

3.4.9 Policy Reforms Governance Committee (PRGC)¹⁷⁶

The Policy Reforms Governance Committee provides tactical oversight and control and meets twice a year. Its terms with regard to accountability and transparency is providing guiding policies and advising on matters strategically.¹⁷⁷

3.5 Historical overview of the accountability principle since police reforms began

Previously, the functions and activities of the police force was interfered with by politics and persons in authority.¹⁷⁸ There lacked a structure to check the powers of several people in positions of power.¹⁷⁹ This was mostly seen during elections.¹⁸⁰ A KHRC report showed that during the elections in 1997, two thousand people were murdered and four hundred thousand displaced.¹⁸¹ During the election in 2002, the police force was involved in politics where the police in Taveta, led by Andrew Ochieng' who was the Commanding Officer at that time, called off a political rally by the opposition and did not give entry to those who were attending that rally.¹⁸² This shows that the use of police force for political agenda had become a culture.¹⁸³ The previous constitution also allowed the President to have absolute control, without checks and balance, over the police force. The President also had the right to hire and fire the Commissioner of Police. Currently, IPOA plays an oversight and supervisory role in ensuring police powers are not misused and human rights are respected.¹⁸⁴ A 2003 newspaper article showed how a former Commissioner, Kamau Ngotho was appointed in President Moi's regime.¹⁸⁵ He received a phone call that summoned him to State House where he was appointed

¹⁷⁶ Ministry of Interior and Coordination of National Government, *Revised Police Reforms Program Document 2015-2018*, August 2015, 33.

¹⁷⁷ Ministry of Interior and Coordination of National Government, *Revised Police Reforms Program Document 2015-2018*, August 2015, 33.

¹⁷⁸ Commonwealth Human Rights Initiative and Kenya Human Rights Commission, *The Police, The People, The Politics: Police Accountability In Kenya*, 2006, 27.

¹⁷⁹ Commonwealth Human Rights Initiative and Kenya Human Rights Commission, *The Police, The People, The Politics: Police Accountability In Kenya*, 2006, 27.

¹⁸⁰ Commonwealth Human Rights Initiative and Kenya Human Rights Commission, *The Police, The People, The Politics: Police Accountability In Kenya*, 2006, 27.

¹⁸¹ Commonwealth Human Rights Initiative and Kenya Human Rights Commission, *The Police, The People, The Politics: Police Accountability In Kenya*, 2006, 27.

¹⁸² Commonwealth Human Rights Initiative and Kenya Human Rights Commission, *The Police, The People, The Politics: Police Accountability In Kenya*, 2006, 27.

¹⁸³ Commonwealth Human Rights Initiative and Kenya Human Rights Commission, *The Police, The People, The Politics: Police Accountability In Kenya*, 2006, 27.

¹⁸⁴ Dzenisevich U, 'Police Accountability is an antidote to police brutality' *The Star*, 20 June 2015 <https://www.the-star.co.ke/siasa/2015-06-20-police-accountability-is-an-antidote-to-police-brutality/> on 22 November 2019.

¹⁸⁵ Commonwealth Human Rights Initiative and Kenya Human Rights Commission, *The Police, The People, The Politics: Police Accountability In Kenya*, 2006, 28.

because the president had confidence in him and had the previous Commissioner was arrested and taken to Kamiti Maximum Prison.¹⁸⁶ In the previous Constitution, the power to declare a state of emergency was upon the President and this showed displacement of the Commissioner of Police powers and can give direct orders to the police force.¹⁸⁷ It also allowed the President to regulate how to preserve public security which was subject to bias. An operation under the Preservation of Public Security Act was to expire after 28 days without approval from the Parliament.¹⁸⁸ This constitutional article¹⁸⁹ was not as useful because the President had the power to issue a new order which brought the Preservation Act into immediate effect if the previous order expires.¹⁹⁰ Additionally, 28 days could not run when Parliament was dissolved and the President had the power to dissolve parliament.¹⁹¹ This showed that the president enjoyed absolute power of the police force.¹⁹² However, there were internal accountability methods and external ones which were not so developed as compared to the policies, laws and regulations put in place.¹⁹³

3.5.1 Internal methods

3.5.1.1 Complaints filed by a Kenyan Citizen.

After these were lodged against an officer by a citizen, the only person who could investigate was the most senior officer available.¹⁹⁴ More often than not, an officer was most likely not to report his/her fellow officer and this became a problem.¹⁹⁵

¹⁸⁶ Commonwealth Human Rights Initiative and Kenya Human Rights Commission, *The Police, The People, The Politics: Police Accountability In Kenya*, 2006, 28.

¹⁸⁷ Commonwealth Human Rights Initiative and Kenya Human Rights Commission, *The Police, The People, The Politics: Police Accountability In Kenya*, 2006, 28.

¹⁸⁸ Commonwealth Human Rights Initiative and Kenya Human Rights Commission, *The Police, The People, The Politics: Police Accountability In Kenya*, 2006, 28.

¹⁸⁹ Commonwealth Human Rights Initiative and Kenya Human Rights Commission, *The Police, The People, The Politics: Police Accountability In Kenya*, 2006, 28.

¹⁹⁰ Commonwealth Human Rights Initiative and Kenya Human Rights Commission, *The Police, The People, The Politics: Police Accountability In Kenya*, 2006, 28.

¹⁹¹ Commonwealth Human Rights Initiative and Kenya Human Rights Commission, *The Police, The People, The Politics: Police Accountability In Kenya*, 2006, 28.

¹⁹² Commonwealth Human Rights Initiative and Kenya Human Rights Commission, *The Police, The People, The Politics: Police Accountability In Kenya*, 2006, 28.

¹⁹³ Commonwealth Human Rights Initiative and Kenya Human Rights Commission, *The Police, The People, The Politics: Police Accountability In Kenya*, 2006, 41.

¹⁹⁴ Commonwealth Human Rights Initiative and Kenya Human Rights Commission, *The Police, The People, The Politics: Police Accountability In Kenya*, 2006, 41.

¹⁹⁵ Commonwealth Human Rights Initiative and Kenya Human Rights Commission, *The Police, The People, The Politics: Police Accountability In Kenya*, 2006, 41.

3.5.1.2 Disciplinary process

Most times, when an officer is convicted of an offence, ranging from absconding duty to sleep to a criminal offence, the expected result, especially for the latter would be discharge from work.¹⁹⁶ But back then, it was not mandatory and as expected, most officers got away with many offences.¹⁹⁷ The senior officers would carry out these proceedings and the juniors, subject to their senior's prejudice, was vulnerable to victimization.¹⁹⁸ Hence this was not an efficient methods as discussed in Chapter 3 where there are laws and institutions that carry out proceedings in a fair manner.

These two methods were not proficient in improving accountability and transparency. There were also external methods that were not efficient.

3.5.2 External methods

3.5.2.1 Parliament of Kenya

During this time, there was a session called question time where MPs would seek answers about the budget allocation of the police force, seek annual reviews from various departments and assess issues in the police sector through a parliamentary committee system.¹⁹⁹ This was not efficient as it would not fully address the problems faced in the force or the relationship between the citizens and regular police.²⁰⁰ This accountability and transparency measure through parliament would only discuss alleged police killings and not delve into the depth of matters.²⁰¹

3.5.2.2 Commissions

These included Public Service Commission, Kenya Anti-Corruption Commission, the Department of Governance and Ethics amongst others.²⁰² All these institutions were meant to

¹⁹⁶Commonwealth Human Rights Initiative and Kenya Human Rights Commission, *The Police, The People, The Politics: Police Accountability In Kenya*, 2006, 43-44.

¹⁹⁷Commonwealth Human Rights Initiative and Kenya Human Rights Commission, *The Police, The People, The Politics: Police Accountability In Kenya*, 2006, 43-44.

¹⁹⁸Commonwealth Human Rights Initiative and Kenya Human Rights Commission, *The Police, The People, The Politics: Police Accountability In Kenya*, 2006, 43-44.

¹⁹⁹Commonwealth Human Rights Initiative and Kenya Human Rights Commission, *The Police, The People, The Politics: Police Accountability In Kenya*, 2006, 46.

²⁰⁰Commonwealth Human Rights Initiative and Kenya Human Rights Commission, *The Police, The People, The Politics: Police Accountability In Kenya*, 2006, 46.

²⁰¹Commonwealth Human Rights Initiative and Kenya Human Rights Commission, *The Police, The People, The Politics: Police Accountability In Kenya*, 2006, 46.

²⁰²Commonwealth Human Rights Initiative and Kenya Human Rights Commission, *The Police, The People, The Politics: Police Accountability In Kenya*, 2006, 48.

be independent commissions however they were completely embedded in the Government and this removes the aspect of independence since there was political interference within them.²⁰³

3.5.2.3 Judiciary

Back then, the Court of Appeal was the most superior court.²⁰⁴ During that time, it is important to note that the judiciary had its own issues on corruption.²⁰⁵ The due process was that if a judge and a magistrate notes down any comment regarding any member of the force, a police prosecutor was to write a report to his/her senior officer to report those remarks made by the judge but there was never evidence of that happening.²⁰⁶ Hence this accountability and transparency measure was inadequate and rigged.

Connoting the above methods, it is seen based on Chapter Three that Kenya has taken tremendous steps to ensure accountability and transparency through formation of relevant institutions and regulating laws and policies.

3.6 Violation of fundamental freedoms and the current situation in Kenya

Even with the progress made, there are still some cases where the police fail to meet accountability and transparency standards. Some of the rights that are seen to be closely violated include right to life²⁰⁷, right to protection of human dignity²⁰⁸ and against physical and mental torture.²⁰⁹

*Law Society of Kenya & 3 others v Attorney General & 3 others*²¹⁰, involved a dispute on the freedom and liberty of citizens.²¹¹ LSK, on behalf of Willie Kimani and two others, filed for an order asking the DCI to produce the bodies of Willie and the other two men.²¹² LSK claimed that there was a plot to hide the truth about the murder of the three men.²¹³ The Court was also

²⁰³Commonwealth Human Rights Initiative and Kenya Human Rights Commission, *The Police, The People, The Politics: Police Accountability In Kenya*, 2006, 48.

²⁰⁴Commonwealth Human Rights Initiative and Kenya Human Rights Commission, *The Police, The People, The Politics: Police Accountability In Kenya*, 2006, 51-52.

²⁰⁵Commonwealth Human Rights Initiative and Kenya Human Rights Commission, *The Police, The People, The Politics: Police Accountability In Kenya*, 2006, 51-52.

²⁰⁶Commonwealth Human Rights Initiative and Kenya Human Rights Commission, *The Police, The People, The Politics: Police Accountability In Kenya*, 2006, 51-52.

²⁰⁷ Article 26, *Constitution of Kenya* (2010).

²⁰⁸ Article 28, *Constitution of Kenya* (2010).

²⁰⁹ Article 25, *Constitution of Kenya* (2010).

²¹⁰ *Law Society of Kenya & 3 others v Attorney General & 3 others* [2016] eKLR.

²¹¹ *Law Society of Kenya & 3 others v Attorney General & 3 others* [2016] eKLR.

²¹² *Law Society of Kenya & 3 others v Attorney General & 3 others* [2016] eKLR.

²¹³ *Law Society of Kenya & 3 others v Attorney General & 3 others* [2016] eKLR.

convinced that there was “a culture of impunity” in the NPS. This case involved the killing of these three men by Administrative Officers (members of the NPS) from a chief’s camp in Syokimau.²¹⁴ They disappeared after Mr Kimani had filed a complaint with regard to corruption against police officers.²¹⁵ Those police officers were eventually charged with three murder counts.²¹⁶ One man was a lawyer, another the lawyer’s client and the other a driver.²¹⁷

Republic v Chief Executive Officer, Independent Policing Oversight Authority & 2 others Ex parte Harish Kanji Patel,²¹⁸ the applicant Mr Kanji Patel was unlawfully threatened by officers from Lang’ata Police Station where the officers forced him to pay a debt he owed Creative Joiners Limited.²¹⁹ He was harassed by these officers where they demanded payment and failure to pay would have resulted in illegal holding.²²⁰ The applicant proceeded to IPOA and sought assistance because the police misused their power and no assistance or response was given.²²¹ The court eventually ordered IPOA to investigate the applicant’s complaint.²²²

From the media, members of the NPS are seen to harass civilians and overstep their power. Officer Wabwire from Huruma Chief’s Camp in 2011 approached Mr. Munywoki who had allegedly parked his handcart on the roadside.²²³ He gave an order to Mr Munywoki to remove the hand cart and he was told that the handcart did not belong to him.²²⁴ The officer slapped him and as people tried to intervene, they were chased by other police officers. Mr Munywoki was taken to the police camp where he was beaten severely with a metal bar.²²⁵ He suffered a broken leg and head injuries.²²⁶ He then reported the matter and 3 witnesses put down their

²¹⁴ *Law Society of Kenya & 3 others v Attorney General & 3 others* [2016] eKLR.

²¹⁵ <https://www.frontlinedefenders.org/en/case/case-history-willie-kimani> on 23 November 2019.

²¹⁶ <https://www.frontlinedefenders.org/en/case/case-history-willie-kimani> on 23 November 2019.

²¹⁷ <https://www.frontlinedefenders.org/en/case/case-history-willie-kimani> on 23 November 2019.

²¹⁸ *Republic v Chief Executive Officer, Independent Policing Oversight Authority & 2 others Ex parte Harish Kanji Patel* (2019) eKLR.

²¹⁹ *Republic v Chief Executive Officer, Independent Policing Oversight Authority & 2 others Ex parte Harish Kanji Patel* (2019) eKLR.

²²⁰ *Republic v Chief Executive Officer, Independent Policing Oversight Authority & 2 others Ex parte Harish Kanji Patel* (2019) eKLR.

²²¹ *Republic v Chief Executive Officer, Independent Policing Oversight Authority & 2 others Ex parte Harish Kanji Patel* (2019) eKLR.

²²² *Republic v Chief Executive Officer, Independent Policing Oversight Authority & 2 others Ex parte Harish Kanji Patel* (2019) eKLR.

²²³ Akello E, ‘Court to decide another case of police brutality’ The Star 31 January 2019 <https://www.the-star.co.ke/news/2019-01-31-court-to-decide-another-case-of-police-brutality/> on 23 November 2019.

²²⁴ Akello E, ‘Court to decide another case of police brutality’ The Star 31 January 2019 <https://www.the-star.co.ke/news/2019-01-31-court-to-decide-another-case-of-police-brutality/> on 23 November 2019.

²²⁵ Akello E, ‘Court to decide another case of police brutality’ The Star 31 January 2019 <https://www.the-star.co.ke/news/2019-01-31-court-to-decide-another-case-of-police-brutality/> on 23 November 2019.

²²⁶ Akello E, ‘Court to decide another case of police brutality’ The Star 31 January 2019 <https://www.the-star.co.ke/news/2019-01-31-court-to-decide-another-case-of-police-brutality/> on 23 November 2019.

statements.²²⁷ The police officer then vanished for three years and he was discharged.²²⁸ He was later found in Busia and charged.²²⁹ Another scene is where the previous Ruaraka police camp boss Nahashon Mutua killed a suspect who was arrested for assaulting his wife and was found guilty.²³⁰

Most recently, a video surfaced on Twitter where police officers were seen beating and assaulting a JKUAT student and this caused an uproar on social media.²³¹ There are numerous and many cases of police brutality and extrajudicial killings over the years showing that police accountability still has a few more steps to go. Although there has been improvement and progress in this sector as mentioned in Chapter three of this paper.

3.7 Introduction of informal policing strategies

This paper seeks to introduce new informal policing methods to solely help members of the NPS and the public. Looking through the theoretical framework in this paper, one method is introducing private security such as KK Security²³², G4S²³³ and SENACA²³⁴, who should act as private investigators to find information that can be used to interrogate a suspect and for investigation. If introduced, the public may also approach these agencies for assistance as an alternative method to the regular policing. The private entities should however respect the rule of law and know that their sole purpose is to assist members of the NPS and the citizens. For example, from the first case mentioned, the Willie Kimani one, a private entity like G4S would look into the matter and would have assisted the DCI to find the bodied and suspects in order to expedite the process. They would also check and balance the powers of the NPS within the public domain. In order to set a certain standard and respect of values, there is a need to draft agreement or contracts that clearly state the terms and conditions and gives a guideline on how regular police may be assisted. That way a balance is created and the rule of law is upheld. This

²²⁷Akello E, 'Court to decide another case of police brutality' The Star 31 January 2019 <https://www.the-star.co.ke/news/2019-01-31-court-to-decide-another-case-of-police-brutality/> on 23 November 2019.

²²⁸Akello E, 'Court to decide another case of police brutality' The Star 31 January 2019 <https://www.the-star.co.ke/news/2019-01-31-court-to-decide-another-case-of-police-brutality/> on 23 November 2019.

²²⁹Akello E, 'Court to decide another case of police brutality' The Star 31 January 2019 <https://www.the-star.co.ke/news/2019-01-31-court-to-decide-another-case-of-police-brutality/> on 23 November 2019.

²³⁰Akello E, 'Court to decide another case of police brutality' The Star 31 January 2019 <https://www.the-star.co.ke/news/2019-01-31-court-to-decide-another-case-of-police-brutality/> on 23 November 2019.

²³¹Muriuki B, 'Four police officers caught beating up JKUAT student interdicted', Citizen Digital, 12 November 2019 <https://citizentv.co.ke/news/four-police-officers-caught-beating-up-jkuat-student-interdicted-293223/> on 22 November 2019.

²³²<https://kksecurity.garda.com> on 2 November 2019.

²³³<https://www.g4s.com/en-ke> on 2 November 2019.

²³⁴<https://senacaworld.com> on 2 November 2019.

also falls in line with regulatory agencies that should be formed to serve the same purpose as private security, and play an oversight and supervisory role for the private security agencies. This also includes expediting certain processes for the satisfaction of the citizens and community at large.

3.8 Conclusion

This legislative framework regarding accountability and transparency has been shaped to the extent they encompass the values²³⁵ that embody the letter and the spirit of the 2010 Constitution.²³⁶ All the policies and procedures put in place show that truly the government of Kenya has taken enough steps to ensure accountability and transparency in the policing sector all over Kenya.

²³⁵ Lumumba P and Franceschi L, *An Introductory Commentary: The Constitution of Kenya*, Strathmore University Press, Nairobi, 2014, 634.

²³⁶ Lumumba P and Franceschi L, *An Introductory Commentary: The Constitution of Kenya*, Strathmore University Press, Nairobi, 2014, 634.

Chapter Four: Informal policing methods in the Netherlands

4.1 Introduction

This Chapter analyzes the informal methods of policing in the Netherlands and how it has worked for them in assisting the regular police. It shall advise on methodology that can be extracted for Kenya in improving efficiency in police accountability and transparency.

4.2 Justification for using the Netherlands for A comparative study with Kenya

Previously in Netherlands and Kenya, elements of accountability such as audits, monitoring, performance measurement and evaluation of police functions were neglected.²³⁷ Over the years, they have consistently shown key elements of an effective accountability system such as legislation which gives regard to international human rights law²³⁸, consideration of public opinion²³⁹, equipment that improves police functions²⁴⁰ and adequate reporting procedures and facilities.²⁴¹ There is a working culture that promotes transparency and evaluation²⁴², having police work being monitored by independent commissions and external organs²⁴³, having complaints reported to an independent body²⁴⁴, having fair procedures when dealing with misconduct which includes disciplinary and criminal codes, adequate investigative capacity and procedures for punishment and appeal procedures.²⁴⁵ All these steps are similar to Kenya as discussed in Chapter three and both countries have shown positive progress working toward improving accountability and transparency over the years. Additionally, informal policing was introduced to assist in the implementation of the above measures in Netherlands and this study recommends the same for Kenya since there is still a gap where members of the NPS still

²³⁷ Vries M, Accountability in the Netherlands: Exemplary in its complexity, 31 *Public Administration Quarterly*, 3/4 ,2007, 480.

²³⁸ United Nations Office on Drugs and Crime, *Handbook on police accountability, oversight and integrity*, 11 English, Publishing and Library Section, United Nations Office Vienna, 2011 iv-v.

²³⁹ United Nations Office on Drugs and Crime, *Handbook on police accountability, oversight and integrity*, 11 English, Publishing and Library Section, United Nations Office Vienna, 2011 iv-v.

²⁴⁰ United Nations Office on Drugs and Crime, *Handbook on police accountability, oversight and integrity*, 11 English, Publishing and Library Section, United Nations Office Vienna, 2011 iv-v.

²⁴¹ United Nations Office on Drugs and Crime, *Handbook on police accountability, oversight and integrity*, 11 English, Publishing and Library Section, United Nations Office Vienna, 2011 iv-v.

²⁴² United Nations Office on Drugs and Crime, *Handbook on police accountability, oversight and integrity*, 11 English, Publishing and Library Section, United Nations Office Vienna, 2011 iv-v.

²⁴³ United Nations Office on Drugs and Crime, *Handbook on police accountability, oversight and integrity*, 11 English, Publishing and Library Section, United Nations Office Vienna, 2011 iv-v.

²⁴⁴ United Nations Office on Drugs and Crime, *Handbook on police accountability, oversight and integrity*, 11 English, Publishing and Library Section, United Nations Office Vienna, 2011 iv-v.

²⁴⁵ United Nations Office on Drugs and Crime, *Handbook on police accountability, oversight and integrity*, 11 English, Publishing and Library Section, United Nations Office Vienna, 2011 iv-v.

violate fundamental human rights and suggest that informal methods of policing (introduction of private security institutions) in Kenya where they assist the regular police to carry their functions in order to improve accountability and transparency. This study also reflects the theoretical framework in Chapter two and the research objectives in Chapter one.

4.3 Private policing in the Netherlands

4.3.1 Introduction

Throughout the world, prevention of crime has been a major agenda requiring a lot of attention.²⁴⁶ In Europe, many countries came to the conclusion that the prevention and control of crime is a duty for the judiciary, regular police force and additionally, the private sector should contribute.²⁴⁷ This has resulted to the expansion and spread of private security specifically in the Netherlands and it is now considered a profession there.²⁴⁸ It being a profession gave rise to duties and responsibilities.²⁴⁹ The top ten private security firms in the Netherlands include International Protection Services²⁵⁰, WePrevent²⁵¹, BSM Better Security Management²⁵², ISG Security²⁵³, Delta Safe Groep²⁵⁴, Landelijke Beveiliging Dienst²⁵⁵,

²⁴⁶ Waard J, 'The private security industry in the Netherlands: Developments and future perspectives' *Security Journal* 1996 2 <https://www.researchgate.net/publication/303862663> on 24 November 2019.

²⁴⁷ Waard J, 'The private security industry in the Netherlands: Developments and future perspectives' *Security Journal* 1996 2 <https://www.researchgate.net/publication/303862663> on 24 November 2019.

²⁴⁸ Waard J, 'The private security industry in the Netherlands: Developments and future perspectives' *Security Journal* 1996 2 <https://www.researchgate.net/publication/303862663> on 24 November 2019.

²⁴⁹ Waard J, 'The private security industry in the Netherlands: Developments and future perspectives' *Security Journal* 1996 2 <https://www.researchgate.net/publication/303862663> on 24 November 2019.

²⁵⁰ https://www.yelp.com/search?cflt=security&find_loc=Amsterdam%2C+Noord-Holland on 2 November 2019.

²⁵¹ https://www.yelp.com/search?cflt=security&find_loc=Amsterdam%2C+Noord-Holland on 2 November 2019.

²⁵² https://www.yelp.com/search?cflt=security&find_loc=Amsterdam%2C+Noord-Holland on 2 November 2019.

²⁵³ https://www.yelp.com/search?cflt=security&find_loc=Amsterdam%2C+Noord-Holland on 2 November 2019.

²⁵⁴ https://www.yelp.com/search?cflt=security&find_loc=Amsterdam%2C+Noord-Holland on 2 November 2019.

²⁵⁵ https://www.yelp.com/search?cflt=security&find_loc=Amsterdam%2C+Noord-Holland on 2 November 2019.

INTERPI²⁵⁶, D&B The Facility Group²⁵⁷, Reaction Security²⁵⁸ and Pro-Intell Security Solutions.²⁵⁹

4.3.2 Background information on private policing in the Netherlands

Briefly looking at history, the fore fathers of the phenomenon of private security was the Nederlandse Veiligheidsdienst (Netherlands Security Service) which was a security firm for night watchmen who would simply check locks at different times of the night in the places they would work in.²⁶⁰ The in-house security services came about in the 1920s.²⁶¹ Previously, prior to World War II, fighting groups by nationalist parties were formed and this brought about requests for the law that prohibited formation of military organizations.²⁶² The observance of peace and order was then considered a function of the government and not that of private institutions.²⁶³ The Law on Military Organizations (LMO) that was enforceable from 11 September 1936 defined a military organization as one that included private persons whose aim would be assisting the armed forces or regular police in maintaining internal and external security for public peace and order.²⁶⁴ This definition was too wide and it also provided for other organizations that the law did not intend to include in this meaning.²⁶⁵ Therefore there was a royal decree that became enforceable in 1938 which gave a list of organizations under

²⁵⁶ https://www.yelp.com/search?cflt=security&find_loc=Amsterdam%2C+Noord-Holland on 2 November 2019.

²⁵⁷ https://www.yelp.com/search?cflt=security&find_loc=Amsterdam%2C+Noord-Holland on 2 November 2019.

²⁵⁸ https://www.yelp.com/search?cflt=security&find_loc=Amsterdam%2C+Noord-Holland on 2 November 2019.

²⁵⁹ https://www.yelp.com/search?cflt=security&find_loc=Amsterdam%2C+Noord-Holland on 2 November 2019.

²⁶⁰ Waard J, 'The private security industry in the Netherlands: Developments and future perspectives' *Security Journal* 1996 2 <https://www.researchgate.net/publication/303862663> on 24 November 2019.

²⁶¹ Waard J, 'The private security industry in the Netherlands: Developments and future perspectives' *Security Journal* 1996 2 <https://www.researchgate.net/publication/303862663> on 24 November 2019.

²⁶² Waard J, 'The private security industry in the Netherlands: Developments and future perspectives' *Security Journal* 1996 2 <https://www.researchgate.net/publication/303862663> on 24 November 2019.

²⁶³ Waard J, 'The private security industry in the Netherlands: Developments and future perspectives' *Security Journal* 1996 2 <https://www.researchgate.net/publication/303862663> on 24 November 2019.

²⁶⁴ Article 1, *Law on Military Organizations* (1936), Waard J, 'The private security industry in the Netherlands: Developments and future perspectives' *Security Journal* 1996 2 <https://www.researchgate.net/publication/303862663> on 24 November 2019.

²⁶⁵ Waard J, 'The private security industry in the Netherlands: Developments and future perspectives' *Security Journal* 1996 2 <https://www.researchgate.net/publication/303862663> on 24 November 2019.

which the prohibition of Article 1 were not applicable.²⁶⁶ PSIs was one of those given an exemption from that prohibition.²⁶⁷

Private Security Institutions (PSIs) were established under a legal framework.²⁶⁸ However, a problem arose where the LMO was used to regulate those organizations in an unsuitable manner.²⁶⁹ Originally, the LMO was intended to prevent the formation of quasi police and military organizations.²⁷⁰ The unsuitability arose where the law was used to regulate policing then.²⁷¹

After World War II, the number of PSIs rose and became prevalent in the Netherlands and other countries in Europe. The reasons for that include the following:

- Regular police focused on the major crimes and due to the rise in crime had to make some cases priorities.²⁷² Some duties such as erection of crush barriers and attendance at events would not be considered real police and this created a market for PSIs.²⁷³
- After World War II, the citizens felt insecure as the police were unable to respond effectively since crime rates such as looting property and murder has increased.²⁷⁴

These two major reasons gave rise to the increase in PSIs and introduced new methods of surveillance and security such as management of central stations, transporting cash and other valuable materials and this meant that functions of PSIs were not marginal.²⁷⁵ The private policing industry has grown rapidly over the years and there was a need to have high standards

²⁶⁶ Waard J, 'The private security industry in the Netherlands: Developments and future perspectives' *Security Journal* 1996 2 <https://www.researchgate.net/publication/303862663> on 24 November 2019.

²⁶⁷ Waard J, 'The private security industry in the Netherlands: Developments and future perspectives' *Security Journal* 1996 2 <https://www.researchgate.net/publication/303862663> on 24 November 2019.

²⁶⁸ Waard J, 'The private security industry in the Netherlands: Developments and future perspectives' *Security Journal* 1996 2 <https://www.researchgate.net/publication/303862663> on 24 November 2019.

²⁶⁹ Waard J, 'The private security industry in the Netherlands: Developments and future perspectives' *Security Journal* 1996 2 <https://www.researchgate.net/publication/303862663> on 24 November 2019.

²⁷⁰ Waard J, 'The private security industry in the Netherlands: Developments and future perspectives' *Security Journal* 1996 2 <https://www.researchgate.net/publication/303862663> on 24 November 2019.

²⁷¹ Waard J, 'The private security industry in the Netherlands: Developments and future perspectives' *Security Journal* 1996 2 <https://www.researchgate.net/publication/303862663> on 24 November 2019.

²⁷² Waard J, 'The private security industry in the Netherlands: Developments and future perspectives' *Security Journal* 1996 2 <https://www.researchgate.net/publication/303862663> on 24 November 2019.

²⁷³ Waard J, 'The private security industry in the Netherlands: Developments and future perspectives' *Security Journal* 1996 2 <https://www.researchgate.net/publication/303862663> on 24 November 2019.

²⁷⁴ Waard J, 'The private security industry in the Netherlands: Developments and future perspectives' *Security Journal* 1996 2 <https://www.researchgate.net/publication/303862663> on 24 November 2019.

²⁷⁵ Waard J, 'The private security industry in the Netherlands: Developments and future perspectives' *Security Journal* 1996 3 <https://www.researchgate.net/publication/303862663> on 24 November 2019.

of professionalism, accountability and transparency.²⁷⁶ Effective legal regulation was needed and it made possible for PSIs to function. Additionally, any undesired or unacceptable trends can be monitored and prevented.²⁷⁷

4.3.3 Developments in the PSIs industry in Netherlands

The private security sector is defined as an organization set up by private persons having as their principal or sole activity the practical preservation of the safety of people and property or the maintenance of public order and peace. The activities may be carried out on behalf of a third party: this is known as "contract security". The activities may also be carried out on behalf of the business itself: this is called "in-house security". Private central stations and firms which transport cash and valuables are also part of this sector. From 1 December 1993 private investigation agencies have to obtain a licence from the Minister of Justice. In 1994, 300 private investigators were officially performing activities in the Netherlands.

As in the case of private security personnel, there is a high risk of private investigators abusing various technical facilities (e.g., listening devices) in order to obtain the information they desire. However, Dutch legislation contains everything possible to prevent such abuse. Another problem is "moonlighting," which means police officers offering their services part-time or on a freelance basis to a third party such as private investigation agencies (but also to private security organizations). This gives rise to a conflict of interests because one has to serve two employers, which might be at the expense of the interests of one or both parties.

Legislation prohibits police officers from entering paid employment or carrying out activities for remuneration for both private investigation agencies and private security organizations."²⁷⁸

4.3.4 Functions of PSIs in the Netherlands

The functions of the police in the Netherlands includes ensuring maintenance of law and order and public peace with regard to competent authority and respect rule of law.²⁷⁹ These two

²⁷⁶ Waard J, 'The private security industry in the Netherlands: Developments and future perspectives' *Security Journal* 1996 3 <https://www.researchgate.net/publication/303862663> on 24 November 2019.

²⁷⁷ Waard J, 'The private security industry in the Netherlands: Developments and future perspectives' *Security Journal* 1996 3 <https://www.researchgate.net/publication/303862663> on 24 November 2019.

²⁷⁸ Waard J, 'The private security industry in the Netherlands: Developments and future perspectives' *Security Journal* 1996 4 <https://www.researchgate.net/publication/303862663> on 24 November 2019.

²⁷⁹ Waard J, 'The private security industry in the Netherlands: Developments and future perspectives' *Security Journal* 1996 3 <https://www.researchgate.net/publication/303862663> on 24 November 2019.

definitions of police functions and PSIs include prevention of crime by the police.²⁸⁰ Under PSIs, crime prevention is a major function and for the regular police, it is one of their functions.²⁸¹ The Dutch Criminal Justice Policy Plan emphasized that crime prevention is for the government and citizens and also people with commercial interests.²⁸² This gives everyone a responsibility to take care of their own property.²⁸³ Most individuals have been seen to hire PSIs to protect their property. Hiring PSIs touches on a supervisory role of the regular police most especially when the intention of surveillance is to prevent invasion externally of a person or a company's security.²⁸⁴ Additionally, PSIs only alert the regular police and provide information on a misconduct.²⁸⁵ Members of PSIs are still civilians and have no police powers especially to arrest and cannot carry firearms.²⁸⁶ PSIs only assist regular police to make efficient their accountability and transparency.²⁸⁷ Functions of PSIs in Netherlands include supervising and protecting of movable and immovable property, guarding of property and surveillance on the public highway, transportation of cash and valuables, protecting of persons (VIP protection), managing and administration of central stations, in-house security and store security, in-house detectives and access control.²⁸⁸ Other functions include attendance at events, custody of prisoners, security of car parks including mega-malls, supervision of apartment blocks by caretakers, messenger and courier services, reception and hall porter services, search officers for example at Schiphol Amsterdam Airport, traffic control, handling alarm and alarm systems and checking incoming and outgoing goods.²⁸⁹

²⁸⁰ Waard J, 'The private security industry in the Netherlands: Developments and future perspectives' *Security Journal* 1996 3 <https://www.researchgate.net/publication/303862663> on 24 November 2019.

²⁸¹ Waard J, 'The private security industry in the Netherlands: Developments and future perspectives' *Security Journal* 1996 3 <https://www.researchgate.net/publication/303862663> on 24 November 2019.

²⁸² Waard J, 'The private security industry in the Netherlands: Developments and future perspectives' *Security Journal* 1996 3 <https://www.researchgate.net/publication/303862663> on 24 November 2019.

²⁸³ Waard J, 'The private security industry in the Netherlands: Developments and future perspectives' *Security Journal* 1996 3 <https://www.researchgate.net/publication/303862663> on 24 November 2019.

²⁸⁴ Waard J, 'The private security industry in the Netherlands: Developments and future perspectives' *Security Journal* 1996 3 <https://www.researchgate.net/publication/303862663> on 24 November 2019.

²⁸⁵ Waard J, 'The private security industry in the Netherlands: Developments and future perspectives' *Security Journal* 1996 3 <https://www.researchgate.net/publication/303862663> on 24 November 2019.

²⁸⁶ Waard J, 'The private security industry in the Netherlands: Developments and future perspectives' *Security Journal* 1996 3 <https://www.researchgate.net/publication/303862663> on 24 November 2019.

²⁸⁷ Waard J, 'The private security industry in the Netherlands: Developments and future perspectives' *Security Journal* 1996 3 <https://www.researchgate.net/publication/303862663> on 24 November 2019.

²⁸⁸ Waard J, 'The private security industry in the Netherlands: Developments and future perspectives' *Security Journal* 1996 3 <https://www.researchgate.net/publication/303862663> on 24 November 2019.

²⁸⁹ Waard J, 'The private security industry in the Netherlands: Developments and future perspectives' *Security Journal* 1996 4 <https://www.researchgate.net/publication/303862663> on 24 November 2019.

These functions are considered to be of lower priority (non-police functions per se) and the scope for PSIs continues to expand.²⁹⁰ This study recommends these functions to the NPS.

4.4 Limitations of the study

As previously pointed out in Chapter Two, some of the limitations in this study is where members of the PSI may possibly overstep their powers and abuse them. They may interfere with the right to privacy. But the Netherlands has enacted laws that give regard to PSIs and control them so as not to overstep their power. The system is functional and the rule of law is upheld by both members of PSIs and regular police. The relationship between those two is solely for assistance to improve accountability and transparency and to maintain law, order and public peace. In the private security regulations act of 2016, it allows co-operation of PSIs with a national security organ.²⁹¹ The IG of the NPS shall call upon a PSI in order to maintain law and order and together with the Cabinet Secretary of the Ministry of Interior and Co-ordination of National Government, they can make regulations generally to provide for any matter relating to cooperation, scope, mechanism and command when working with a selected PSI.²⁹² This provision regulates power and ensures that PSIs do not overstep their power. Their functions from the act include power to arrest²⁹³, carry out a search²⁹⁴, record and temporarily withhold identification documents²⁹⁵ and report a violation of the law.²⁹⁶ Additionally, the powers of the PSIs does not include powers or functions of a member of NPS.²⁹⁷ This study recommends that in order to assist regular police, PSIs should work on a contractual terms of service so as to regulate power which is already done by the law.

4.5 Conclusion

This chapter advises the NPS to adopt private policing similar to the system of policing in the Netherlands. This is in line with the next chapter that will thematically conclude this study and give recommendations to the National Police Service.

²⁹⁰ Waard J, 'The private security industry in the Netherlands: Developments and future perspectives' *Security Journal* 1996 3 <https://www.researchgate.net/publication/303862663> on 24 November 2019.

²⁹¹ Section 45, *Private Security Regulations Act* (2016).

²⁹² Section 45(2), *Private Security Regulations Act* (2016).

²⁹³ Section 46, *Private Security Regulations Act* (2016).

²⁹⁴ Section 47, *Private Security Regulations Act* (2016).

²⁹⁵ Section 48, *Private Security Regulations Act* (2016).

²⁹⁶ Section 49, *Private Security Regulations Act* (2016).

²⁹⁷ Section 50, *Private Security Regulations Act* (2016).

Chapter Five: Conclusions and recommendations

5.1 Conclusions

Police accountability and transparency has seen positive progress over the years in both Kenya and the Netherlands. In Kenya, there has been formulation and implementation of legislation, independent commissions, oversight of police functions by the international community for example Amnesty International, fair policy and procedures have been put in place to monitor complaints made by citizens about members of the NPS. This has in turn improved the notions of accountability and transparency in Kenya as compared to before the 2002 elections where the police were used for political agenda. As this study has shown, despite having the current legal framework in place, as seen through media reports, the NPS still violate fundamental human rights and assault citizens and are still corrupt and take bribes. Looking at the hypothesis of this study, the gap where NPS officers violate rights has been proved. It has also brought to light that regular police do not always take seriously all crimes reported. There is a need to introduce informal methods of policing where private security institutions solely assist police in carrying out their functions and solve even the crimes considered 'small' by the regular police in order to maintain order in the society.

5.2 Recommendations

5.2.1 To the Independent Police Oversight Authority

First, the superiors at the Independent Police Oversight Authority need to recognize that the other officers who work daily on the ground do not take all crimes seriously and do not assist the citizens with crimes they consider 'small'. This lowers their performance indicators and prove to not be fully efficient despite the effort in the continuous implementation of the current legal framework on policing. IPOA can monitor the 'small' cases reported to police station and the response toward those particular crimes. They also have the mandate to hold those police officers who are reckless accountable. This will assist in increasing performance indicators and satisfaction for the community at large.

5.2.2 To the National Police Service (NPS)

Secondly, the National Police Service can incorporate informal methods of policing by having contractual terms of service with recognized and registered private security institutions such as

G4S to assist them in crimes they may consider small and other investigative processes in order to enhance accountability and transparency and restore order in the society. This way, the citizens have other avenues of being assisted by members of those private institutions even when some members of the regular police may violate their rights. The citizens can have informal police monitor their crime cases for them and be assisted to their satisfaction.

5.2.3 To the Government of Kenya

Thirdly, the government of Kenya may continue with the initiatives and programmes which train members of private security institutions and now introduce informal policing to assist regular police. They may fund these programs and ensure that the training given is of a high standard and have a regulatory body that ensures private security institutions do not overstep their power and mandate and monitor their functions.

5.2.4 To the people of Kenya, the government of Kenya, the NPS and independent commissions

Lastly, to continue enhancing the notions of accountability and transparency, the people of Kenya, the government, the National Police Service and the independent commissions and the external organs that play an oversight role for police functions should work together to see through that crime rates reduce and this paper urges the community to accept informal methods of policing as earlier mentioned as a measure to improve and enhance accountability and transparency.

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