

# Kenya at Fifty: State Policing Reforms, Politics, and Law, 1963–2013

*Wycliffe Nyachoti Otiso and Ruth Joyce Kaguta*

## INTRODUCTION

As Kenya transitioned from a colony to an independent government, part of the fundamental issues preceding the full transfer of power was the debate on leadership and the structure of police intelligence. The debate was settled, or so it appeared, when a Cabinet resolution in October 1963 stipulated that the director of intelligence would be replaced by an African before independence (Throup, 1992). However, it was Prime Minister Kenyatta's decision not to implement the Africanization of the command of police intelligence despite the Cabinet decision. Kenyatta had come to trust the existing police structure owing to the critical role played by the Special Branch during the *shifita* incursions in Northern Kenya (Throup, 1992). Continuities from colonial government into the Kenyatta government were not only reflected in the leadership but they transcended the institution of the police as a whole. Africanization of the leadership of the police would not take place until 1965 when Commissioner Catling retired but even then no comprehensive reform of the policing system was undertaken to meet the aspirations of the majority of African population.<sup>1</sup> The independence government inherited a police force from the former colonial government comprising the same structure and composition and to a large extent the same objectives and modus operandi, namely to protect the interest of the administration. The interests of the colonialists were perpetuated through the independent government as power was transferred from the colonial elite to the

new African elite (Branch, 2009). Grave as it may appear, objectives of state policing were not without judicial and parliamentary support, statutory and even constitutional basis. Any review or reform of law and policy was geared toward strengthening monopoly of police powers and centralizing and consolidating authority under the executive rather than seeking to serve the citizen's interest. There was emphasis on the precedence of preserve of public order and security over the fundamental freedoms and individual rights of the citizen. Police forces under successive governments were anything but legitimate instead they were used to maintain political incumbency and expediency. There were continuities in policing objectives in the formative years of the Moi government. After the 1982 coup attempt, political repression became prevalent where the police were agents for quelling any perceived threats to the stability of the administration. In the period up to 1991 when the constitution was repealed to pave way for multiparty democracy, legal and policy developments relating to public order regulation were aimed at rationalizing suppression of political opposition. The first tenure of the Moi government in the multiparty democracy era did not usher in comprehensive constitutional reform, which would have cascaded to the reform of the police. Constitutional and statutory reform was minimalist with piecemeal revisions mainly relating to the electoral process owing to concessions to opposition and civil society pressure. The Kibaki administration may be credited with setting the roadmap for substantive police reform though such credit is largely attributed to the reforms tied to the promulgation of the new constitution in 2010. Even though initiatives were potentially more progressive than the Moi government, looking back to the period before August 2010, the reform agenda lacked the necessary legal foundation and reform initiatives were driven by the police institution itself rather than its principal. The post-constitutional reform agenda for the police is replete with prospects for a democratized police service that would cater to citizen's interests.

We begin the chapter by evaluating different concepts on policing, their characteristics, scope, and the extent to which they apply to the Kenya police. The next section of the chapter contextualizes the need for reforming the police. We provide a background on the failures of the police force and the nature of regime policing characterized by repression, lack of accountability, and transparency. We then examine respective reforms undertaken during the tenure of governments since independence, namely: Kenyatta government (1963–78); Moi (1978–2002); Kibaki (2003–13). The reform initiatives of the Jubilee government (2013–present) and its implementation record

on ongoing reforms are also reviewed. We argue that the reforms undertaken by the successive government were inspired by political expediency aimed at strengthening the regime rather than serving the interests of its citizens. We draw attention to the challenges to the reform agenda, the milestones achieved, and evaluate the prospects of new initiatives such as Nyumba Kumi toward realization of democratic policing. We argue that strict adherence to the provisions in the new constitution and the legislation enacted to implement it provide an opportunity for the transition from regime policing to democratic policing in which service to citizens is paramount.

### CONCEPTS OF POLICING

Academic attention has focused on the study of police as an institution, its operation, efficiency, accountability, and state of reforms in Kenya. Inquiry into transparency in the police force has also attracted considerable attention ostensibly due to its low ranking compared to other state institutions. Few studies have focused on situating the police within (or alongside) the study of policing or its various paradigms. The past two decades has witnessed a growth of academic focus on non-state policing largely attributable to: the effects of community policing (Ruteere and Pommerolle, 2003); robust commercial private security sector; and the proliferation of *informal* policing groups including neighborhood watches and vigilante groups (Anderson, 2002). Such studies have sought to establish the existence of non-state polices, their excesses, deficits in legitimacy, monopoly over force (Mamdani, 1996), and overall as alternative forces to state police. Fewer still have sought to examine evolving police reforms (Kivoi and Mbae, 2013), and their changing objectives as a dynamic linked to a marked shift in the policing paradigm catalyzed by several legal, policy, and societal developments. It is not to say that this chapter provides the conclusive direction on the study of police and policing. Scholarly attention may have been determined by the research agenda, emerging issues, and events at a particular time.

The theme and timing of this book provides an opportune moment for examination of the evolution of police reforms, analysis of applicable paradigm shifts, and an evaluation of successes, challenges, and prospects. The object of this study is significant as it moves beyond establishing the existence of non-state policing, categorization of phenomena between formal and informal policing, elaborating on the failures of state police, and the resultant emergence of militia and vigilante. It goes further to highlight measures aimed at reshaping the

police, restoring its legitimacy, increasing citizen participation in institutionalization of the police, and ultimately minimizing contestation of the policing arena between the police and self-policing by society.

Scholars of policing have provided diverse meanings of the term. The lack of consensus about the meaning of policing is not for want of scholarly enterprise in the area (to the contrary, it contributes to a rich accumulation of knowledge in the field), rather the nature of policing is contingent upon different political and socioeconomic contexts applicable in a given state or political regime. In a study about policing in Africa, one such definition refers to policing as “any organised activity, whether by the state or non-state groups that seeks to ensure the maintenance of communal order, security and peace through elements of prevention, deterrence, investigation of breaches, and punishment” (Baker, 2008). The recognition of both state and non-state policing is essential to the study of policing in Africa because of the reality of proliferation of self-policing groups and their role in shaping societal norms and maintaining law and order. The mode of policing in each political system is informed by a specific paradigm that defines the objectives and purpose of enforcement of public order and security. Scholars have categorized state policing policies into different policing paradigms.

Neo-feudalism policing advocates for a clear distinction between state police and private policing, where state police have dominant use of force for preserving order, while private policing represents commercial security charged with enforcement of rules in privileged private spaces, which exclude the larger public. Multilateral policing is practiced where both state and non-state actors participate in policing of public order and their roles often overlap. In such systems both actors use coercion to maintain societal order. Plural networked policing constitutes a partnership of security providers comprising the state and non-state institutions that form a network. It is understood as a network of state and private agencies that regulates societal order. The security governance paradigm distinguishes the historical understanding of police as the primary enforcement institution and legitimate user of force. It points out that there are other aspects of policing beyond punishment including problem solving, remedial, and restorative justice. Security governance theorists minimize the role of actors and the specific mode of enforcement, instead they define policing as “the application of any means that will promote safe and secure places in which people live and work” (Baker, 2008). Clapham advances the universality of the private policing paradigm, where policing is established to facilitate the ruling elite to protect their wealth and power.

He argues that this occurs in political systems where there is no fully developed public system of security as the police does not serve all its citizens and is not accountable to them. The paradigm states that in Africa, there is no division between public and private actors because all security is self-serving and is private to the extent that it is meant to protect the private interests of individuals rather than the interests of all the citizens.

Multichoice policing is an approach that focuses on the perspective and experience of the citizen. For the citizen, policing is not merely diverse or private it is a complex pattern of overlapping agencies where the citizen makes a choice of the security provider to use based on pragmatic considerations (like cost and availability). It is a scenario where no institution (public or private) has a monopoly over security or coercive methods, nor can one institution impose its law over other institutions to the extent that overlapping does not necessarily amount to cooperation or partnership, mostly it ends up in territorial competition for policing certain spaces they believe belong to them (Baker, 2008). The multichoice policing paradigm resonates well with a broader human security approach that departs from traditional approaches to analysis of security with the primary reference of the state (Thomas and Wilkins, 1999). The human security approach gives privilege to the citizens as the primary reference, that is, to examine security from the individual's point of view rather than from the state's. Other studies have also sought to classify policing systems into broader paradigms namely democratic policing and regime policing. While each of the paradigms to an extent describes certain aspects of the Kenya policing system, the scope of analysis in this chapter seeks to evaluate the Kenya Police through contrasting broader paradigms of regime policing and democratic policing, which we consider encompass the elements of state policing reforms examined from 1963 to 2013.

Democratic policing is a system of policing that is accountable to the law and structures of the community, transparent in its activities, representative of the community it serves, prioritizes protection of the safety and human rights of individuals (and not the state), and provides professional services (Commonwealth Human Rights Initiative (CHRI), 2006). Democratic policing is contrasted with *regime policing*, which is aimed at protecting government rather than citizens with a focus on maintenance of law and order with no regard for protection of human rights. Under regime policing, police are accountable to the regime rather than the law and the community. Police represent interests of the dominant group (elite) and have no connection with

the community, often being required to stay outside the community. The police in Kenya have for long applied regime policing despite the rhetoric that democratic policing is the most appropriate and beneficial form of policing. While strict adherence and implementation of the tenets of democratic policing will result in a more accountable and responsive police force, the slow pace of reforms and attendant lack of goodwill have inhibited the realization of the desired transition from regime policing.

## CONTEXT

In addressing the milestones, challenges, and prospects of police reform, the chapter seeks to trace the mode of policing in different historical periods from independence to date as implemented by different political regimes. The examination of policing and reform agenda is set against their historical and politico-legal contexts to demonstrate the shift in nature and method of policing. Contextualization of regimes is important as it enquires into the underlying factors that may have led to the nature of policing and suggested reforms at the time. For instance, we observe that policing during the Kenyatta era was influenced by the policies, laws, and political conditions prevalent during colonial rule. The analysis employs historical approaches to law and politics in particular. To understand the politics of reform, it is imperative to examine the evolution of reform to enable us to understand its current nature, form, and content.

The problems that bedeviled the police cannot be overstated. Unlawful, repressive, and irregular acts of police with official sanction constituted a significant part of the undemocratic nature of the Kenyatta and Moi governments. Even the advent of multiparty democracy and the subsequent Kibaki regime up to 2010 did little to deter the police from perpetuating the policy of political repression at the behest of the executive. Yet, it is vital to set the contextual background for the need for police reforms by outlining the activities that have resulted in dismal perceptions by the public thus necessitating the overhaul of the police.

### *The Need for Reform*

#### *Transparency*

The police has greatly featured in corruption surveys and largely dominated the rankings as the most corrupt institution. In a study carried out in 2002, results showed that on average each Kenyan citizen

interviewed had bribed the police at least four times a month and the cost of the bribe was an average of US\$16 per month. The respondents' interactions with the police ended up with them parting with a bribe 95 percent of the time (Baker, 2008). As late as 2012 the police still ranked as the most corrupt state institution. The likelihood of bribery of the police stood at 60 percent according to the East African Bribery Index survey (Kivoi and Mbae, 2013).

#### *Unlawful Use of Force*

The police have a long history in the disproportionate use of force against its citizens and politicians that has led to many deaths. Indeed, the police have been implicated in several political and criminal assassinations and cover-ups. During the Kenyatta regime, a vocal critic of his government, J. M. Kariuki, was picked by the police and days later found dead: his body was dumped in a thicket in Kajjado. Where use of force has not led to death, police have been involved in torturing and maiming civilians. Under the Moi administration, the police maintained a special secret place for torture of political prisoners at the Nyayo House in Nairobi. In 2003, the Independent Medico Legal Unit (IMLU) reported 358 cases of torture. The police under the Kibaki administration were found complicit in failing to prevent and manage the postelection violence that broke out after the 2007 elections and they were found culpable in the use of excessive force against civilians. For instance, television footage showed a police officer shooting an unarmed civilian. The police officer was charged with murder but was later set free for lack of evidence. In 2009, the Special Rapporteur to the United Nations, Philip Alston, revealed that police had been responsible for extrajudicial killings (United Nations, 2009). Though at the time, the Alston Report was vehemently criticized by the government, in 2012, the government report submitted to the United Nations Human Rights Committee admitted that the problem of extrajudicial killing remained a great security challenge in Kenya (Kivoi and Mbae, 2013).

## NATURE OF POLICING AND REFORM

### *Colonial Policing, 1887–1963*

The genesis of Kenya Police is in 1887 when the East Africa Trading Company<sup>2</sup> operated in the region as a vehicle to expand British interests. The company recruited Indian police and watchmen in 1887, to provide security for its stores and premises. Prior to 1920,

the police operated as “an armed wing of the administration made up of recruits commonly drawn from a military background, often deployed in punitive expeditions or other sorties against local recalcitrant peoples” (Anderson, 1992). In 1920 the police attempted to shed their militaristic image in favor of an institution that would gain public acceptance from both Africans and European settlers. The Kenya Police was established as a professional civilian outfit. African officers were recruited for the first time; however, Africans were eligible only for the lowest ranks subordinate to European and Asian officers (CHRI, 2006). Police stations were established throughout the country. Stations were set up in Nakuru, Eldoret, and Kisumu, which were strategic areas near White Highlands and the railway (Anderson, 1992). The first police station was established in Mombasa in 1900, the headquarters was then moved to Nairobi in 1902

Attempts made by police between 1920 and 1940 to implement civilian policing were diminished by the colonial administration’s prioritization of the protection of European persons and their property to the exclusion of the majority of African population. Deployment of police was concentrated in the White Highlands and urban centers where they owned property and the race of the victim formed the base of culpability for crime (Anderson, 1992). In the 1940s professionalization of the police remained as rhetoric of the senior police officer. In reality the police force performed poorly in crime control and was increasingly involved in political policing in response to the proliferation of political activity at the time (Anderson, 1992). The robust political mobilization of citizens by Mau Mau necessitated colonial authorities to extend police presence in the Reserves, which had been hitherto policed by the Chiefs and Tribal Police under the Indirect Rule system. In 1940, the Police Act was amended to increase the number of police in the Reserves and to introduce the deployment of European officers to the reserves. The police became agents for enforcing unpopular policies and laws of the colonial administration (Throup, 1992). The police pursued a European political agenda by enforcing laws restricting the movement of poor Africans who had migrated to urban areas in search of work after they had been dispossessed of their land (Throup, 1992). Laws like the Vagrancy Amendment Act of 1949 empowered the police to deport anyone who failed to secure permanent employment after three months’ residence in Nairobi. The Voluntarily Unemployed Persons (Provision of Employment) Ordinance empowered the police to arrest and deport to the Reserves anyone suspected of being unemployed or a



vagrant. These laws were enforced in order to restrict the presence of Africans in urban areas by curtailing their movement (Throup, 1992). Between 1950 and 1952 the police underwent major reforms initiated by Commission O'Rorke. The reforms focused on improving training, strengthening the Criminal Investigations Department (CID), and revision of the curriculum to provide for intellectual and experiential training at the Police Training school in Nyeri (Throup, 1992).

The commencement of the state of emergency on October 20, 1952, completely changed the dynamics of policing in colonial Kenya. The O'Rorke reforms were intended to improve colonial policing standards and the capacity to deal with crime. However, the colonial administration redirected the police toward policing prevailing political activities of the Mau Mau. As Throup (1992) observes, "By the end of 1952, the political situation in the Colony had propelled the police back into the paramilitary role that had characterised an earlier phase of colonial policing." The nature of policing relapsed from professional policing to regime policing. Areas affected by Mau Mau were heavily policed. For example, where there had existed four police stations, twenty-seven police stations were set up within two months. By December 1953 the police force had grown more than twofold from 7,000 to 15,000 police officers. The transition to civilian policing started in 1950–52; the reform period did not take place as expected even with the cessation of emergency military operations in November 1956. The gradual relinquishing of representative democracy through the 1957 Legislative Council elections served to expand the political participation of the majority African population. The police force, nevertheless, was not subjected to comprehensive reforms to accord to prevailing political developments and the new political order. The police force at independence lacked sufficient bureaucratic structures and properly trained personnel. For long African officers worked in junior positions and with the impending independence they were expected to take leadership positions and command the force. The rushed process of transfer of power from colonial authorities to the independence government affected the police structure as there was insufficient time for training. Hence the reform process of professionalization was incomplete due to the disruption of the emergency period. The police force at independence was competent in policing politics and suppressing perceived threats to incumbent establishments. Such competence was useful to Kenyatta government as it served his government's political expediencies.

### *Kenyatta and Independence Policing, 1963–78*

Adopting the assumption that reforms relate to positive changes, it is fair to say that there were minimal structured reforms during the Kenyatta and Moi eras. Any changes to the police force were not aimed at enhancing accountability, transparency, or subjecting their powers to the rule of law or the constitution. Changes were aimed at consolidating political power and empowering the police with wide and robust mandates. Reforms to the political system that had a direct effect on the institutional structure of the police were made through constitutional and legislative amendments. The formalistic interpretation of statutory police powers by the judiciary supported the executive's objectives (Ghai and Mc Auslan, 2001). State policing under the Kenyatta administration was characterized by weakening of regional governments and centralization of state policing.

### *State Centralization of Policing*

At independence, Kenya adopted a federal system of government with the country divided into seven regions, each with its own legislative and executive powers as set out in chapter five of the self-government constitution (Ghai and Mc Auslan, 2001). In the subsequent independence constitution, the powers of the state were divided between the central government and regional governments. It was based on the parliamentary system and protection of minorities through representation by regional governments (Ghai and Mc Auslan, 2001). The central government was bound to seek the approval of regional governments on important matters of governance including decisions concerning the police. The first amendment to the constitution targeted the weakening of the federal system of government. Because regional governments exercised powers over the police, these powers were stripped as a result of the amendment and effectively police was restored to the central government. The effect of weakening of *majimbo* system and ultimate abolition was the centralization of policing at the expense of service to citizens at the grass-root level.

The Kenyatta government retained several oppressive laws that were used by the colonial administration to protect the interests of the settlers by restricting the free movement of Africans especially in urban areas. For instance, the scope of the Vagrancy Act gave the government wide powers in limiting the right of liberty and freedom of movement of any person. The police were charged with enforcing this law and any challenges to the validity of the law were defeated by

the courts' narrow interpretation in favor of the state and to the detriment of individual rights. For instance in the case of *Kioko v. Attorney General* the court upheld the Vagrancy Act at the expense of the freedom of movement. The Vagrancy Act emanated from Vagrancy Regulations No. 2 of 1898, which sanctioned the arrest and detention of any person found loitering without employment or any means of subsistence. The Vagrancy Regulations were later amended in 1900 and adopted by the Kenyatta government as the Vagrancy Act.

Under the Outlying District Ordinance Act, the commissioner could declare districts closed with the power to restrict movement of nonresidents from entering into the closed district. The Act also gave wide powers to the commissioner in issuance and revocation of licences. Section 7(2) provides that a "licencee who failed to comply with the terms of his licence was liable to have his building or crops seized or disposed of as considered fit by the District Commissioner" (Ghai and Mc Auslan, 2001). As late as 1967, four years into the Kenyatta administration, the parliament was informed that there were nineteen districts that had remained wholly or partly closed since the declaration of emergency in 1952 (Ghai and Mc Auslan, 2001).

### *Moi Government, 1978–2002*

Similar to the Kenyatta government, political reforms undertaken during the Moi era had a bearing on the regulation of public order and were aimed at the concentration of power at the center rather than the democratization of governance. Policing was characterized by human rights violations where the police enforced repressive practices like detention without trial political activists (Ghai and Mc Auslan, 2001). Further, the Moi government adopted an approach similar to Kenyatta's by retaining significant aspects of colonial laws aimed at curtailing individual rights and fundamental freedoms. Continuities were manifested by the retention of repressive provisions of law contained in the Vagrancy Act, Preservation of Public Security Act, and the Outlying Districts Act. Changes in the government system in the *post-coup era* were geared to place a firm grip on power, security, and public order regulation. The repeal of Section 2A of the old constitution in 1982 is only one example of fundamental change in the governance structure. The Police Act enacted in 1961 was revised in 1988. The aim of revision was an amendment of the Police Act to include Police Regulations (Ghai and Mc Auslan, 2001). None of the revisions were aimed at transforming the police into a democratic institution to serve the people.

Nevertheless, the last decade of the Moi administration witnessed minimal reversals on constitutional and legislative provisions that had been used to justify repression, gagging of the media, limiting the freedom of expression, curtailing the independence of the judiciary and the office of the attorney general. In 1998, the Preservation of Public Security Act, the Vagrancy Act, and the Outlying Districts Act were repealed. The power to detain persons without trial for political reasons was removed from the Preservation of Public Security Act. The offence of sedition, which had been used to target opposition politicians and media was repealed from the Penal Code. The constitution was also amended to restore the independence of the attorney general and nominal independence of the judiciary during this period.

### *Kibaki Government, 2003–10*

A number of reform initiatives were launched by the Kibaki government prior to the promulgation of the constitution. Even though laudable, the reform initiatives in the early years of Kibaki's tenure had no constitutional or legal backing and were therefore not enforceable. The initiatives were ad hoc and emanated from within the police itself, like the 2003 Strategic Plan and from semi-autonomous ministerial programs like the Governance Justice Law and Order Sector program.

The Governance Justice Law and Order Sector (GJLOS) program was a sector wide approach to security sector governance and reform. It brought together thirty-three state institutions in the sector with the aim of coordinating activities aimed at improving service delivery and peer review under one body (GJLOS, 2005). The GJLOS programme was housed under the then Ministry of Justice and Constitutional Affairs. The activities of GJLOS thematic group on security were aimed at improving accountability, anti-corruption, sensitization, promotion of proactive policing, better training for police officers, and provision of better training and technical assistance to improve efficiency in intelligence and investigation of crime (CHRI, 2006).

In accordance with the GJLOS program each of the state institutions was required to implement their reforms through a strategic plan. With regard to security reforms, the police developed the Kenya Police Strategic Plan, 2003–07. The objectives included establishing a Police Service Commission, formulating a national policy on policing, and modernizing of the police as key priority areas. The Commission was to be mandated with an oversight role to monitor police performance

and investigate misconduct. The police was to be modernized through the acquisition of vehicles, modern communication equipment and weapons, and use of Information and Communications Technology. Little was achieved in terms of implementation. No commission was established within the relevant period and there was no formulation of a national policing policy. The reform proposals in the strategic plan were positive and progressive. Indeed most of the proposals are replicated in the current reform agenda contained in the provisions of the National Police Service Act, National Police Service Commission Act, and the Independent Policing Oversight Authority. However, inadequate budgetary support meant that modernization plans failed in acquisition of necessary material to improve its operational efficiency.

### *Kibaki Administration Constitutional Reform, 2010–13*

The single most significant contributor to policing reform since independence has been the new constitution promulgated in August 2010. The constitution lays the roadmap for improving the face and the perception of the police and it lays the roadmap for transforming the regulation of public order from regime policing to democratic policing. The constitution stipulates a number of enabling Acts that need to be enacted to implement specific Articles (Odhiambo, 2011). The enabling Acts provide in detail the procedures, process, and practice of the day-to-day workings of the new Kenya Police Service (KPS). In sum, the constitutional and legislative requirements for police reform not only provide the direction that reform will take and democratize policing, they provide much needed legal protection of the reform agenda that was lacking in previous governments. As the main reform areas are attributed to the passing of the constitution, it is important to examine the extent to which the transition to democratic policing has been realized by evaluating the extent to which the reforms have been implemented.

Article 239 (1) establishes the National Police Service (NPS) as a national security organ alongside the Kenya Defence Forces and the National Intelligence Service. In tandem with democratic policing, Article 239 (2) prohibits the police from partisanship, advancing political interests, and prejudice of legitimate causes recognized under the constitution. Enforcement of national security is to be exercised in line with guiding principles stated in Article 238 (2). National security is subject to the authority of the constitution and parliament, the rule of law, democracy, human rights, and fundamental freedoms. Performance of national security functions must respect the diverse

culture of communities and recruitment of officers must reflect the diversity of the Kenyan people. Article 239 (5) of the constitution also provides that national security organs are subordinate to civilian authority. Article 239 (6), requires the enactment of substantive enabling legislation providing for establishment and regulation of the NPS, the National Police Service Commission (NPSC), and the Independent Policing Oversight Authority.

Broadly, the National Police Service Act 2011 regulates the administration, functions, and powers of the IG and the DIGs, the KPS, the Administration Police Service (APS), and the Directorate of Criminal Investigations. It gives the police a robust mandate, strengthens internal accountability, and attempts to curtail interference in police operations. The Act also provides for independent funding of the police service, with the intention of enhancing the management and quality of its investigations. It describes the powers of the police and requires all serving police officers to be vetted for integrity and competence to determine their suitability to continue in the service. It also places limits on the use of force and firearms, arrest, and detention by providing clear instructions for its use, and outlines the management's responsibilities when using these police powers. The Act diversifies the means of accountability by establishing clear command structures and responsibilities among the Police, Administration Police, and Director of Criminal Investigation. An Internal Affairs Unit also provides an internal accountability mechanism as it receives and investigates complaints about police misconduct. It reports directly to the IG and provides for civilian oversight at county level through the County Policing Authorities.

The National Police Service Commission Act establishes an independent commission responsible for overseeing the appointments, promotions, and transfers of police officers, to address corruption in recruitment and career management, and also disciplinary matters. Its main powers include: independent recruitment and appointment, promotions and transfers of members of the NPS, oversight of the disciplinary process and removal of members from the NPS, oversight of police training to enhance the capacity of police officers to deliver high quality services with respect to human rights, and vetting of all current members of the NPS.

The Independent Policing Oversight Act 2011 establishes and stipulates the objectives, functions, and powers of the Independent Policing Oversight Authority (IPOA). This marks a significant step toward promoting accountability and democratization of the police and enhancing access to justice by creating an independent civilian

oversight body over the NPS. Its investigative mandate includes inquiry into: policing operations; allegations of police misconduct; human rights violations; any death or serious injury suspected to have been caused by a member of the police; and to prevent excessive use of force and extrajudicial executions for which the police have been commonly implicated. IPOA is also charged with the responsibility of inspecting police premises; promoting police accountability to the public, and providing an independent oversight of complaints handled by the police.

## MILESTONES

### *Strengthened Constitutional and Legislative Framework*

The promulgation of the constitution in 2010 itself marked an important chapter in the history of police reforms. Entrenchment of the the police service in the constitution ensured that the intended overhaul of the policing system would be infused with legitimacy, transparency, and accountability to the law. It also ensured that the reform process would be safeguarded through the doctrine of supremacy of the constitution. The police institution would no longer be subject to the whims of the executive but would be accountable to the constitution, the law, and its citizens. The National Police Service Act, The National Police Service Commission Act, and the Independent Oversight Authority Act were enacted in accordance with the above stated constitutional requirements. Though the Fifth Schedule to the constitution allowed two years for the enactment of new laws governing the NPS, the government prioritized these laws and had them in place by August 27, 2011, within one year of the promulgation of the constitution.

### *Efficiency of the Joint Command and Independence of the Inspector General*

The National Police Service Act 2011 places the KPS and the APS jointly under the command of the inspector general of Police (IG). The previous structure where the two institutions were under different commands had occasioned unnecessary turf wars that resulted in security lapses. The APS and KPS are each headed by a deputy inspector general (DIG) who report to the IG. The constitution gives the IG security of tenure for four years, and clearly stipulates the grounds of his/her removal from office. In a significant departure from past

practice, the constitution gives the IG operational independence, outlawing political interference in police investigations and enforcement against particular person(s). Article 25 of the constitution stipulates that the cabinet secretary for Internal Security can only give directions to the police on policy issues and such directives must be in writing. The NPSC is established as an independent commission by the constitution. The rationale for the establishment of the NPSC is to inhibit political interference in police personnel management practices. It is responsible for recruitment, promotions, transfers, and disciplinary sanctions of the police. Significantly, the interviews for the IG and DIGs were all held in public, which was an important milestone since such positions were previously political appointees of the president.

### *Accountability*

Advances made in relation to police accountability are evident in the post-constitutional period. Key amongst the accountability mechanisms infused in police service is the provision on the requirement for vetting of police officers. The criteria and vetting tools were formulated in accordance with Section 7(2) of the National Police Service Act 2011. Although initially it met with resistance from senior officers within the service, the first phase of the vetting exercise commenced in December 2013. The rationale behind vetting enables public scrutiny of senior police officers charged with the responsibility of providing leadership to the service of citizens. The procedure for vetting under the Act facilitates public participation. Citizens are allowed to file petitions on complaints about individual senior officers, who in turn respond to the allegations before the interviewing panel of the NPSC in a public forum. For the first time in Kenya's history, the public was invited to give feedback on the integrity and capabilities of candidates and their input was widely debated in the media. The complaints raised by the public ranged from corruption to abuse of office and inefficiency. The Commission itself raised issues relating to wealth declaration, technical expertise, and knowledge of reform agenda before making an assessment on the fitness of an officer to continue serving.

Further, a number of steps have been undertaken for the realization of internal accountability as stipulated under the constitutional reform agenda. The process of establishment of the Internal Accountability Unit (IAU) in line with Section 87 of the National Police Service Act is at an advanced stage. Proposals to mainstream the IAU as one of the five (5) main directorates has been accepted by the NPSC and is



awaiting budgetary support from the National Treasury to facilitate its operation (A, Police Officer, Reforms Committee, Interview, January 13, 2014). The financial support will enable competitive recruitment and staffing of the IAU.

### *Operational Efficiency*

A number of milestones in the reform process relating to the operational efficiency of the NPS have been achieved. The formulation of a stakeholders' consultative draft of the National Police Service Strategic Plan 2013–17 is complete. The police have taken initiatives to establish internal mechanisms for reform that are charged with implementation and monitoring reforms. Toward this end a reform committee was established on July 1, 2013, to track implementation under seven thematic areas, namely traffic reforms, establishment of County Policing Authority, curriculum review and training, operations audit, police housing, welfare audit, and general reforms.

A number of measures have been put in place to modernize the operation of the police service. The police have received substantial budgetary support from the government to the tune of KSh4 billion to facilitate the modernization of police. In order to enhance police response efficiency, the fleet of police vehicles has been increased in the past two years. In 2013, 335 vehicles were purchased for the NPS. The APS also acquired seventy-four vehicles, while communication equipment was provided through partnership with the United Kingdom. A Control Operation Centre has been established with CCTV surveillance systems and trained officers to manage the center. Emergency call lines have been reactivated and are fully operational.

As part of the police's performance in creating a conducive environment for democratic participation, overall the police successfully managed the 2013 elections as compared to the 2007/08 elections that degenerated into postelection violence and crisis. There has also been a drop in crime rate in the first year of the tenure of the IG, which commenced on December 24, 2012. According to statistics, there has been a reduction in the crime rate by an average of 8 percent. Studies carried out on the basis of reporting of crime reveal that levels decreased by 5,903 cases, that is, 66,188 cases were reported compared to the same period last year when 72,091 cases were reported (A, Police Officer, Reforms Committee, Interview, January, 13, 2014).

Certain changes relating to police welfare and measures to motivate police officers have been implemented. Substantial progress has been made in the completion of housing projects for both the

APS and NPS. By the end of 2013, five housing projects were completed in Ngong, Keroka, Kainuk, Kehancha, Ruai Police Station, and the General Service Unit (A, Police Officer, Reforms Committee, Interview, January 13, 2014). Further, in relation to career advancement and upward mobility, over 2,000 officers have been promoted in the first year of the IG's tenure.

### *Decentralization of Police Services*

The decentralization of police services is an important aspect of democratizing policing as it ensures that the police service is accountable and connected to the community it serves rather than the political regime. The County Policing Authority has not been fully established and the guidelines are yet to be published. What is in place to guide the process is a consultative draft. However, certain activities have been undertaken toward the decentralization of police services to the county. County commanders who will be in charge of counties have been appointed and deployed to the forty-seven counties.<sup>3</sup> Community policing has also been strengthened to bring services closer to the people and to ensure that there is partnership between the government and society in policing. Community policing programs in their pilot phases have been established in following police stations in five different counties, namely Manga Police Station (Nyamira County), Kajiado Police Station (Kajiado County), Sotik Police Station (Bomet), Kimilili Police Station (Bungoma), Kikuyu Police Station (Kiambu), and Lari Police Station (Kiambu) (A, Police Officer, Reforms Committee, Interview, January 31, 2014).

## CHALLENGES

Adoption of certain progressive reforms can be said to represent the success of the police, but the bulk of the challenges have emerged in implementation of reforms due to the lack of goodwill, from within the police service, and externally, mainly from the executive. The lack of political will remains a major challenge to police reform cutting across political regimes since independence to the current administration. Kenya like many other African countries is struggling with entrenched impunity in some of its governance institutions. There has been lack of political will to put in place necessary structures to address the lethargy, inefficiency, and mistrust created as a result of long-standing impunity in the police service because the police service in Kenya has since independence been used as a political tool and

not as a public service institution. This challenge persists, despite the constitution shifting responsibility for security from the presidency to institutional mechanisms (IPOA, NPSC, and the IG) with the aim of granting the police more autonomy and insulating it from political interference.

Numerous delays in establishing these institutions point to the limited political commitment to police reform, which may hamper their effectiveness in the long-run. Though parliament passed the three Acts within the one year deadline, soon after, the executive failed to ensure and commence implementation in accordance with the stated dates in the respective legislation. The National Police Service Act was due to come into effect on August 30, 2011. However, it was not published until July 2012 to enable its commencement. No explanation was provided for the lengthy delay, although there were indications of internal resistance to changes within the police service (*Daily Nation*, March 20, 2012). The IG was not recruited until after the NPSC was established, though the National Police Service Act would have allowed the IG's recruitment beforehand under a transitional arrangement. All three institutions are now operational, but they lack proper secretariats and are underresourced, significantly limiting their capacity to carry out their respective mandates (Amnesty International, 2013).

Reform in the Kenyan police service has faced several setbacks which have led to the slow pace in implementing change. Ad-hoc implementation of the new legislations which are vital to police reform remains a major concern. In part, this stems from a lack of knowledge within the police, as not all officers have been made aware of the implication of the new laws. As a result of lack of sensitization programmes, many aspects of the new legal framework, including new restrictions which limit the use of force and firearms, regulate arrest and detention, and enhance internal accountability and reporting obligations by the Police Service to IPOA, are yet to be embraced in practice. IPOA itself is not free from criticism. Though it takes time to build an institution, frustration is beginning to mount over the slow pace of IPOA's implementation of its mandate (C, Human Rights Activist, Personal communication, January 8, 2014). IPOA has received many complaints and has started some investigations, but their findings have not been made public and to date, no officer has been held to account under the IPOA mandate (C, Human Rights Activist, Personal communication, January 8, 2014).

Undue delays by the executive and legislature in enacting constitutionally-required legislation have posed a barrier to efforts to create

new structures to address the legacy and mistrust created by long-standing impunity. Despite ongoing reforms, the police still lag behind in public perception surveys as the most corrupt institution in Kenya (Transparency International, 2004). Consequently, there is great need for reforms to focus on restoration of integrity within the police force. Corruption in the police is perceived as an enterprise so entrenched and well protected that the current government has appeared unable to address it effectively. This perception is compounded by the belief that the political elite control the police and this control contributes to their failure to address corruption (Amnesty International, 2013).

### PROSPECTS: KENYA AT 100

Broadly, prospects for police reform in the next fifty years must be the ultimate realization of transition from regime policing to democratic policing. The successful implementation of the proposed reforms as set out in the constitution and enabling provisions as laid down in the National Police Service Act, National Police Service Commission Act, and Independent Policing Oversight Authority Act will certainly contribute to such a transition. However, the police reform must not over-rely on a pure legalist approach. Too great a focus on enactment of laws and legislation, though important, leaves little room for implementation and policy development. It would be foolhardy to think that because the constitution was promulgated and legislation was enacted in good time, the reform agenda is complete. Such a perspective would be narrow and minimalist. The challenges relating to political goodwill, institutionalization of new police bodies, accountability and transparency must be addressed. The milestones gained in setting up new legislative framework, decentralization of policing, and initiatives toward police welfare must be harnessed to ensure the sustainable transformation of the police into a democratic institution.

The qualities that citizens aspire for in the police service are responsiveness, efficiency, and accountability to parliament and directly to the citizen, which are reflective of the core attributes of democratic policing. Ideally, this can be achieved within the current constitutional and legislative framework that paves way for democratic policing. Further, there must be a convergence between people's aspirations on the role of the police (preserving law, public order, and security for all) and the police's vision of their role of policing public order. This would enhance the legitimacy of the police. Currently there is a divergence where the police regulate

public order to defend the incumbent political interest. In the language and spirit of the constitution, there is potential for meeting the expectations of citizens and consolidating the legitimacy of the police services for better service delivery. However, the provisions of the Act must be implemented to capture the aspirations of the people. The focus should now move away from lauding constitution and enactment of legislation to implementing comprehensive operational reforms and supporting police officers who also face a number of welfare challenges.

### *Prospects of Nyumba Kumi*

The Nyumba Kumi initiative is a plan by the current Jubilee administration to curb crime and insecurity. It is a Kiswahili phrase that translates to “ten households,” which means that every citizen is committed to knowing households within one’s neighborhood to enhance security intelligence at the local level and cooperation between police and the community at the local level. The system seeks to monitor the security of the community by appointing trusted village residents, which is the basic administrative unit. Any time a stranger to the locality arrives at a particular village, the local Nyumba Kumi council is instantly informed.

The rationale behind the Nyumba Kumi is the promotion of participatory governance of security where the community partners with the state police in tackling crime. The rationale behind Nyumba Kumi resonates well with elements of democratic policing. As the Commonwealth Human Rights Initiative report (2006) states, with such an initiative, “the public begins to see the police service as an ally in keeping peace rather than an instrument of oppression, they are more willing to share information which can help prevent and solve crime” (CHRI, 2006). However its grounding and implementation so far have posed challenges to reaping the benefits of democratic policing. The initiative has been criticized by opposition for being a haphazard response to the Westgate Mall terrorist attack (*Daily Nation*, November 20, 2013). Indeed the initiative had been conceptualized months earlier in June 2013 under the office of secretary of Internal Security, but it was not until the aftermath of the Westgate Mall attack on September 21 that it received overwhelming goodwill from the executive and in particular the president during the *Mashujaa* Day celebrations, a month after the Westgate events. Constitutional issues were also raised, in particular that implementation of Nyumba Kumi infringes on citizen’s rights to privacy. They

argued that the unnecessary attempt to know and reveal the information relating to a person's family or private affairs is an infringement of the right to privacy as provided for in Article 31 of the constitution. Further, there is no firm grounding of the initiative in law and there is no effort yet to reconcile it to constitutional dispensation. What exists are policy pronouncements and weak institutional structure not provided for in legislation. Notwithstanding the transient challenges, the Nyumba Kumi initiative as a community policing initiative holds prospects for the legitimization of police to the extent that it ensures cooperation between the police and the community. Nevertheless, issues raised need to be addressed and the initiative ought to adhere to the spirit of democratic policing and be aligned to new constitutional reform prescriptions.

### CONCLUSION

Three years into the post-constitutional reform period, significant milestones have been achieved in state policing reforms compared to previous governments. There is potential to achieve more should implementation of the reforms adhere to the letter and spirit of the constitution. However, divergence between letter and practice remains significant as a result of the numerous challenges that implementation of police reforms continues to face. Such divergence is determined by the goodwill of executive in ensuring that interventions against threats to security are urgent and effective. For instance, soon after the Westgate attack, there was political goodwill that appeared to have catalyzed the rapid implementation of intelligence collection at community level under the auspices of the Nyumba Kumi. The government was quick to attribute success of foiling of terrorist attacks in the coastal region in February 2014 to Nyumba Kumi and new policy initiatives. While it was inconclusive to credit Nyumba Kumi with the prevention of terrorist attacks in the coastal region, it was an indication of urgency and decisiveness on the part of the Jubilee government and the police toward insecurity. However, the police failed to act with the same zeal and effectiveness to prevent attacks in Lamu despite intelligence available to them warning of possible attacks. Therefore, the prospects of an efficient and legitimate police service that is responsive to citizens' aspirations depends on the goodwill of government in supporting police reforms. Prospects of achieving democratic policing will be contingent upon tackling different challenges in the police reform agenda, political regime transition(s), and prevailing security situations for the next fifty years.

## NOTES

1. See Mawby 2003. Indeed as Mawby notes, the change in personnel (or leadership) does not guarantee that the system itself has been transformed
2. It was established in 1887 to develop trade in the far interior and in the kingdom of Uganda. It later came to be known as the Imperial British East Africa Company.
3. Remarks by the inspector general at the launch of the County Police Reform Forum, Hilton Hotel, Nairobi May 13, 2013.

## REFERENCES

- Amnesty International (2013). *Police Reform in Kenya: A Drop in the Ocean*. London, UK: Amnesty International Publications.
- Anderson, D. (2002). "Vigilante Violence and Politics of Public Order in Kenya," *African Affairs*, vol. 101, 530.
- (1992). "Policing the Settler State." In D. Engels and S. Marks, *Contesting Hegemony State and Society in Africa and India*. London, UK: I.B. Tauris.
- Baker, B. (2008). *Multi-Choice Policing in Africa*. Uppsala, Norway: Nordiska AfrikaInstitutet.
- Branch, D. (2009). *Defeating Mau Mau, Creating Kenya: Counter-Insurgency, Civil War and Decolonization*. New York: Cambridge University Press.
- Commonwealth Human Rights Initiative (2006). "Police, the People, the Politics: Police Accountability in Kenya Nairobi." Kenya: CHRI/ KHRC.
- Ghai, Y., and Mc Auslan, J. (2001). *Public Law and Political Change in Kenya: A Study of Legal Framework of Government from Colonial Times to the Present*. Nairobi, Kenya: Oxford University Press.
- Government of Kenya Constitution of Kenya (2010). Nairobi: Government Printers.
- Governance Justice Law and Order Sector Programme (2005). *Medium Term Strategy: 2005/06 to 2008/09 Final Report*. Nairobi: GJLOS.
- Government of Kenya National Police Service Commission Act (2011) (Nairobi: Government Printers).
- Government of Kenya National Police Service Act (2011) (Nairobi: Government Printers).
- Government of Kenya Preservation of Public Security Act (2011) (Nairobi: Government Printers).
- Government of Kenya Independent Policing Oversight Authority Act (2011) (Nairobi: Government Printers).
- Government of Kenya Police Act (1988). Nairobi: Government Printers.
- Kivoi, D., and Mbae, C. (2013). "The Achilles' Heel of Police Reforms in Kenya." *Social Sciences*, vol. 2, no. 6, 189–194.
- Kenya Police (2003). *Kenya Police Service Strategic Plan 2003–2007*. Nairobi: Kenya Police.

- Lumumba, P., Mbondenyei, M., and Odero, S. (2011). *The Constitution of Kenya: Contemporary Readings*. Nairobi, Kenya: LawAfrica.
- Mamdani, M. (1996). *Citizen and the Subject: Contemporary Africa and the Legacy of Late Colonialism*. Princeton, NJ: Princeton University Press.
- Mawby, I. (2003). "Models of Policing." In T. Newburn (ed.), *Handbook on Policing*, pp. 15–37. Exeter, UK: Willan Publishing.
- National Police Service Strategic Plan (2003–07). Nairobi: Kenya Police.
- National Police Service Strategic Plan (2013–17). Consultative Draft. Nairobi: Kenya Police.
- Newburn, T. (ed.) (2003). *Handbook of Policing*. Exeter, UK: Willan Publishing.
- Odhiambo, V. (2011). "Constitutional Implementation in Kenya." In PLO Lumumba, M. Mbondenyei, and S. Odero, *Constitution of Kenya: Contemporary Readings*, pp. 287–306. Nairobi, Kenya: LawAfrica.
- Ruteere, M., and Pommerolle, M. (2003). "Democratising Security or Decentralising Repression: The Ambiguities of Community Policing in Kenya." *African Affairs*, vol. 102, 587–604.
- Thomas, C., and Wilkins, P. (eds.) (1999). *Globalization, Human Security and the African Experience*. London, UK: Lynne Rienner.
- Throup, D. (1992). "Crime Politics and the Police in Kenya." In D. Anderson and D. Killingray, *Policing and Decolonisation, Politics, Nationalism and the Police 1971–65*. Manchester: University Press Manchester.
- Transparency International—Kenya (2004). *Kenya Bribery Index 2004*. Retrieved from <http://www.tikenya.org/pub/KENYA%20bribery%20INDEX%202004.pdf>.
- United Nations (2009). Statement by Professor Philip Alston, Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Delivered at United Nations Human Rights Council. Retrieved from <http://www.un.org/website/unhrc/11th.statements.Alston-STMT.pdf>.