

**THE ROLE OF POLICE IN HUMAN RIGHTS ABUSE WHEN EFFECTIN ARRESTS
IN KENYA**

BY

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DECLARATION

I, KIBUNJA LYDIA WAMAITHA, hereby do declare that “police involvement in human rights violations when effecting arrests in kenya” is entirely my own original work, except whereby acknowledged, and that it has never been produced before for a degree or any other award in any institution.

Signature.....

Date.....

APPROVAL

This is to certify that this dissertation has been submitted for examination with my approval as a university supervisor.

Signed.....

Name.....Mr. Wandera Ismail.....

Supervisor

Date.....10/12/2013.....

DEDICATION

This work is dedicated to Mr. And Mrs. John Maina Kibunja , who have been on my side throughout my academics: financially, emotionally and morally.

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ABBREVIATIONS

PEV -Post election violence

UDHR - UNIVERSAL DECLARATION OF HUMAN RIGHTS

UN - UNITED NATIONS

NGO - NON –GOVERNMENTAL ORGANISATIONS

CPC -CRIMINAL PROCEDURE CODE

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CHAPTER ONE

1.0 INTRODUCTION

In a democratic society, the police serve to protect, rather than impede, freedoms. The very purpose of the police is to provide a safe and orderly environment in which these freedoms can be exercised.¹

Police are termed as the law enforcement body. The police body is viewed as an agency that, maintains the thin line between order and chaos in a society. In a democratic society where parliament holds the key position and the rule of law is said to be established, the police force are a desirable and much needed group to maintain and sustain such a society. Furthermore, the police force or agency is a condition, not a denial of liberty within the restraints of the law. Theoretically the police is to uphold the law set by any given society and without these laws societies are said to be practically 'worthless'.

Kenya boasts to be a democratic nation yet one of the hallmarks of a healthy democracy is accountable police services that exists to and supports the rights of the community.²

The early roles of the police include preventing crime and keeping peace. The police whose duty is provision of assistance to the public when in need; maintenance of law and order preservation of peace; protection of life and property; investigation of crimes; collection of criminal intelligence; prevention and detection of crime; apprehension of offenders; enforcement of all laws and regulations with which it is charged; and performance of any other duties that may be prescribed by the Inspector-General under this Act or any other written law from time to time.³

The role of the police in human rights protection was perhaps laid down by The Independent Commission on Policing for Northern Ireland in a report in (1999) "the role of the police is to help achieve the social and international order. They must, for example, uphold the laws that safeguard the lives of the citizens. There should be no conflict between policing and human rights. Policing means protecting human rights."⁴

¹ United nations international police task force

² The Police, The People, The Politics; Police Accountability In Kenya, a joint report by the commonwealth human rights initiative and the human rights commission (2006)

³ The National Police Service Act No.11A Of 2011

⁴ Commission of Policing In Northern Ireland (1999). A New Beginning ; Policing In Northern Ireland

Despite this role, the police in Kenya are named as the biggest human rights violators of human rights in the country⁵. The violations range from police brutality, arbitrary arrests and harassments, torture and extra judicial killings just to name a few.

1.1 BACKGROUND OF THE STUDY

The history of Kenya is one that has seen the worst cases of human right abuse by the security forces. The police have practically been above the law causing both physical and emotional abuse.

Citizens have lost faith and confidence in the police whose duty is the maintenance of order, protection of life and property, the prevention of crime and the apprehension of offenders and enforcement of all laws and regulations which they are charged with. Reporting levels of crimes to the police are low because victims don't believe the police can assist them in dealing with the matters either because there seems to be no chance of them resolving the crimes or because they don't believe that the police are competent enough to solve them.⁶

The police can use force and even arms where allowed by the law. However the use of unnecessary and unwarranted physical force, use of abusive and profane language, cruelty, inhuman and degrading treatment and even to the extreme of torture are what characterizes the making of an arrest and is seen as the norm in the history of Kenya. It is therefore a common sight experienced by the courts and even the prisons of broken limbs and bruised bodies of suspects due to violence meted out during their arrests and subsequent incarcerations that are sustained when the suspects are arrested. This is because the police act like they are above the law and a lot of impunity in the police force because the police do not want and are not ready to follow the law.

The issue of the police transgressing fundamental and inherent human rights and go on justifying their act as necessary to make an arrest or to maintain order, to keep peace or maintain order or acts of self-defense under the right to protect themselves is rapidly gaining urgency and is worrying. Kenyans want to be treated with the full rights and dignity, that one is entitled in a democratic society⁷; to leave in a Kenya where one is treated with dignity ;where one is not treated with suspicion and can walk around without been stopped and questioned by the police

⁵ Sixth schedule of the National Police Service Act(2011)

⁶ Stranov, safer cities program (2002), crime in Nairobi ;results of a city wide victims survey 2(UNHabitat)

⁷ Article 25(a) of the 2010 constitution provides that one of the freedoms that is not limited

and harassed and sometimes end up being arrested and charged with ‘trumped up’ charges in court , and not a Kenya where ones right of movement is restricted.

1.2 Statement of the problem

The research problem is to show the extent the Kenya police are responsible in human right violations when making arrests. Many police practices only serve to degrade the citizen’s sense of himself and his status. This is quite true in regard to the way the police use their language. Most people who have come into contact with the police object to the way police officers talk to them. Practically objectionable is the habit police officers have of “talking down” to citizens, calling them names that depreciate them in their own eyes and those of others and of course the use of violence.

Citizens want to be treated as people, and not non-persons who are subjected to physical and emotional abuse. Harassment and one been seen suspiciously is also degrading. Survey and reports on human rights observance in Kenya name the police as the biggest human rights violators. The post election violence (PEV) that rocked the nation in 2007-2008 saw the worst human rights abuse by the Kenya security forces.

1.3 JUSTIFICATION OF THE RESEARCH

The research will show the role of the police in transgressing human rights when making arrests yet they have a duty to provide an environment that this human rights should be enjoyed. The impact that of their actions to the citizenry and the effect their actions have on the image of the police service.

Further, the research tends to bring out workable recommendations on how to eliminate these violations and enhance human rights observance by the police service when making arrests so that the faith and confidence in the service can e restored and which will consequently provide an enabling environment for the citizens to work and live. Stimulate and foster social, economic and **political development in Kenya.**

1.4 OBJECTIVES

1. To show the role of the police in human rights protection.
2. To show the various ways the rights of Kenyans are transgressed by the police when making arrests.

3. To come up with concrete recommendations on how to reduce and hopefully eliminate these violations so as to restore faith in the police and provide an enabling environment for the Kenyan citizens.

1.5 RESEARCH QUESTIONS

1. Do the police have a role in human rights protection?
2. How should an arrest be made?
3. What are the workable recommendations that can be enforced to address this human rights issue?

1.6 RESEARCH METHODOLOGY

This study will be mainly qualitative relying on secondary research sources. Secondary sources will include; the library, the internet and recent publications on the role of the police in human protection and conduct of the police when effecting an arrests that violate human rights. Additionally interviews were conducted from various victims as the key informants.

The study shall involve an extensive literature review, ranging from varied study publications on the role of the police in human rights protection in general and the standards that should be maintained and observed when they make an arrest.

This study will also consider survey reports for the purposes of drawing lessons and further paint a better picture of the situation in Kenya as far as arrests by the police are concern.

1.6.1 RESEARCH DESIGN

The research will be both analytical and descriptive. The main intention is to obtain data and evidence on how human rights abuse by the police is prevalent especially when they are using their power of arrest, in view of both the domestic statutory obligations and international law.

1.7 SCOPE OF THE STUDY

The study is limited to the Nairobi area and the Kenya police⁸.

⁸ The new constitution of Kenya merged both the Kenya police and the administration police.

1.8 HYPOTHESIS

When conducting this research the following assumptions were taken into consideration; that the police in Kenya are the greatest human rights violators especially when making arrests and thus not performing their function as the protectors of the law and the people have lost confidence in them.

There is also a lot of impunity thus officers that are involved in human rights violations do not get punished or even when they are punished the punishment is not effective and so the vice continues.

That the police service and the government have come up with police reforms due to the continued gross violations of fundamental human rights by the police officers when making arrests so as to improve the tainted image of the police among the citizens and the international community have so far been inadequate and have not reached their objectives.

1.9 LITERATURE REVIEW

1.9.1 Human Rights and Policing

Crawshaw (1998)⁹ observes that complete policing is policing that is effective, lawful and humane. Thus, any police activity or operation that achieves results through unlawful or inhumane action is a complete negation of the purposes and principles of policing. It is an utter failure of policing. Without law and humanity policing is incomplete. Complete policing is a form of policing delivered by well managed and well-resourced police agencies deploying technically competent officials who behave lawfully and humanely. Lawful and humane behavior is contingent upon compliance with the great legal and humanitarian principles set out in international human rights law and international humanitarian law; it is contingent upon compliance with the detailed provisions of those branches of law, and with national law that embodies those principles and provisions; it is contingent upon the development and perpetuation of an ethos supportive of human rights and high ethical standards within police agencies.

Police and human rights are two aspects that are inseparable. Crawshaw observes that this can be

⁹ Prof. Dr. Ralph Crawshaw Human Rights Centre, University Of Essex, UK Crawshaw, Ralph, Barry Devlin and Tom Williamson (Eds.), *Human rights and policing. Standards for good behaviour and a strategy for change*, Kluwer Law International, The Hague, Netherlands, (1998)

seen in two ways; police functions and powers are determined by human rights and what the relationship between human rights and policing should be.

1.9.1.1 Police Powers and Functions and Human Rights

Policing is one of the means by which states meet or fail to meet their obligations under international law to ensure respect for and protection of the rights and freedoms of individuals and groups within their jurisdiction. All such rights and freedoms may affect, and may be affected by, policing. However, given the nature and purposes of police activity, it is the most fundamental human rights that are of greatest significance to the powers and functions of police. For example the power to use force is regulated by the right to life (as expressed, for instance, in Article 2 of the European Convention on Human Rights). Crawshaw thus, concludes that police powers and functions are regulated by legally enforceable human rights and humanitarian standards that require the delivery of effective, lawful and humane policing - complete policing. These legally enforceable standards are reinforced by standards of good practice set out in non-treaty texts.

1.9.1.2 The Relationship between Human Rights and Policing

Maintaining social order is such a fundamental police function, and social order is so fundamental to the realization of human rights that the protection of human rights can be seen, in itself, as a police function. He further puts it in perspective that, the very specific ways in which police protect particular human rights give further support, if it were needed, to the notion that the protection of human rights is a police function. Indeed, it is argued here that the protection of human rights should stand alongside the prevention and detection of crime; the preservation of social order; and the provision of assistance in emergencies as one of the primary functions of policing.

The relationship between human rights and policing extends further in that the police are also required to respect human rights. That is to say, when they are exercising their powers (for example to use force, to deprive people of their liberty, or to carry out search or surveillance activities) police must obey the laws designed to secure human rights. Protection of and respect for human rights are so integral to policing that the removal of any tension between policing and human rights that exists in practice, the creation of a human rights culture within police agencies,

is one of the most pressing tasks presently facing police leaders.

1.9.3 Police in human rights protection

Green(2010)¹⁰ says that the police are at the forefront of securing, upholding, and reaffirming rights to assure the dignity of individuals, for peaceful assembly free of fear and reprisal, for free speech, for civic participation, for due process, and for the restoration of civil rights and processes following traumatic events. The police secure these rights at each stage of their intervention, albeit with differing focus. But make no mistake:

policing is about the allocation of human rights. In a very practical way, if the police defend those rights, they are substantiated; if not, they are invalidated. Such power in substantiating or invalidating human rights places the police in a delicate balance, assuring collective interests while maintaining individual distinctions

1.9.4 Human rights and arrests

Anneke osee (2007)¹¹ observes that the right to liberty is one of the most important rights available to individuals. Depriving someone of her or his liberty is one of the most intrusive actions a state can take against its people. At the same time, deprivation of personal liberty represents one of the most common means used by the State to fight crime and maintain internal security. The right to liberty is not an absolute right, but the lawful application of the powers to arrest and detain is restricted to specific circumstances, that need to be well described in law and for which subsequent accountability is required. In the commentary to Article 1 of the UN Code of Conduct for Law Enforcement Officials (UN Code of Conduct.

An arrest must be based on a reasonable, lawful, suspicion that a person has committed, or is planning to commit, an offence defined as unlawful in law. It must be in compliance with the basic principles of proportionality, subsidiary, legality and necessity.

1.10 Chapter Breakdown

This investigation will basically be completed in five distinct chapters. The first chapter basically introduces the study and goes further to explain its background. The second chapter will

¹⁰ **Jack R. Greene** is professor and former dean of the College of Criminal Justice at Northeastern University a commentary on “Policing Through Human Rights” Idea On American Policing.

¹¹ ‘Understanding Policing’(2007) A Resource Book For Human Rights Activists Amnesty International.

comprehensively look at the concept of human rights and human rights based policing. The third chapter will look at the arrests, how it should be done based on the human rights standards of arrests. the fourth chapter looks at ways that police conduct arrests in Kenya and hence violating human rights. The fifth chapter will make conclusion remarks and come up with concrete recommendations as to this human rights issue among the police force in Kenya.

1.11 CONCLUSION

In this chapter, the introduction, statement of the problem, research questions, justification of the study, limitations of the study, review of related literature, research related problem being investigated, methodology and procedures used to gather data for the study are presented and highlighted.

CHAPTER TWO

UNDERSTANDING HUMAN RIGHTS AND THE POLICE; ROLE OF THE POLICE IN THE PROTECTION OF HUMAN RIGHTS.

2.0 Introduction

This chapter discusses the concept and idea of human rights tracing the history of human rights, characteristics and how they are protected. It looks at the constitutional provision of human rights in the 2010 Kenya constitution. It also examines the police history and the introduction of the police in Kenya and its history through a political eye. The status of the police under the new constitution. And the role of the police in human rights protection.

2.1 Concept of Human Rights

Human rights are the rights of a person that one has simply because he/she is a human being. They are said to be universal legal guarantees protecting individuals and groups from government that interfere with fundamental freedoms and human dignity. Human rights law obliges Governments to do some things and prevents them from doing others. human rights are said to be ; Internationally guaranteed, legally protected, focus on the dignity of the human being, protect individuals and groups, oblige states and state actors, cannot be waived or taken away, Equal and interdependent and universal¹².

Human rights norms and standards are derived from two principal types of international source, “customary international law” and “treaty law”. Customary international law (or simply “custom”) is international law that develops through the general and consistent practice of States and is followed because of a sense of legal obligation. In other words, if States perform in a certain way over a period of time because they all believe that they are required to do so, that behavior comes to be recognized as a principle of international law, binding on States, even if it is not laid down in a particular agreement¹³. Treaty law includes the law of human rights as set out in the many international agreements (treaties, covenants, conventions) that have been collectively (either bilaterally or multilaterally) developed, signed and ratified by States. Some of these treaties cover whole sets of rights (such as the International Covenant on Civil and Political

¹²Professional Training Series No. 5/Add.2 Human Rights And Law Enforcement *A Trainer's Guide on Human Rights for the Police*- UNITED NATIONS(2002)

¹³ Ibid

Rights and the International Covenant on Economic, Social and Cultural Rights), while others focus on particular types of violations (such as the Convention against Torture, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Prevention and Punishment of the Crime of Genocide) or on particular groups to be protected (such as the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the Convention relating to the Status of Refugees). Another type focuses on particular situations, such as armed conflict (including the four Geneva Conventions of 1949 and the two Protocols additional to the Conventions). All of these instruments are fully legally binding on States that are party to them.¹⁴

Throughout history people acquired rights and responsibility through membership of a group while others observed the “golden rule¹⁵”. The sources of would include religious texts e.g. the bible. Every society had some sort of the system of property and justice. Documents asserting individual rights, such the Magna Carta (1215), the English Bill of Rights (1689), the French Declaration on the Rights of Man and Citizen (1789), and the US Constitution and Bill of Rights (1791) are the written precursors to many of today’s human rights documents. Yet many of these documents, when originally translated into policy, excluded women, people of color, and members of certain social, religious, economic, and political groups. Nevertheless, oppressed people throughout the world have drawn on the principles these documents express to support revolutions that assert the right to self-determination.

World war II and the holocaust made the human rights much stronger and led up to the drafting of the UN Charter in 1945 the member states of the UN in their pledge to respect and promote human rights which was charged with drafting a document that would map out the meaning of the fundamental human rights and freedoms proclaimed in the charter.

In 1948, December 10, the Universal Declaration Of Human Rights (UDHR) which is referred as the International Magna Carta, extended the revolution of international law introduced by the UN Charter-namely , that how a government treats its own citizens in a manner of legitimate concern. The UDHR in its prologue declares that the recognition of the inherent dignity and of

¹⁴ Ibid

¹⁵ Golden rule is the ethic of reciprocity i.e. do to others what you would want them to do to you.

the equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world.

Human rights are monitored in a regional level by the regional organizations have developed mechanisms to monitor human rights within the relevant countries. Such mechanisms include the Inter-American Commission on Human Rights, the Inter-American Court of Human Rights, the African Commission on Human and Peoples, and other international NGO's and on national level Concerned government agencies and services, including the police; National human rights institutions (such as a human rights commission or an ombudsman); Human rights and other non-governmental organizations (NGOs); courts; Parliament; The media; Professional organizations (such as lawyers, doctors, etc.); Trade unions; Religious organizations; and university centers.

The influence of the UDHR has been substantial. Its principles have been incorporated into the constitutions of most of the more than 185 nations now in the UN. Although a declaration is not a legally binding document, the Universal Declaration has achieved the status of customary international law because people regard it "as a common standard of achievement for all people and all nations."

The constitution of Kenya recognizes human rights in an exclusive chapter (the bill of rights – chapter 4). The purpose of recognizing and protecting human rights and fundamental freedoms is to preserve the dignity of individuals and communities and to promote social justice and the realization of the potential of all human beings.¹⁶ these fundamental rights and freedoms belong to each individual and are not granted by the State do not exclude other rights and fundamental freedoms not in the Bill of Rights, but recognized or conferred by law, except to the extent that they are inconsistent with this Chapter; and are subject only to the limitations contemplated in this Constitution¹⁷.

The state and every state organ have an obligation to observe, promote and protect the bill of rights. The state can do this by way legislative, policy and other measures, including the setting of standards, to achieve the progressive realization of the rights guaranteed under Article 43, as for the State organs and all public officers have the duty to address the needs of vulnerable

¹⁶ Article 19 (2) 2010 constitution

¹⁷ Article 19 (3) of 2010 constitution

groups within society, including women, older members of society, persons with disabilities, children, youth, members of minority or marginalized communities, and members of particular ethnic, religious or cultural communities. The State shall enact and implement legislation to fulfill its international obligations in respect of human rights and fundamental freedoms.¹⁸

The constitution also provides for the enforcement of the bill of rights under article 22 where one can seek redress of the courts (high court has the jurisdiction) if the bill of rights have been denied, violated, infringed or threatened and give appropriate relief that include compensation, injunctive orders, declaration of rights, conservatory order, judicial review, a declaration of invalidity of any law that undermines the bill of rights and it is not justified under article 24¹⁹, however despite of this the following rights cannot be limited in whichever way; freedom from torture and cruel, inhuman or degrading treatment or punishment; freedom from slavery or servitude; the right to a fair trial; and the right to an order of habeas corpus

The state is able to monitor human rights through the Kenya national human rights and equality commission under article 59 the commission was established to: to promote respect for human rights and develop a culture of human rights in the Republic; to promote gender equality and equity generally and to coordinate and facilitate gender mainstreaming in national development; to promote the protection, and observance of human rights in public and private institutions; to monitor, investigate and report on the observance of human rights in all spheres of life in the Republic, including observance by the national security organs; to receive and investigate complaints about alleged abuses of human rights and take steps to secure appropriate redress where human rights have been violated; on its own initiative or on the basis of complaints, to investigate or research a matter in respect of human rights, and make recommendations to improve the functioning of State organs; to act as the principal organ of the State in ensuring

¹⁸ Article 21 of the 2010 constitution

¹⁹ Article 23 of the 2010 constitution- however article 24(1) provides that A right or fundamental freedom in the Bill of Rights shall not be limited except by law, and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including—(a) the nature of the right or fundamental freedom; (b) the importance of the purpose of the limitation;(c) the nature and extent of the limitation;(d) the need to ensure that the enjoyment of rights and fundamental freedoms by any individual does not prejudice the rights and fundamental freedoms of others; and (e) the relation between the limitation and its purpose and whether there are less restrictive means to achieve the purpose.

compliance with obligations under treaties and conventions relating to human rights; to investigate any conduct in state affairs, or any act or omission in public administration in any sphere of government, that is alleged or suspected to be prejudicial or improper or to result in any impropriety or prejudice; to investigate complaints of abuse of power, unfair treatment, manifest injustice or unlawful, oppressive, unfair or unresponsive official conduct; to report on complaints investigated under paragraphs and take remedial action; and to perform any other functions prescribed by legislation.

2.2 The Police

The concept of 'police' has a long history. Its characteristic feature is that the concept has been narrowed down more and more. 'Police', 'politics' and 'policy' are clearly related words. The words derive from Latin 'politia', meaning 'civil administration' or 'the State', stemming from the Greek 'polis' (city) and 'politikè' (that which belongs to the city state, to civil society). Originally the word 'police' encompassed the entire responsibility of the State, including religious functions (where these were still the responsibility of the State). Later the concept was used only for secular functions of the State and again later only for certain aspects of these State functions. Only in the 19th Century is the concept restricted to those functions of the State that encompass protection against threat. Police agencies (as opposed to the police function) as we know today, are relatively new. In fact the first civil, public police, was the Metropolitan Police of London, formed by Sir Robert Peel in 1829. Other countries followed, with most developed democracies having police for some 100-150 years. In many formerly colonized countries the police were 'implanted' by colonial rule, primarily serving the interests of the colonial power at the expense of the local people.²⁰

In summary police function can be said to be to protect life, liberty and security; to maintain public safety and social peace; and to promote and uphold the rule of law and human rights.

Police are always contingent upon the state and its inhabitants; they always reflect the nation in its political, culture, history, people and economy. Thus in looking at the history of law enforcement in Kenya it can be seen through the eyes of the political regimes in Kenya.

²⁰ Understanding policing (amnesty international) at page

Having being colonized by Britain Kenya has experienced law enforcement as control imposed by an alien culture. Kenya experienced the imposition of colonizers initially by Arabs, Persians and later by Europeans. Through the imperial east Africa trading company Britain was able to establish an administration with an armed security force in 1896 with fortified stations to protect their trading routes, centers, stock and staff.²¹

In 1880 with the expanding colonial presence, the British colonial office took over the administration of the region from the British Imperial East Africa Trading Company. The regional commissioner was given the right to establish a police and other force to defend the protectorate and thus the armed force was established; the force was used to suppress the resistance that was emerging. In 1960 through the Police Ordinance the Kenya Police was formed. With the increase of the white settlers after the 2nd world war the demand for security was increased by the administration, and greater resources were required to support the police.

In 1920 the modern Kenya Police was founded. Africans were recruited to fill only the lowest rankings of the force subservient to European and Asian officers. The police were a tool of the colonialists right from the start, the early Kenya Police force has been described as a “punitive citizen contaminated squad”²²

There continued to be signs of development of the police as an investigative body with the establishment of the Criminal Investigation Department (C.I.D. In 1948 With the continued unrest from the indigenous people the Kenya police reserve was formed as an auxiliary to the force, authorized to provide assistance in times of emergency and integrating the increasingly anxious settler communities into security operations. The dog section and the GSU (General Service Unit) that were deployed during emergency situations were also formed. In 1949 the Police Air Wing was formed to facilitate communications and evacuations. With the up rise of the Mau Mau in the late 1940 and early 1950 a state of emergency was declared in 1952 which was only lifted in 1960, when the army took over from the police was the primary law enforcement agency. The security force used during the emergency period included the British

²¹ The people the politics(2006) at page

²²ibid

military, volunteer military forces, locals collaborating with the British, local home guards and the Kenya police forces.²³

The emergency ended in 1960 and in 1961 Kenya conducted its first general elections, through KANU forming the government headed by Jomo Kenyatta and with the colonial government the 1st constitution was compiled adopted and Kenya gained internal self-rule on 1st June 1963 and full independence in 1963. The constitution had included provisions designed to establish a professional / neutral police force. The independent constitution gave autonomy to the police force. It envisaged that the police force to be set up by legislation and overseen by the Police Service Commission and a National Security Council.²⁴

The inspector general of police was to be appointed by the President on advice of the Police Service Commission; unfortunately these provisions were never implemented. In 1964 through a constitutional amendment the police became an extension of the civil service. Similarly the amendment consolidated power into the hands of the president, who became the head of the executive as well as the head of state. In 1966 the government also gave itself unlimited emergency powers. In echoes of the previous decade of emergency. The amendment continued until the death of President Kenyatta in 1978, with the succession of president Moi the executive became all powerful, with the parliament and judiciary reduces to rubber stamps of executive authority.²⁵

In 1982, amendment of section 2A of the constitution was passed making Kenya a one party state destroying the hope of judicial independence and separation of powers. At this time resistance was growing within the civil society and the police became the enforcement wing of the oppression that had emerged through movements like the “mwakenya”. With no independent investigators or prosecutors, the police were accountable only to the ruling regime with continued agitation for reform the section 2A in 1990 was again repealed and Kenya reverted back to a multiparty state. This period was marred with political assassinations of prominent politicians e.g. J.M Kariuki and Robert Ouko and other men and women the police were often implicated in these deaths. They were accused of assisting the government especially with

²³ ibid

²⁴ ibid

²⁵ ibid

Ouko's death where the police were accused of covering up of the death and tampering with the crime scene.²⁶

In 1992 during the first multi party election held in December KANU won the election although there were claims of voter intimidation and violence being carried out by the police.²⁷

In the run up to elections, KANU leaders urged their constituents in the Rift Valley region to chase away all the opposition this resulted to displacement and deaths of the people. The police were used to aid the government's ambitions to build a power base in the region, either by acquiescing to the violence or by direct participation.²⁸

The next decade elections was characterized by violence through the police and also through political party enforcers e.g. Jeshi -La-Mzee a KANU youth wing that was reputable for intimidation, harassment, extortion and violence. All this in time the police did not intervene in the brutal attacks by these forces on citizens: government support of these groups was well known.²⁹

Lobbying then began for constitution review through coordinated country wide strikes and monthly demonstrations and resulted in the forming of the Standing Committee on Human Rights in 1996(which later became the Kenya National Human Rights Commission in 2003).

KANU again won the 1997 election but the pressure for constitutional reform was so high and could not be ignored and the government formed the Inter-party Parliamentary Group (IPPG) that produced lots of recommendations that culminated in the enactment of the Constitution of Kenya Review Act in 2000 that was to govern the reform process. And in 2001 the constitutional of Kenya review commission (CKRC) chaired by Prof. Yash Pal Ghai. The commission published its first report in October 2002.

In December of the same year new elections that brought in a new regime with the National Rainbow Coalition (NARC) victory at the polls. Included in the commission's report was an

²⁶ *ibid*

²⁷ Election Monitoring Unit(1993) The Multi Party General Elections In Kenya:The Report Of The National Election Monitoring Unit ,Nairobi At Page 1003

²⁸ Human Rights Watch(1993) , Divide And Rule: State Sponsored Ethnic Violence In Kenya, USA at page 30

²⁹ *Ibid* no 15 at page 39

acknowledgement of the public perceptions of the police behavior, a corrupt and violent reference to United Nations Standards for exercise of police powers and recommendations for the constitutional entrenchment of police independence.

The commission (CKRC) proposed the famous Bomas draft constitution, the government put an amendment i.e. the Wako draft and in 2005 in a referendum the proposed draft was unsuccessful. However with the change in regime, the government started to finally acknowledge the role of the police had had in creating insecurity and contributing to crime putting in mind that majority of the people in the government had suffered in the hands of the police during the struggle for multi-partisim.

The government started developing a new range of strategies and policies for the police reform, and in 2003 set up a Police Force Task Force that was to examine the role and reform of the police. In the same spirit for reform the police appointed a new police commissioner Major General Hussein Ali (an army officer) whose appointment was controversial, because rather than adopt a more public /participatory mode of appointment, the president used his discretionary powers of appointment just like in previous regimes. Further, the involvement of the military in civilian policing implied lack of confidence in the higher ranks of the police and reinforces the notion of a police force modeled along militaristic laws that were inimical to the tenets of democratic policing.

The most recent phase of constitutional process was mandated by the Constitution of Kenya Review Act, passed in December 2008. The act reflects the accord mediated by Kofi Annan to end the post-election violence. It also gives effect to the judgment in the *Njoya v AG (2004)* case, which held that a new constitution could not be adopted without a referendum or proper constitutional convention. The court held that the Constitution of Kenya Review Commission, set up under the 1998 Constitution Review Act, did not constitute a proper constitutional convention. The requirement to hold a constitutional convention is in line with a number of other constitutional systems in Africa, for example in Togo.³⁰

Under the act, an eleven-member Committee of Experts was mandated to produce a first draft of the constitution. The committee contained nine voting members and two ex-officio members,

³⁰ 2004(L.L.R) 4788 HCK

including three foreigners who had voting rights and were meant to ensure that the process of constitutional formation would not be associated with pre-existing ethnic or political factions.³¹

The current Constitution of Kenya was the final result of the revision of the harmonized draft constitution of Kenya. It was initially published in November 2009. The public was given 30 days to scrutinize the draft and forward proposals for amendments to their MPs, after which a revised draft was presented to the Parliamentary Committee on 8 January 2010. The Parliamentary Select Committee (PSC) revised the draft and returned it to the Committee of Experts who published a Proposed Constitution on 23 February 2010. The majority of Kenyans voted in favor of the new constitution on 4 August 2010 and President Kibaki signed it into law on 27 August 2010³².

Currently due to the increase in criminal activities and in line with the police resolve to effectively deal with security threats and to bring down crime to minimal levels, various specialized units have been formed. They include the Anti-Stock Theft Unit, Anti-Motor Vehicle Theft Unit, Tourism Police Unit, The Anti-Corruption Police Unit, Presidential Escort Unit, and the Anti-Terrorism Police Unit.

2.2.1 Police and the 2010 Constitution

Under the New Constitution the Kenya Police Force has been renamed the National Police Service and retains its mandate and jurisdiction as one arm of the three arms of national security, albeit with a new name to reflect its new servant (as opposed to master) role.

The police forms part of the national organs under article 239(1) of the constitution. They are under the supervisory of a largely civilian National Defense Council. Article 243 establishes the national police service that consists of the Kenya national police service and the administration police.

The two services are under the command of the inspector general whose office is established under article 245 and with two deputies that head each of the two services of the national police service. The ranking of the Kenya police service is as follows; Deputy Inspector-General-Assistant Inspector-General- Senior Superintendent- Superintendent.-Assistant Superintendent-

³¹ Road to Kenya's new constitution (2010) Fredrick cowel:consultancy Africa intelligence

³² Ibid

Chief Inspector- Inspector- Senior Sergeant- Sergeant while that of the administration police is as follows; Deputy Inspector-General- Assistant-Inspector-General-Senior Superintendent-Superintendent-Assistant Superintendent-Chief Inspector- Inspector-senior Sergeant- Sergeant-Corporal- Constable as set out in the 1st and 2nd schedule of the National Police Service Act (2011) respectively. All functions, powers and duties of the national police service, powers and appointments of the Inspector general and the director of the Criminal Investigation Division is detailed in the National Police Service Act (2011)

2.3 HUMAN RIGHTS AND THE POLICE

Respect of human rights is in the heart of good governance. The state has the duty to protect and promote these human rights. The police play this role.

Human rights and the police (or even police work/policing) are said to be inseparable. Police are said to be the first in line when it comes to the protection of human rights. The community depends on them to protect the full range of rights, through effective enforcement of the country's criminal laws.

Respect of human rights is central to police work. The police are the gate keepers of the criminal justice system thus they are the law enforcers; this law they enforce includes human rights.

The International Bill of Rights encourages legislative and policy changes that put human rights at the core of policing. Individual officers are expected to know and adhere to their responsibility to promote and protect rights, and effective training and accountability mechanisms promote and monitor compliance. Law enforcement officials are obliged to know, and to apply, international standards for human rights³³.this ensures that people enjoy the due process.

³³ Law enforcement officials refers to all officers of the law either elected or appointed that exercise police powers especially the power to arrests and detain.

The UN Code of Conduct for Law Enforcement Officials requires that all law enforcement officials in the performance of their duty, to respect and protect human dignity and maintain and uphold the human rights of all persons³⁴.

In line with this international requirement, Kenya has itself adopted many international conventions and also implemented laws that prohibit acts of human rights violations by the police. It is thus a constitutional obligation for the government to maintain a police service that provides security of the people in Kenya and protect the fundamental human rights recognized in the constitution and adheres to the rule of law.

Complete policing is policing that is effective, lawful and humane. It is clearly important for the good governance of any country, and for the well being of its inhabitants, that criminality and social disorder should be kept to minimum levels, that those who break the law should be brought to justice, and that public emergencies should be responded to promptly and efficiently. And this calls for the police to behave lawfully and humanely. Policing here means ‘what the police do to ensure compliance with the law.’

2.3.1 Police Actions and Human Rights

The police are given a range of powers that some argue they undermine the concept of human rights. The law thus requires a police officer who performs an official duty or exercises police powers shall perform such duty or exercise such power in a manner that is lawful. The police are required to adhere to the rule of law as an essential element to human security, peace and the promotion of fundamental rights and freedoms. Thus in performance of their functions the police should;

³⁴ Article 2 of the UN Code of Conduct for Law Enforcement Officials-Resolution 34/169 of 1979. In its commentary it states that “The human rights in question are identified and protected by national and international law. Among the relevant international instruments are the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Suppression and Punishment of the Crime of Apartheid, the Convention on the Prevention and Punishment of the Crime of Genocide, the Standard Minimum Rules for the Treatment of Prisoners and the Vienna Convention on Consular Relations.

(b) National commentaries to this provision should indicate regional or national provisions identifying and protecting these rights.

a) *The police will act in a manner that ensures they discharge the duties assigned to them by law equitably, diligently and with a high degree of professional responsibility and will, at all times, strive to maintain a community service focus. Police must exercise their lawful functions with a high degree of professional responsibility and maintain a focus on community service.*³⁵

b) *The police will act in a manner that upholds the right to life, liberty and security of the person by only using force and firearms when strictly necessary and only to the extent required for the fulfillment of their lawful duty.*³⁶

The international and regional frameworks for policing recognize the fundamental right to life. In the exercise of their lawful function, police are permitted to use force. In order to promote a balance between the right to life and the lawful use of force, the UN established the Basic Principles on the Use of Force and Firearms (Basic Principles). These aim to guide police organizations on legal and operational frameworks for the use of force and firearms that safeguard the right to life.

c) *The police will act in a manner that ensures all citizens enjoy their fundamental rights and freedoms without discrimination.*³⁷

Under the UDHR all persons are entitled to enjoy their fundamental rights and freedoms without discrimination, and enjoy equal recognition and protection by the law without discrimination on any ground³⁸. Accordingly, in the exercise of their lawful function, the police must ensure that they: respect and protect human dignity and maintain and uphold the human rights of all people; recognize that all persons are equal before the law and are entitled, without discrimination, to equal protection of the law; do not unlawfully discriminate on the basis of race, gender, religion, colour, political opinion, national origin, property, birth or other status; recognise that it is not unlawful discrimination to enforce certain particular measures designed to address the special

³⁵ Common standards for policing in east Africa (2010) at page 28

³⁶ *ibid*

³⁷ *ibid*

³⁸ Article 2, UDHR and Article 3, ICCPR

status and needs of women, juveniles, the sick, the elderly, persons living with disabilities and others requiring special treatment in accordance with human rights standards; and ensure that recruitment and promotion policies of police agencies are free from any form of unlawful discrimination.

- d) *The police will act in a manner that upholds the absolute prohibition on the use of torture and other cruel, inhuman or degrading treatment or punishment. The police will not inflict, instigate or tolerate any act of torture, cruel, inhuman or degrading treatment or punishment. No circumstances will override this prohibition, including threats of war, political instability or periods of emergency.*³⁹

International law policing contains an absolute prohibition on the use of torture and other cruel, inhuman or degrading treatment or punishment⁴⁰. Torture, in the context of policing, is any intentional action by, or with the consent of, a public official which causes severe pain or suffering, whether mental or physical, for purposes which include obtaining information or a confession, punishment, intimidation or coercion, or for any purpose based on any form of discrimination⁴¹. States must establish both legal and operational frameworks that prohibit torture and take positive steps to prevent its use by the police.

- e) *The police will act in a manner that ensures all persons deprived of their liberty are treated with humanity and respect for their inherent dignity.*⁴²

The International Bill of Rights requires that all persons who are deprived of their liberty are treated with humanity and with respect for their inherent dignity⁴³. The Code of Conduct for Law Enforcement Officials requires officials to ensure the protection of the health of persons in their custody and to ensure that medical attention is available when required⁴⁴. Police with the consideration that all persons are innocent until proven guilty by a competent judicial authority

³⁹ *ibid*

⁴⁰ Article 1, Convention Against Torture.

⁴¹ Article 5, UN Code of Conduct for Law Enforcement Officials, Preamble, Article 1 and Article 16, Convention Against Torture.

⁴² *ibid*

⁴³ Article 10(1), ICCPR, Article 6, African Charter on Human and Peoples' Rights, Articles 5(1)-(3), Draft East African Bill of Rights, 2007.

⁴⁴ Article 6, UN Code of Conduct for Law Enforcement Officials.

they should treat all persons in custody with dignity and give them provisions like clothes, food and sanitary provisions.

- f) *The police will act in a manner that adheres to the absolute prohibition on extra-judicial executions and the government will legislate to ensure that such actions are investigated and prosecuted as a matter of priority and as punishable criminal offences under law. Police will not derogate from this principle on account of war, armed conflict or other national emergencies.*⁴⁵

At international law, the police are not permitted to engage in, or tolerate acts of, extra-judicial execution or enforced disappearances. Such actions are contrary to the rights to life, liberty and security of the person and the principles of the rule of law and due process, all of which are articulated by the UDHR and ICCPR. The UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Execution set out clear provisions for the investigation and prevention of these acts by law enforcement officials. The Principles provide that such actions must be punishable criminal offences under domestic law and that states are not permitted to derogate from the Principles on account of war, armed conflict or other national emergencies.⁴⁶

- g) *The police will act in a manner that ensures victims are treated with compassion and dignity, which includes access to prompt, fair and inclusive mechanisms of redress that respect the privacy of victims. They will make known and provide victims with assistance, including psychological, medical and social services. The police organization will ensure that officers receive training to sensitize them to the diverse needs of victims.*⁴⁷

The Declaration on Basic Principles for Justice of Victims of Crime and Abuse of Power defines victims⁴⁸ in article 1 and their rights and aims to ensure that police, justice, health, social services and other personnel dealing with victims are able to provide proper and prompt aid.

⁴⁵ *ibid*

⁴⁶ Principle 11. Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions

⁴⁷ *ibid*

⁴⁸ a victim is defined as a person who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or

- h) *The police will act in a manner that does not discriminate against women, juveniles and minority communities. Police who are in frequent contact with suspects, offenders, victims and witnesses from these groups should receive sensitisation training.*⁴⁹

The international and regional framework for policing recognises that minority communities are in particular need of protection by the police and from abusive policing practices. The type of protection is two fold: first, they require legal structures to eliminate and prevent discriminatory policing practices that target minority communities. Second, a framework for protection is needed to ensure that the police are themselves sensitive to the particular needs of such groups in the course of policing them, whether as victims, witnesses or accused persons.

- i) *The police will act in a manner that recognises the right of all persons to peaceful assembly, without restriction, insofar as this right is consistent with the rule of law, democracy, public peace and security, police will avoid the use of force and, if force is necessary, only use force to the minimum extent. In violent assemblies, police will use less dangerous means of crowd control but again if force becomes necessary, only use the minimum force necessary.*⁵⁰

The ICCPR, the African Charter on Peoples' and Human Rights and the EAC Bill of Rights

recognise the right of all persons to peaceful assembly, without restriction, insofar as the exercise of this right is consistent with the law, democracy, public peace and security, and the rights of others.⁵¹

The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials recognizes the right to participate in lawful and peaceful assembly enshrined in the UDHR and restricts the use of force and firearms in the policing of other assemblies to:⁵²

omissions that are in violation of criminal laws operative within member states, including those laws proscribing criminal abuse of power.

⁴⁹ *ibid*

⁵⁰ *ibid*

⁵¹ Article 21, ICCPR. See also, Article 15, Convention on the Rights of the Child, Article 11, African Charter on Human and Peoples' Rights, Article 9(1)(d), Draft East African Bill of Rights, 2007.

- unlawful, but peaceful, assemblies: avoid the use of force and, if force is necessary, use force to the minimum extent necessary;⁵³ and
- violent assemblies: use less dangerous means of crowd control, but if force becomes necessary, use it to the minimum extent necessary.

The use of firearms is prohibited except when necessary to protect life in the following circumstances:

- Self-defense;
- In the defense of others against the imminent threat of death or serious injury;
- To prevent the commission of a crime that presents a grave threat to life; or
- To overcome the resistance to arrest of a person, or to prevent their escape, if that person's actions represent a grave threat to life.

2.4 CONCLUSION

In summary police function can be said to be to protect life, liberty and security; to maintain public safety and social peace; and to promote and uphold the rule of law and human rights. Police actions should always be guided by human rights principles.

⁵² Article 12, UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials

⁵³ Article 13, UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

CHAPTER THREE

ARRESTS:

3.0 INTRODUCTION

The chapter looks at the concept of arrest in general, how an arrest should be conducted and the rights human rights perspective of arrests.

3.1 UNDERSTANDING ARREST

Black's law dictionary defines arrest as the stopping, seizing, or apprehending a person by lawful authority; the act of laying hands upon a person for the purpose of taking his body into custody of the law ; the restraining of the liberty of a man's person in order to compel obedience to the order of a court of justice, or to prevent the commission of a crime, or to insure that a person charged or suspected of a crime may be forthcoming to answer it⁵⁴.

Section 2 of the National Police Service Act (2011) defines arrest as the act of apprehending a person for suspected commission of an offence or by the action of legal authority. In *R vs. Whitefield*⁵⁵ the Supreme Court of Canada held that "Arrest consists of the actual seizure or touching of a person's body with a view to his detention. The mere pronouncing of words of arrest is not an arrest, unless the person sought to be arrested submits to the process and goes with the arresting officer."

An arrest is the initial stage of a criminal prosecution. It is intended to vindicate society's interest in having its laws obeyed, and it is inevitably accompanied by future interference with the individual's freedom of movement, whether or not trial or conviction ultimately follows⁵⁶.

Powers of arrest interferes with the individual freedom to a far greater extent. An arrest changes the rights of the arrested citizen. Since arrest has such an impact upon the individual citizen, it must be subject to a body of strict rules concerning the grounds for arrest and the detailed procedures. All major human rights instruments guarantee the rights to liberty and security of person for everyone. And prohibit arbitrary arrest or detention. No one shall be deprived of his

⁵⁴ Black's Law Dictionary free online 2nd edition at AERSST accessed on 12/03/2013

⁵⁵ (1970) S.C.R. ,at page 49

⁵⁶ Terry Vs. Ohio 392 U.S. 1 (1968), At Page 26

liberty except on such grounds and in accordance with such procedures as are established by law (Art. 9 ICCPR, Art. 5 ECHR). The right to liberty of the person, as found in international human rights instruments, does not grant complete freedom from arrest or detention.

Deprivation of liberty is a legitimate form of state control over persons within its jurisdiction. Instead, the right to liberty acts as a substantive guarantee that arrest or detention will not be arbitrary or unlawful. In general, any deprivation of liberty is only allowed if it is carried out in accordance with a procedure established by domestic law and if the following minimum guarantees are respected: a) every detained person shall be informed promptly of the reasons for her/his arrest; b) every detained person shall be entitled to take *habeas corpus* proceedings before a court (which has to decide without delay and order release if the detention is unlawful); c) every detained person has an enforceable right to compensation if detention was unlawful; and d) persons held in custody shall be brought promptly, that is within a few days, before a judge who must either release them or authorize pre-trial detention. They are entitled to trial within a reasonable time and to release in exchange for bail or some other guarantee to appear for trial. In other words, pre-trial detention shall not be the general rule and shall be as short as possible, depending on the complexity of the case.

For an arrests to be lawful under International Human Rights Law, arrests and detention must: be carried out in accordance with both formal and substantive rules of domestic and international law, including the principle of nondiscrimination and also be free from arbitrariness, in that the laws and their application must be appropriate, just, foreseeable or predictable and comply with due process of law. The notion of “‘arbitrariness’ is not to be equated with ‘against the law’, but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law...” The prohibition of arbitrariness also means that deprivations of liberty must not be motivated by discrimination

The reasons of arrest can be summarized as: To make certain that the accused does not flee to some distant place or go into hiding. This insures the accused person’s availability when the case comes to trial ;to give protection to the community, since the offender may commit other crimes and to prevent loss of evidence.

Criminal laws of Kenya provide that an arrest occurs when a person restrains the freedom of movement of another person. At common law one of the requirements of a lawful arrest is that the person being arrested must be informed of the reason for the arrest.⁵⁷ However it is not necessary to inform the arrested person the reason for the arrest in circumstances where such a person must know the nature of the alleged offence of which he is detained e.g. if he runs away or resorts to attack the arresters.

For a police officer to effect an arrest one is required to have a warrant of arrest. A warrant is an order by a magistrate to a law enforcement officer to arrest and bring a person charged with a crime to jail. However, an arrest can be made even without a warrant of arrest (discussed below).

The police are not the only people with the powers of arrest. Private persons in section 34 of the Criminal Procedure Code allow a private person to arrest a person to make an arrest if they catch someone committing an offence *red handed* (in flagrante), such persons should be taken to a police station promptly for booking. Chiefs and Magistrates⁵⁸ can effect an arrest too.

3.1.1 Power to arrest without a warrant

Subject to Article 49 of the Constitution⁵⁹, a police officer may without a warrant, arrest a person—

⁵⁷ *Mwangi S/O Njoroge Vs R* (1954) 21 EACA 377

⁵⁸ Section 38 of the CPC allows a magistrate to arrest an offender when an offence is committed in the presence of a magistrate within the local limits of his jurisdiction, he may himself arrest or order any person to arrest the offender and may thereupon, subject to the provisions of this Code as to bail, commit the offender to custody in .Section 39: A magistrate may at any time arrest or direct the arrest in the presence, within the local limits of his jurisdiction, of any person for whose arrest he is competent at the time and in the circumstances to issue a warrant. When magistrates effect an arrest they have judicial immunity and thus should be careful before exercising these powers, it is important that they do not violate the rights of citizens by arresting people simply because they have these powers. It is in rare circumstances that magistrates effect arrests.

⁵⁹ Article 49 of the constitution outlines the rights of an arrested person as—

(a) to be informed promptly, in language that the person understands, of— the reason for the arrest; the right to remain silent; and the consequences of not remaining silent; (b) to remain silent; (c) to communicate with an advocate, and other persons whose assistance is necessary; (d) not to be compelled to make any confession or admission that could be used in evidence against the person; (e) to be held separately from persons who are serving a sentence; (f) to be brought before a court as soon as reasonably possible, but not later than— twenty-four hours after being arrested; or if the twenty-four hours ends outside ordinary court hours, or on a day that is not an ordinary court day, the end of the next court day;

- (a) who is accused by another person of committing an aggravated assault in any case in which the police officer believes upon reasonable ground that such assault has been committed;
- (b) Who obstructs a police officer while in the execution of duty, or who has escaped or attempts to escape from lawful custody;
- (c) Whom the police officer suspects on reasonable grounds of having committed a cognizable offence;
- (d) Who commits a breach of the peace in the presence of the police officer ;
- (e) In whose possession is found anything which may reasonably be suspected to be stolen property or who may reasonably be Suspected of having committed an offence with reference to that thing;
- (f) Whom the police officer suspects upon reasonable grounds of being a deserter from the armed forces or any other disciplined service;
- (g) Whom the police officer suspects upon reasonable grounds of having committed or being about to commit a felony; or
- (h) Whom the police officer has reasonable cause to believe a warrant of arrest has been issued.

3.2 USE OF FORCE AND FIREARMS WHEN EFFECTING ARRESTS

Police are typically associated with the equipment they carry to enable them to exercise force e.g. handcuffs, truncheon and firearms in their day to day functions. However, there are only a few functions in which some sort of force, or the threat to use force, may be necessary and legitimate to attain a lawful policing objective. These include making arrests, preventing crime and managing incidents involving public disorder. As the use of force against its own people is one of the most extreme measures a State can take there are many standards aimed at limiting the use of State force. At the heart of all these standards is the question of what constitutes legitimate

(g) at the first court appearance, to be charged or informed of the reason for the detention continuing, or to be released; and(h) to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.

force. Article 3⁶⁰ of the UN Code of Conduct for Law Enforcement Officials (UN Code of Conduct) and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (hereafter Basic Principles) are the main standards covering the use of force and firearms for the police.

3.2.1 Key human rights principles relating to the use of force and firearms

- **Proportionality:** use of force must be proportionate to the lawful objective to be achieved and to the seriousness of the offence⁶¹. In the training of police, special attention should be given to⁶²: Alternatives to the use of force, including the peaceful settlement of conflicts, understanding crowd behavior, and methods of persuasion, negotiation and mediation Technical means (including less than lethal weapons and protective gear for officers)

Proportionality can only be achieved if police have a broad range of techniques and equipment available to them including self-defence equipment (such as shields, helmets, bullet-proof vests and bullet-proof means of transportation), empty hand techniques and non-lethal incapacitating weapons⁶³.

- **Lawfulness:** The use of force by police is lawful when it conforms to national laws and police regulations that in turn conform to international human rights standards. Both the objective and the means of achieving it must be lawful. In the preamble, the Basic Principles require States to take the Principles into account in their national legislation and in police rules and regulations on the use of force and firearms. Its Principle 1 specifically requires States to adopt national rules and regulations concerning the use of force and firearms and to keep the ethical issues involved constantly under review.

These rules and regulations should include guidelines that⁶⁴:

Specify the circumstances under which police may carry firearms and the type of firearms and ammunition permitted;

Ensure that firearms are used appropriately and with least risk of unnecessary harm;

⁶⁰ Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.

⁶¹ Basic Principles, Principle 5.

⁶² Basic Principles, principle 20

⁶³ Basic Principles, Principle 2.

⁶⁴ Basic Principles, Principle 11.

Prohibit firearms and ammunition that cause unwarranted injury or present unwarranted risk
Regulate the control, storage and issuing of firearms, including procedures that ensure that officers are accountable for the weapons and ammunition issued to them;

Provide for warnings to be given, when appropriate, if firearms are to be discharged;

Provide for a reporting system whenever officials use firearms in the performance of their duty;

- **Accountability:** To ensure accountability for the use of force and firearms there must be adequate reporting and review procedures, including:

- *Incident reports:* The UN Code of Conduct requires that a report be made promptly to the competent authorities every time a firearm is discharged⁶⁵. The Basic Principles add that a detailed report must be made “in cases of death, serious injury and other grave consequences” and submitted promptly to the authorities responsible for administrative review and judicial control⁶⁶.

- *Reports of violations:* The UN Code of Conduct requires that officers report any violation of the Code.¹⁰ The Basic Principles put the onus on superior officers to do everything in their power to “prevent, suppress or report” unlawful use of force or firearms⁶⁷.

Both the UN Code of Conduct and the Basic Principles state that police should not be penalized for refusing to carry out violations or for reporting them⁶⁸.

- *Effective independent review:* The Basic Principles call for an effective review process by independent administrative or prosecutorial authorities whenever a firearm is used and in every case of death, serious injury or other grave consequences. Victims, relatives or others affected by the use of force or firearms, or their legal representatives must also have access to an independent process, including a judicial one⁶⁹.

⁶⁵ UN Code of Conduct, Article 3.

⁶⁶ Basic Principles, Principles 6, 11(f) and 22.

⁶⁷ Basic Principles, Principle 24.

⁶⁸ UN Code of Conduct, Article 8; Basic Principles, Principle 25.

⁶⁹ UN Code of Conduct, Article 8; Basic Principles, Principle 25.

• *Personal responsibility*: Following the orders of a superior is no excuse for unlawful use of force⁷⁰. It follows from this principle that police officers are personally responsible⁷¹ and also that officers should be personally identifiable. They should wear nametags or numbers that are clearly visible.

• **Necessity**: Force should be an exceptional measure⁷². This means that non-violent means must be tried first and force and firearms should only be used if these “remain ineffective or without any promise of achieving the intended result.”⁷³ “Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty⁷⁴.”

It is not essential that the individual being placed under arrest be subdued, handcuffed, or held down. The restraint aspect of an arrest is just as valid when the arrestee peaceably submits to authority, whether it is real or assumed. The intent of the arresting officer to take person into custody is the distinguishing element that makes an arrest different from mere questioning, detention or street interrogation. Force may be physical or mental.

The law thus provides for use of necessary and reasonable force whenever force needs to be used to effects an arrest. The sixth schedule of the national police service act(2011) outlines condition or rules when it comes to the use of force. A police officer shall always attempt to use non-violent means first and force may only be employed when non-violent means are ineffective or without any promise of achieving the intended result⁷⁵. The force used shall be proportional to the objective to be achieved, the seriousness of the offence, and the resistance of the person against whom it is used, and only to the extent necessary while adhering to the provisions of the law and the Standing Orders.⁷⁶

When the use of force results in injuries—⁷⁷

⁷⁰ Basic Principles, Principle 26.

⁷¹ HRC, General Comment No.31, para. 18

⁷² UN Code of Conduct, Commentary to Article 3.

⁷³ Basic Principles, Principle 4

⁷⁴ UN Code of Conduct, Article 3

⁷⁵ Rule 1 6th schedule national police service act(2013)

⁷⁶ Rule 2 *ibid*

⁷⁷ Rule 3 *ibid*

- (a) The police officers present shall provide medical assistance immediately and unless there are good reasons, failing to do so shall be a criminal offence; and
- (b) Shall notify relatives or close friends of the injured or affected persons.

A police officer who uses any form of force shall immediately, report to the officers' superior explaining the circumstances that necessitated the use of force and the supervisor shall judge the rightfulness and decide on the next step, subject to these regulations⁷⁸. Any use of force that leads to death, serious injury and other grave consequences shall be reported immediately by the officer in charge or another direct superior of the person who caused the death or injury, to the Independent Police Oversight Authority who shall investigate the case.⁷⁹

The use of force is said to be the hardest form of force used by the police. It is an authorization that has serious consequences almost without exception on the person towards whom it is used, but also on the police officer using it. The use of firearms can cause serious danger to the health, or the actual death of the person at whom it is used, as well as causing serious psychic traumas to the police officer. This is the case since the police officer appears as the judge without performing any formal proceedings, he passes judgment and executes. Keeping in mind the constitution gives everyone a right to life.

Firearms may only be used when less extreme means are inadequate and for the following purposes—saving or protecting the life of the officer or other person; and in self-defence or in defence of other person against imminent threat of life or serious injury⁸⁰.

An officer intending to use firearms shall identify themselves and give clear warning of their intention to use firearms, with sufficient time for the warning to be observed, except— where doing so would place the officer or other person at risk of death or serious harm; or if it would be clearly inappropriate or pointless in the circumstances.

A police officer shall make every effort to avoid the use of firearms, especially against children.

⁷⁸ Rule 4 *ibid*

⁷⁹ Rule 5 *ibid*

⁸⁰ Rule 1 part B (*ibid*)

Any use of firearm, even if there's no injury, shall immediately be reported to the officer's superior. Any use of fire arms that leads to death, serious injury and other grave consequences shall be reported by the officer in charge or another direct superior of the person who caused the death or injury, to the Independent Police Oversight Authority who shall investigate the case.

CONCLUSION

Police powers of arrest are very sensitive as they affect the rights of a person and therefore human rights should be observed all the time in relation to this police power.

CHAPTER FOUR

FACE OF ARRESTS IN KENYA

4.0 INTRODUCTION

Arrest is a physical situation and an arrestee is extremely vulnerable to abuse. Despite detailed legislation on arrests in Kenya . Abuse of inherent human rights is pronounced. Abuse that is being done by the police who are the defenders of law.

From the point of arrest that involves informing the suspect his rights, recording of his bio data and any other relevant information about him or her⁸¹, body searches, arraignment in court as entitled under article 49 of the constitution, to the sentencing or release of a suspect, a person is entitled to all other rights that do not relate to the deprivation of liberty. Human rights policing means carrying out arrests and detentions where necessary in accordance with human rights principles the most important of which are non-arbitrariness, the presumption of innocence, 'fair trial' and 'equality of arms' and the absolute prohibition of torture and other cruel, inhuman or degrading treatment. Despite these constitutional guarantees there remains a major problem both in law and in practice when it comes to arrests and detentions. The following will paint a good picture of what is the face of arrests in Kenya.

4.0.1 Arbitrary arrests

Despite the law being clear on when and how arrests should be affected my research showed that police frequently arrest citizens arbitrarily.

The story of Steven Musyoka is a victim of arbitrary arrest. In 2010, he was accused of shooting a police officer and robbing the bank that he worked as a teller. The police officers that arrested him subjected him to savage torture and beatings and for a confession and constantly moved him from one police station to another at night so that his wife could not trace him. When it was determined that he was innocent the police prosecutors conspired with a corrupt judge to hold

⁸¹ Rule 8 of the fifth schedule of the national police service act (2011) provides that; that the police officer incharge of the station or the detention facility should maintain a register into which the following particulars in respect of detained persons shall be entered—

- (i) name;
- (ii) reasons for the arrest and detention;
- (iii) date and time of the arrest and detention;
- date and time of first appearance before a court;
- (v) identity of the arresting officer;
- (vi) date and time for interrogations and identity of interrogators;
- (vii) date and time of any transfer of the detainee to another place of detention.

him for three and a half years. Lucky for him an organization called International Justice Mission a human rights agency that secures justice for victims of slavery, sexual exploitation and other forms of violent oppression. IJM lawyers, investigators and aftercare professionals work with local officials to ensure immediate victim rescue and aftercare, to prosecute perpetrators and to promote functioning public justice systems learnt of his predicament took up his case and proved that there was no evidence linking him to the crime. They finally secured his release in June 13th 2013 and reunited with his family⁸².

Mr. **Kenneth Kirimi Mbae**, a member of Release Political Prisoners (RPP), a human rights organization in Kenya, as well as an active member of Bunge la Mwananchi, a grassroots movement that aims at fighting social injustice and promoting accountable leadership at all levels in Kenya. According to the information received, on April 22, 2010, Mr. Kenneth Kirimi Mbae was arrested in Nairobi near the headquarters of the General Service Unit (GSU) by four persons in civilian clothes. Two other individuals were arrested at the same time and released shortly after.

Although RPP members tried to trace Mr. Kenneth Kirimi Mbae in the different police stations in Nairobi and asked the police to produce Mr. Mbae before justice, his whereabouts remained unknown until April 25, 2010, when Mr. Kenneth Kirimi Mbae was found at Suswa market, Narok district. During his detention subjected to ill-treatments while in detention, including intimidation through gunshots being fired in a small room and being beaten. He was also threatened that the police officers would sleep with his wife if he did not own up. He is currently undergoing treatment with the support of the Independent Medico Legal Unit (IMLU)⁸³.

During his detention, Mr. Kirimi Mbae was reportedly interrogated about his role in RPP and Bunge la Mwananchi as well as about the work carried out by Mr. Stephen Musau, Executive Coordinator of RPP, and the organization generally with regard to the Mount Elgon military operations, and the work of Mr. Musau and the RPP regarding extrajudicial killings and the

⁸² IJM(2010) fact sheet at www.ijm.org (accessed on 31st August 2013)

⁸³ The observatory for the human rights defenders (2010), arbitrary detention without charge and subsequent release of mr. kenneth kirimi mbae / threats against mr. stephen musau at <http://www.omtc.org//stephen=kirimi//=intimidation.com> (accessed on 31st august 2013)

subsequent sharing of their report with Professor Philip Alston, United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions. the arbitrary arrest of Mr. Kenneth Kirimi Mbae as well as the threats and acts of intimidation against Kenneth Kirimi Mbae and Stephen Musau, which seem to merely aim at sanctioning their human rights activities, and fears for their physical and psychological integrity.⁸⁴

With the high terror alert in Nairobi after the attacks in various parts of the city, persons of Somali ethnicity have faces the wrath of arbitrary arrests. In the Eastleigh a predominantly Somali suburb police arbitrarily detained refugees and asylum seekers in their homes, in the street, in police vehicles, and in police stations. The police held the detainees – sometimes for many days in inhuman and degrading conditions – while threatening to charge them, without any evidence, with terrorism or public order offenses. In one case, police charged almost 100 people without evidence only to have the courts throw the case out months later for lack of evidence⁸⁵. In the report by Human Rights Watch seven women described how police raped them in their homes, on side streets, and on wasteland, in some cases with children close by. One of the women who was raped said police also raped three other women in the same attack. Forty refugees, including many women, described how police beat, kicked, and punched them and their children in their homes, in the street, and in police vehicles, causing serious injury and long-term pain. Dozens of people spoke about how police entered businesses and homes, often in the middle of the night, stole large amounts of money and other personal belongings, and extorted money to let them go free⁸⁶.

4.0.2 Trade of justice

This is where the police use arrests for the purpose of making money. It is a known practice that Police officers detain citizens without charging them with specific crimes the arrests were primarily for the purpose of extorting bribes. Police often stopped and arrested citizens to extort bribes; those who could not pay were jailed on trumped-up charges (e.g., preparation to commit a felony) and beaten. Transparency International's 2012 *Bribery Index* concluded that police were

⁸⁴ Ibid

⁸⁵ Human Rights Watch(2013) “*You Are All Terrorists*” Kenyan Police Abuse Of Refugees In Nairobi.

⁸⁶ Us country reports (2013)

extremely corrupt. The study noted that more than 60 percent of respondents reported being forced to pay bribes to the police⁸⁷.

In areas of Dandora and Mathare slums, police target the youth on Friday's around 7:00 P.M. is what they call 'Friday collection' as they go around the slums targeting youth and threatening them to arrest them with trumped up charges if they don't give them "kitu kidogo." Those who do not give the bribes are arrested and put in the cells until Monday morning when they are presented in front of the magistrate with obviously trumped up charges. All this while while the suspects are in holding in police stations the police will receive bribes from relatives of the arrested persons so as to avoid the fines that are imposed in court or even imprisonment.

This extends to also traffic police who are the most notorious in asking for bribes from motorists who have committed traffic offences and they let them go. The practice is so bad that the police accept as little as Ksh.50 (fifty shillings). Matatu operators are the worst affected they give bribes at every police stop to avoid arrests most of them have committed offences e.g. overloading and over speeding. Pedestrian/passengers along the thika super highway route complain of overloading and over speeding all the time and nothing changes as the police are on a pay roll by the owners of the matatus on that route⁸⁸.

Another practice is when a person reports a crime and the suspect needs to be arrested the police require that the person requiring the suspect to be arrested the police ask to be facilitated so as to go and make the arrest. Research shows that this has discouraged people to go and make reports to the police. Justice is for those who can afford those who can afford.

4.0.3 Use of Unreasonable Force and Firearms leading to death.

On April 21, police shot and killed three persons and injured two others while attempting to disperse a crowd in Dandora, one of Nairobi's suburbs. Two of the victims were young children. Police authorities suspended six officers for their role in the incident. The government promised an investigation but had not initiated criminal proceedings against the suspended officers so far⁸⁹.

⁸⁷ ibid

⁸⁸ ibid

⁸⁹ ibid

In November 2012 police officers attached to the Muthangari police station shot and killed a man and his 12-year-old son outside their home in Kawangware, Nairobi. Eyewitness reports indicated that the son was shot while pleading for his father's life. Police officers threatened a reporter who arrived on the scene. Two police officers were suspended and charged with murder. As of year's end, no government witnesses had testified, and the case had been adjourned multiple times⁹⁰.

Police use of excessive force to disperse demonstrators resulted in injuries, hawkers in the Ngara market have several times lost their colleagues when police use live bullets to chase them away from selling their wares in the central business district of Nairobi. In the month of April to August 2013 three people lost their lives from gunshot injuries⁹¹.

Police killed numerous criminal suspects, often claiming that they violently resisted arrest or were armed. On March 25, police shot and killed four persons during an attempted robbery at a rural electrification authority facility in Nairobi. The suspects were allegedly part of a gang of 13 persons who were caught in the act of stealing cables. They were unarmed but were shot and killed when they attempted to flee the scene. There was no investigation, and no action was taken against the police⁹².

In January 2011 three police officers shot and killed three suspected carjackers who already had surrendered. The incident occurred in the middle of a busy Nairobi highway in broad daylight; it was captured on camera and featured prominently in the media. The officers were suspended temporarily but subsequently reinstated, although the investigation into the incident continued at year's end⁹³.

4.0.4 Torture , cruel, inhuman and degrading treatment

In July 2013 two officers from the Kasarani police Station in Nairobi reportedly assaulted John Maingi a resident of the Kasarani area, beating him with batons in the street before taking him into custody and continuing the abuse inside a jail cell. The man was released several hours later

⁹⁰ Ibid

⁹¹ Standard digital

⁹² Ibid

⁹³ Ibid

with severe injuries to both legs; he was not charged with any crime. No action had been taken against the police officers as of year's end⁹⁴.

Another emerging trend is abuse of transgender. In early 2012 police arrested a male to female transgender Cosmas Musa in Nairobi Ngara area. Upon arrests they stripped her naked upon seeing that she has male genitalia, the police brutal beat her up accusing her of homosexuality and prostitution. They further sexually abused her and later released her. Through a transgender Kenya a human right organization fighting for transgender rights in Kenya through their founder Audrey Mbugua a transgender too filed a case in the Millimani High Court against the police men. The victim was later compensated with Ksh. 300,000.

4.1 CONCLUSION

From the above illustrations it is clear that the police are failing terribly in their duties to protect human rights. Statistics show that Up to 20 percent of Kenya's 55,000 prisoners might be declared innocent with proper legal representation. (*New York Times*). Kenya has only 63 lawyer prosecutors for a population of 30 million. (U.S. State Department.

⁹⁴ ibid

CHAPTER 5

SUMMARY OF FINDINGS , DISCUSSION , CONCLUSION AND RECOMMENDATIONS

5.0 INTRODUCTION

This chapter summarizes the findings and discussion, presents a conclusion and makes recommendations based on the results. The main aim of the study was to analyze the role the police are playing in human rights when they are making arrests with a focus of Nairobi area. The study first had to analyze their role in human rights protection in general and specifically human rights observance when effecting arrests. This would help in understanding what is happening in Kenya when it comes to the police exercising their power of arrest and also answer the set out research questions.

5.1 SUMMARY OF FINDINGS

Chapter two found that human rights are rights that are guaranteed to every individual simply because they are human and no one has the right to interfere or deny these rights. The government through its agents is supposed to promote human rights. Looking at international conventions and domestic statutes and specifically the national police service act of 2011 and the 2010 constitution. I explored the important role the police play in human rights protection. Human rights protection is part of the function of the police in a democracy. Policing means protecting human rights. Throughout Kenya's history police have played a big role in human rights abuse.

Further in chapter two I explored police actions which should always be guided by human rights principles for example the use of firearms and force should be guided by the principle of necessity, proportionality, lawfulness and accountability.

Chapter three looked at arrests and found that arrests interferes with the right to liberty of a person however the purpose of arrest is to compel in obedience to the order of a court of justice, or to prevent the commission of a crime, or to insure that a person charged or suspected of a crime may be forthcoming to answer it. Arrests are in line with the society's need to have its

laws obeyed. Consequently arrests interfere with other rights and freedoms such as the freedom of movement even if a suspect does not go to trial and gets a conviction.

Further in chapter three it was found that the right to liberty acts as a substantive guarantee that arrest or detention will not be arbitrary or unlawful. the law prohibits arbitrary arrests. This is to say an arrest should be made based on the law.

Chapter four found that by exploring the accounts of victims of human rights abuse by the police especially when it came to arrest one is able to understand what is happening in the country, and relating to what is required by the law and human rights instruments in the previous chapters the problem is far entrenched in the society. Human rights abuse by the police is like a culture and something of the norm to them, the people seem to have accepted it too so they accept to give bribes.

5.2 DISCUSSION

The concept of human rights is something that has grown and will continue growing as states continue growing democratically and observe the rule of law. This concept is growing in Kenya fast especially with the promulgation of the new constitutional dispensation in 2010 with an extensive bill of rights in chapter 4. Legislation has to be made to be in line with the constitution and therefore reforms of state organs that are to protect human rights are to undergo serious reforms. The police are the state organ that is to protect human rights. This research explored the role of the police to protect human rights as required by the domestic and international law, so as to show that what is happening in the ground is a complete violation of their role.

The real life experiences help expose the face of arrests in Kenya that are marred with unlawfulness and arbitrariness, harassments, bribery, use of abusive language, cruel inhumane and degrading treatment all this that are violations of a list of human rights that are guaranteed to every citizen in Kenya without discrimination.

However judging from the reforms that are taking place in terms of legislation for example the passing of The National Police Service Act (2011) that merges The Kenya Police and The Administration Police to be headed by one inspector general means that supervision of the forces is under the command of one inspector general of police that help define the roles and

responsibilities as the administration police were seen to be easily by politics. The formation of The Independent Police Oversight Committee that is to supervise the force when it comes to recruitment, punishment of the police just to name a few.

5.3 CONCLUSION

My conclusion is that the police have a clear role in human rights protection and this extends to their functions that are to protect the rights. the role played by the Police could play a positive role in the protection of human rights in the following manner: to contribute to the liberty, equality and fraternity in human affairs; to help and reconcile freedom with security and uphold the rule of law; to uphold and protect human rights of the citizens; to build up faith of the people in their protection of human rights by the state; to investigate, detect and prevent the offence; to deal with the minor child, in crisis, to accept public service is as a mission; to understand the human rights in true spirit and uphold them Police actions should be in line with human rights principles all the time. The power of arrest which is very sensitive as it involves derogation of the right to liberty and is one of the ways that social order is meant to be maintained. Police should not make arbitrary arrests as it is clearly prohibited, arrests should always be in line with human rights from the initial point of arrest to the final stage of conviction.

With this in mind and the situation happening in Kenya when it comes to arrests is a clear indicator that this is an issue that cannot go unaddressed before a human rights crisis emerges or even worse the public starts rebelling.

5.4 CHALLENGES FACED DURING THE STUDY

Being a private student had its difficulties especially financially. There were also time onstraints.

Further a research on human rights is very wide and detailed and there was need to have real life scenarios. Getting people to speak out about their abuse experiences was difficult as most people fear the consequences of harassment and intimidations.

5.5 RECOMMENDATIONS

5.5.1 Introduction

An arrest must be based on a reasonable, lawful, suspicion that a person has committed, or is planning to commit, an offence defined as unlawful in law. It must be in compliance with the basic principles of proportionality, subsidiary, legality and necessity.

Based on this I recommend that the government does the following;

Law reform : this will include reviewing , the police standing orders and other laws pertaining to the criminal justice system to ensure that they conform with the principles established in new constitution.

Law enforcers should be trained on the law and procedures this will develop the capacity of police officers to distinguish between different situations and adapt reactions to the circumstances of the situation at hand. Police should be trained thoroughly in how to make use of open- and closed-hand techniques and equipment such as handcuffs so that their use does not cause additional stress to the arrestee.

Create a human rights culture within the police agencies The police should be constantly trained on human rights observance when making arrests and especially now with the introduction of new legislation and most important the constitution. The police should go through thorough training on the human rights introduced by the new laws, the importance of observing human rights and the effect that this would have in their day to day work the consequences of not observing these human rights.

The government should also establish a body where citizens can report these abuses on human rights when arrests are conducted. The body should be independent from the force. The body is to carry out full independent and impartial investigations into all these allegations and bring forward the perpetrators to justice. The body should also look at allegations of corruption and blackmailing of citizens and bring the perpetrators to justice.

The government should monitor and regularly assess and evaluate how arrests are carried out. Excessive use of force and complaints of excessive use of force, especially when these are

recurrent, should be discussed in performance appraisals with police officers. New methods or equipment should always be carefully monitored and evaluated.

To curb the issue of corruption the government should constantly review the salaries and allowances of the police officers.

Establish an awareness campaign on corruption especially bribery, this is aimed to show the citizens in that they are fueling the bad practice among the force and at the end they are becoming the victims since arrests are now for the purpose of extortion.

The government should ensure that persons who report human rights abuse by the police and are protected.

The government should publicly condemn all forms of human rights abuse as a preventive measure and raise public awareness about the negative effect and impact.

The government should ensure all laws that are in force and are to be enacted that are intended to deal with use of excessive force, use of fire arms arbitrary arrests, torture, degrading and inhuman treatment are adequately funded.

The government should through the newly formed the national police service commission

Vet police officers starting from the top of the police hierarchy to the bottom so as to ensure that only suitable officers remain in the force.

The national police service commission in the recruitment of police officers should make sure only qualified persons with integrity enter the force.

The society

The public should also be made more aware on their human rights and their rights upon arrests.

They should be sensitized on the disadvantages of giving bribes to the police.

Development partners

They should offer aid without constraints in order to ensure that all the projects that are meant to safeguard human rights are implemented.

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