

Police Brutality in Kenya

is it “*utumishi kwa wote ama utumishi kwa wanasiasa*” (service to all or to politicians)?

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In memory of my late brother, and too all those who have lost their lives in the hands of police brutality.

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Abstract

This research explores cases of police brutality in Kenya during the election period. It explores cases of police brutality in post-police reform period from 2010-2018. The study is done qualitatively, through content analysis, mainly a review of newspaper and articles detailing cases of police brutality in Kenya. These data are analysed thematically in regard to the research question.

The findings of the research in relation to the research question found that the police brutality is still happening in Kenya, mostly during the elections period. The study further found that there is an ingrained culture of police brutality, which is influenced by historical, contemporary social-cultural and structural dimensions.

I concluded the study with implications of the findings, with respect to the theory and the research. Further, the study offers suggestion to the reform policies within the context and adherence to the constitution. The suggestion offers two approaches, from below and from above. The approaches suggest; establishing grassroots policing, encourage community policing, reviewing the police recruitment, reviewing the police training curriculum, expanding financial and manpower support to the Independent Policing Oversight Kenya (IPOA), lay down proper parameter which will totally separate Police from executive authorities, and addressing the socioeconomic status of the police officers.

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Acronyms

AP-Administration Police

CHRI-Commonwealth Human Right Initiative

CS-Cabinet Secretary

CPA-County Policing Authorities

CORD-Coalition for Reforms and Democracy

DC-District Commissioner

DO-Division Officer

GSU-General Service Unit

IBEA-Imperial British East Africa Company

ICCPR-International Covenant on Civil and Political Rights.

IEBC-Independent Electoral and Boundaries Commission

IG- Inspector General

IPOA-The Independent Policing Oversight Authority

IT-Information Technology

KADU-Kenya African Democratic Union

KANU-Kenya African National Union

KHRC-Kenya Human Right Commission

KPS-Kenya Police Service

KPU-Kenya People Party

MOU-Memorandum of Understanding

NARC-National Rainbow Coalition

NASA-National Super Alliance

NGO-Non-Governmental Organization

NPSC-National Police Service Commission

PC-Provincial Commissioner

UNDP-United Nations Development Programme

Chapter 1

Introduction

This study explores and try to understand the persistence cases of police brutality, which has been a challenge in Kenya. Thompson and Lee (2004) helps me to understand what police brutality is. He defines police brutality as the use of excessive or unnecessary force by police when dealing with civilians.¹ Which may entail harassment, assault, false arrest, intimidation, sexual abuse, verbal abuse, or repression. In his view, brutality has two forms, physical, which includes assault, or non-physical brutality which includes verbal language.²In Kenya, there are many cases of police harassment, physical and violent attacks to citizens whom they ought to serve and protect as reported by media and human rights groups. Police brutality has been heightened more during election times: before the elections trying to intimidate the competitors' zones, and after the elections trying to contain protesting individuals with different opinions and disagreement with the elections results. The police torture and brutality has covered media headlines for the last years. Cases of Kenya police injuring, extra-judicial killing, killings through use of extreme violence and excess force to people demonstrating or those clamoring for change and demands for rights.³ The point here is, police in their action go against what is contained in Kenya bill of rights and directly violate Civilians' rights.

1.1. Background of study

In the Kenya Police website, the motto reads in Swahili, '*utumishi kwa wote*' (service to all).⁴ However, when I read Mutunga (1990), I learn that the relationship between Kenya citizens and the police has been that of indifference due to open cited cases of police brutality and overt impunity.⁵ Further, from the Kenya police service strategic plan 2003-2007, the report shows that the Kenya police since its establishment in 1907 by then British colonial government, to the present democratic Kenya state is brutal.⁶ Police brutality, criminal behaviours and abuse of power has made public to lose trust with the Kenya police. Kagari and Thomas (2006) shows that the Kenyan public has viewed the Kenya police as playing the

¹ Thompson, B. & Lee, J. "Who Cares If Police Become Violent? Explaining Approval of Police Use of Force Using a National Sample." (2004), *Sociological Inquiry*, Vol. 74(3), pp. 381 – 410.

² Thompson, B. & Lee, J (2004).

³ Darlington, Manyara, "Police shoot, kill Meru University student leader as protests turn ugly" in Standard Digital (2018), <https://www.standardmedia.co.ke/article/2001271379/police-shoot-kill-meru-university-student-leader-as-protests-turn-ugly>.

⁴ Kenya Police Service, <http://www.kenyapolice.go.ke/>.

⁵ Mutunga, W. M, the Rights of an Arrested and Accused person, (1990), Oxford University Press: Nairobi

⁶ The Kenya police service strategic plan 2003-2007, http://www.humanrightsinitiative.org/programs/aj/police/ea/articles/draft_strategic_plan_2003-07.pdf.

role of those in authority, and not being a service, the citizens can rely on. Kenya police enjoying the hand and protection of the authority and operates with outmost impunity. Most brutality cases being derived from order policing, from those in power, to ‘protect’ and safeguard their interests, as they deal with those gathering and protesting.⁷

I analyse police brutality from Mendes, Zuckerberg, Lecorre, Gabriel, and Clark (1999) work, where they argue that policing is inseparable from the political context in which it is situated⁸. The problem with Kenya policing is its colonial past. Where the British indirect⁹ rule imposed policing policies to Kenyans which were from an alien culture. The British indirect rule, using Indian police and local chiefs whom they appointed themselves was much brutal among the local indigenous communities for the colonial government sake.¹⁰ After independence, the new Kenyans lead government adopted the policing system as it was from the colonial government. However, in this case the brutality became entrenched on the tribal grounds and political ideology lines to contain any opposition from those of different ethnic groups and ideology. The first president Jomo Kenyatta and his predecessor Daniel Arap Moi used the Kenya police to rule with outmost brutality, very much like the British colonialists.¹¹ Joe Khamisi opines regarding Kenya independence government that, “it is about impunity and disrespect for the rule of law it is about *wananchi* (citizens) getting a raw deal.”¹²

Following the promulgation of the new constitution in 2010, the question of the police reforms arose. These reforms were aimed at building trust, which has always been on the lower end between the Kenya police and the public. The public referred as *Wanjiku*¹³ views

⁷ Kagari. M and Thomas. S. (2006), *The Police, the people, the politics: Police accountability in Kenya*. Common Wealth Human Rights Initiative.

⁸ Mendes. P E, Zuckerberg. J, Lecorre. S, Gabriel. A. and Clark. A. J. (1999), *Democratic, Policing and Accountability: Global Perspectives*. Ashgate: Aldershot, Brookfield, Singapore, Sydney, pg1

⁹ Before Kenya became British colony, there were no distinctive styles of administration and policing among its communities. When the British came, they established an indirect rule system, but to create uniformity among these tribes, they borrowed an idea from West Africa, where they created an office of Chief (an office which was never existence in all Kenya communities) and policing from India and Britain. The chiefs were appointed by the British themselves and meant to serve the interests of the British in a tax collection and keeping laws and orders in the black villages. While in other parts of Kenya, mainly urban centers and British areas. The British had brought some Indian police, who worked in collaboration with the British officers to enforce law and order.

¹⁰ Caroline Elkins, (2005), *Imperial Reckoning: The Untold story of Britain’s Gulag in Kenya*. Henry Holt and Company: New York. Also, David Throup, “Crime, politics, and the police in colonial Kenya, 1939-63” in *David M. Anderson, and David Killingray, Policing and decolonization: Nationalism, politics, and the police, 1917-65* (1992), Manchester University Press: Manchester, pp127-157.

¹¹ Branch. D. (2011), *Kenya: Between hope and despair, 1963-2011*. London: Yale University Press.

¹² Joe. K. (2011), *The politics of betrayal: Diary of a Kenya legislator*. USA, Canada: Trafford Publishing, pgxii

¹³ In Kenya, Wanjiku is an Kikuyu ethnic girls name. However, the name has been used in defining an average Kenya citizen within the socio-economic and political context. Wanjiku represents an ordinary citizen

Kenya police in three ways; as brutal, corrupt and the beholders of the impunity. Kenya police is still struggling with the reforms, moving away from being a police force into a police service,¹⁴ a process of building the image to the public. Kenyans are not surprised that the process of reforms has been so short lived and so slow. Recent human rights watch reports shows the Kenya police service is still the same Kenya police force.¹⁵ If differences be, they are minimal.

Human Rights watch data indicates police brutality in Kenya is a daily affair.¹⁶ However, massive brutality has been witnessed mostly in the elections and electioneering periods. The study recounts the most recent ones, in 2007, different reports show that, the 2007 elections period show an escalated police brutality than any other period post the repeal of section 2(A) of Kenya constitution and multiparty politics in 1992. In 2007, following the post-elections violence, there were 1,133 recorded death, 405 of the deaths were caused by gunshots wounds and according to the reports police were responsible for those deaths.¹⁷ The human rights watch reports have also shown that the 2017 Kenya general election was no exception. They tabled massive police brutality before and after August 2017 general elections. This has been the case regardless of the laws (National Police Commission Act), Bill of Rights in the 2010 Kenya constitution and massive police reforms. From August 2017, the Kenya media has been awash with news of outright police criminal activities and police brutality.¹⁸

In 2017 general elections period, the Kenya police has been accused of killing at least 33 people and injuring a dozen of them in some parts of Kenya. Those who were killed, some were under age children.¹⁹ In the process of containing the crowds, the police have been using

(mwananchi), who is on the oppressive end of Kenya politics, experiencing police brutality and a victim of political betrayal. Wanjiku is the one who the constitution should guard zealously.

¹⁴ Law of Kenya: National Police Acts, NO. 11A of 2011, <file:///C:/Users/User/Downloads/NationalPoliceServiceAct11Aof2011.pdf>.

¹⁵ Human Rights Watch, "Kill those criminals: Security forces violations in Kenya's August 2017 elections" (2017), <https://www.hrw.org/report/2017/10/15/kill-those-criminals/security-forces-violations-kenyas-august-2017-elections>.

¹⁶ Human Rights Watch (2017).

¹⁷ The International center for Transitional Justice, "the Kenya Commission of Inquiry into Post-Election violence" <https://www.ictj.org/sites/default/files/ICTJ-Kenya-Dialogue-Inquiry-2008-English.pdf>. Also, the Commission of Inquiry into the Post-Election Violence (CIPEV), known also as the Waki commission, documented widespread allegations of attacks, including killings and rapes committed by police especially in the opposition areas.

¹⁸ Kenya: Post-Election Killings, Abuse: Investigate Police Use of Excessive Force; Uphold Right to Peaceful Protest, in <https://www.hrw.org/news/2017/08/27/kenya-post-election-killings-abuse>.

¹⁹ Kenya: Police Killed, beat post-election protesters (2017), in <https://www.amnesty.org/en/latest/news/2017/10/kenya-police-killed-beat-post-election-protesters/>.

excess brutality, denying Kenya people (especially those who differ politically with the ruling government) freedom of assembly and freedom of speech. This form of police brutality goes against individuals who have different political opinions rights to hold an opinion, which is in Article.19 and freedom of peaceful assembly, which is in Article. 21 of ICCPR²⁰. The police have also threatened and harassed the vocal Civil Societies and human rights activists²¹. Those who have been demonstrating have been met with the full force of law²² against the Chapter 4 of the Bill of Rights of the Kenya Constitution (section 37 rights to assembly, demonstration, picketing and opinion).²³

The study looks onto the police brutality experienced under democratic regime. The extent of brutality shows that, even in democratic society, “the activities of the police can take place in compliance with the rule of the law and with full democratic accountability and respect for human rights or they can occur in a fashion which undermines the rule of the law and makes mockery of the facades of democracy and human rights.”²⁴ It is within this political context this study is done, questioning if there can be a contextualized redress to a democratic policing. I take interest of Mendes et al who argue that, “protection of basic rights and compliance with law are twin pillars of good police forces in liberal democratic societies.”²⁵

1.2. Statement of problem

Regardless of the decades of democratisation of both the police and the society in Kenya, it appears that despite the many changes, very little of what is envisaged has been achieved. While on paper the police are governed by the Constitution and the rule of law, they are still highly politicised,²⁶ for example by president appointing²⁷ police Inspector General (IG) and Deputy IG who he will control to discharge effectively his commands to meet his political

²⁰ International Covenant on Civil and Political Rights and

²¹ Kenya Human Rights Defenders and Activists, “Stop the post-election crackdown on peaceful activists in Kenya”, Amnesty International (2017): https://www.amnesty.org/en/get-involved/take-action/stop-the-post-election-crackdown-on-peaceful-activists-in-kenya/?utm_source=FBPAGE-IS&utm_medium=social&utm_content=1056244168&utm_campaign=Testing.

²² This term is well known by every Kenya citizen. It is a phrase that is always used by the Kenya police, Cabinet secretary Internal security, and Kenya leadership. The term is mainly used to warn those of different opinion and silence the mass from taking any action, including demonstrations, picketing etc.

²³ The Kenya constitution (2010): http://www.kttc.ac.ke/images/Constitution_of_Kenya.pdf.

²⁴ Mendes, pg1

²⁵ Mendes, pg34.

²⁶ Washington Osiro, “The Impact of Politicization of Kenya’s security Agencies: Repeat Attacks, loss of lives and as shattered sense of normalcy”, in *Huffpost* https://www.huffingtonpost.com/washington-osiro/the-impact-of-politicizat_b_7772742.html.

²⁷ I put appointing in quotes since based on the 2010 Kenya Constitution the president does not directly appoint Police Inspector General, rather, after parliament venting.

agenda. Kenya has enacted police reforms and legislations. Within the 2010 Constitution of Kenya, the National Police Service Commission Act 2011, and the Independence Police Oversight Authority (IPOA) were enacted. However, various reports from the Amnesty International, Human rights watch and daily newspapers show prevalent cases of police brutality in Kenya.

This idea brings the hypothetical thoughts; the lack of change is an effect of goodwill from police, the political elites desire not to see any police reform. Or could it be a lack of a useful contextual understanding and conceptualisation of what democratic and human rights policing should entail? Maybe, most of the available police reforms have used alien approaches or more ‘modern’ ideologies, rather than being coined from the indigenous context to create meaning. This might have limited the conceptualisation of the ideas of policing within the local context. Mazrui (1980) advised African countries to re-conceptualise development for their use.²⁸ What he meant is that, African countries should redefine development within their ‘contextual language’ to suit their individual indigenous needs. Is there need for local, and African informed perspective towards better police service and law enforcement? We have already witnessed an Africa approach deliver justice in Rwanda²⁹, using both conventional and unconventional means.

What is seen in Kenya is an evidence of continuous trend of violence and police brutality. The trend is tied to the socio-economic imbalances, ethnic politics, as well as traditional authoritarian-patriarchal practices. Those in leadership, both under the former authoritarian and present democratic Kenya regimes, have combined their decision-making parameters with the use of police, and mostly in physical way to suppress their opponents. This ‘culture’ is the reason why police corruption, unthwarted extra-judicial violence and killings have remained in Kenya. The decades of police involvement in partisan-politics have motivated refusal to register complaints, arbitrary detention, torture and killings. This has been perpetrated by police at the goodwill which has resulted in an unprecedented level of public distrust and fear of the police. Police are often viewed as ‘*mbwa*’ (dog), of the politicians and those in

²⁸ Mazrui, A. A, (1980). “Beyond dependency in the Black World: Five Strategies for Decolonization” in A.Y. Yansane (ed), *Decolonization and Dependency: Problems of Development of African Societies*, 84-97, Westport: Greenwood Press.

²⁹ In this case I refer to the Gacaca Courts in Rwanda towards restorative justice in post genocide cases.

authority. Kenyans contextualised notion of '*mbwa -kali*'³⁰(fierce dog), root of the metaphor for '*seri-kali*'³¹(police or government) under a legalized police/state brutality. Thus, metaphorical suffix '*-kali*' (fierce, dangerous, nasty), is a contextually held perspective to the government authority, magistrate, parliament and police, as one and the same alien authorities propagating a suppressive and oppressive culture.

Regardless of democratic changes, no far-reaching reforms and reorientation which have brought the policing operations into conformity with Kenya constitution, regional and international human rights standards. Mendes et al holds that, the foundation value for any democracy is good policing.³² For better policing ideally means, more human rights. It is imperative therefore to say that there is a close link between better policing, democracy and human rights. How this can be effective in Kenya remains the question in this study.

1.3. **Research objective and Research question**

The overall objective of this study is to identify and discuss the cases of police brutality; which are typical and emblematic in Kenya. The main research question of this study is:

- Why the persistence of police brutality and the failure of the 2013 police reforms in Kenya?

1.4. **Significance of study**

I confine with Mendes et al, who shows that police officers across the world, including Kenya have popularly portrayed as serving at the goodwill of the ruling class rather than being the instruments of service to the citizens. Kenya police has mostly been portrayed as an organisation, that is selective in its application of law under a political influence leading to impunity, corruption and ineptness. It was against that backdrop that the Kenya government, after successful multi-party election win in 2002 attempted to introduce various police reforms targeted towards establishing a citizen friendly police institution. In 2002, the NARC government came into power with a promise to implement wide ranging police

³⁰ '*Mbwa kali*' is a sign which initially was put in the white settlers' gates and estates to thwart African from intruding or they will get the consequences of a 'tough/fierce' dog attack. After the independence, the signs still exist, but mainly in the estates of the rich, and famous to stop intruders, and 'robbers'.

³¹ '*Seri-kali*' is a Swahili word defining the 'police and government'. Its origin is from the two words, '*siri*' (secret), and '*kali*' (top), in '*siri-kali*' (top secret). Or from '*seria*' (law), and '*kali*' (top), in '*seria-kali*' (tough law). The two terms connect elements of 'brutalization' to the public from the government and those who effect government policies. All viewed as one and the same.

³² Mendes, pg3.

reforms.³³They made a major overhaul of the police institution. Several initiatives of administrative and operational reforms such as, police training from 9months to 15months (including basic understanding of human rights), increment in financial allocations (to avoid corruption) and a change on how police leaders are appointment.³⁴

Immediately after the reforms were started, there were some initial and pragmatic steps. Serious venting of police officers under a civilian friendly IPOA appeared to have resulted in an increased police capacity, to respond to crime alongside improved police visibility across Kenya.³⁵ However, despite introducing those reforms initiatives which were aimed at making the police more transparent (open to the public), accountable (reliable and taking responsibility) and effective (having public confidence and legitimacy) in fighting crime and being non-partisan³⁶, evidences of the cases explored and discussed in my thesis pointed to structural and administrative challenges. Persistent hostilities between the police and members of the public are still rife, with increased insecurity and outright police brutality. This study shows that police reforms initiatives in Kenya did not succeeded in many fronts. The issues of police brutality and abuses of their power are still witnessed.³⁷In 2017 elections period, police went overboard in excessive use of force against Kenyan citizens.³⁸

The above phrase shows incompatibilities between intentions to reform the experiences of realities of the context. This means, reform policies have been difficult or impossible to implement during elections. This study is contextually done, where contextual descriptions provide the raw information upon which measures of human rights have been based on a democratic policing in Kenya. The study therefore explores the advancement and setbacks in the promotion and protection of the human rights in Kenya through democratic policing.

³³ Joe Khamisi, pp 69ff.

³⁴ Jerome Lafargue (ed.). (2009). *The General Elections in Kenya, 2007*. Dar es Salam: Mkuki na Nyota Publishers Ltd.

³⁵ Esther N. (2015). "Institutionalizing police reforms in Kenya: lessons from 2012-2015", in SAFEWORLD preventing violent conflict, building safer lives. <file:///C:/Users/User/Downloads/institutionalising-police-reforms-in-kenya.pdf>.

³⁶ 'Non-partisan' in this case means. Leader of the Kenya Police was changed from Police Commissioner to an Inspector General. Before reforms, a Commissioner was a direct appointee of the President. However, an Inspector General position goes through an applications process. Those qualified are vented by parliament and then three names are forwarded to the President. In addition, there was established a civilian oversight body called Independence Policing Oversight Authority (IPOA). Whose aims and goals among other, are to provide civilian oversight to policing.

³⁷ Njuguna (2015).

³⁸ Human Rights Watch (2017).

1.5. **Research Methodology**

This study identifies and discusses cases of police brutality in Kenya during election periods. It focuses on the severity, continuous and persistence of police brutality experienced in Kenya, mostly in the period of election. Gathering material to aid the study will be done through an empirical document analysis³⁹ (content analysis) approach. The aim is to investigate Kenya as a single-case, mainly, creating a national wide perspective. Within the research objective, I will identify and discuss the cases of police brutality using the most recent material and data available during election periods between 2010 and 2018.

The content analysis is done through; reports in newspapers, magazines, NGOs reports, related researches, policy papers and Government papers detailing cases of police brutality in Kenya. In the content analysis, the study takes note on the reports relating to the Kenya police involvements and routine operations during the election period. It explores relevant cases of police brutality in general as well as, police actions in containing political demonstrations. The study also explores cases of brutality to the politicians who are critical to the government policies during and after elections. The study also takes notes of the human rights research methods.⁴⁰ The study explores the phenomenon of police brutality as a social issue of human rights concerns.⁴¹ Cases identified will be analysed thematically and discussed in the light of history of policing in Kenya and the social-cultural perspectives within the context aiding or averting police brutality.

1.6. **Theoretical framework**

I approach this study about police brutality in Kenya from an historical perspective, using the past to study the present. The historical foundation of the policing in Kenya may help in understanding why we have the police brutality. Kenya police has origin from history of colonialism. Though there were some form of policing which existed within different Kenya communities prior to colonialism, Jeffrey Fadiman (1993), doing his studies in Meru assent that 'policing' was centered within the 'tribal cultural protocols' based on virtues and moral codes. The policing were tied to the customs, taboos, norms, and values (including belief systems) which automatically became infused to the individuals, as part of the community. The society was egalitarian, with 'no elite groups' of unformed officers. Thus, every person

³⁹ Alan Bryman. (2012). *Social Research Methods* (4th ed.). Oxford: Oxford University Press.

⁴⁰ Bård. A, Sano. H, and Lankford. S. M. (2017). *Research Methods in Human Rights: A Handbook*. Cheltenham, Northampton: Edward Elgar Publishing.

⁴¹ Coomans. F, Brems. E, Grunfeld. F, and Kamminga, T. M. (2009). *Methods of human rights research*. Antwerp, Oxford, Portland: Intersentia.

member of the community was involved as a custodian of the community values and norms, hence 'a police officer'. Violation was meant with dire consequences with restorative and retributive justices. The consequences included beating and material penalties. However, he opines that, the system got changed with the coming of the British colonialism and Christianity.⁴² Of course the effects were both positive in entrenching modernity, but negative in eroding the traditional cultural codes.

It was in the erosion of the traditional cultural codes when continuity with the tradition mode of policing was lost. Instead, those who went to established British schools became British conformist (referred to as British loyal subordinates), meant to turn against their culture and their fellow people. The metaphorical profiling of the British conformists was '*muthomi*'⁴³ (meaning, reader, elite or those who copied British mannerism). This was the first social-cultural rift between the elites and non-elites. Some of the Kenyans-black elites were recruited by the British as chiefs, teachers, clerks and police officers, serving as the local representatives of the British government.⁴⁴ They had to impose the new codes by force, especially to those who were not willing to adhere to the British rule. So, the first victims of the British system and brutality are those who did not conform to the British culture, rulership and leadership.⁴⁵ This implies that, from its inception, the colonial system was about establishing culture and taming those of distinct cultural and ideological views, not about upholding some of the local embedded virtues and ethos. To meet their goals, the British government entrenched policing and indirect-colonial rule⁴⁶ as its style of governance. Kenya police became part of the brutal colonial history. I therefore find Fadiman arguments vital in tracing the historical elements of the Kenya police and culture of brutality.

Kenya novelist Ngugi wa Thiong'o (1989) traces the brutality of Kenya police to colonialism and colonial culture. Ngugi holds that the colonial rulership legalised a 'culture of brutality'. This was a culture of the ruling class of fear, the culture of oppressing minority and the culture of imposing total silence on a restive oppressed majority. Within the colonial regime,

⁴² Fadiman, J. (1993). When we began, there were witchmen. California: University of Californian Press, pg2

⁴³ Nthamburi, J. Z. (1982). A history of the Methodist Church in Kenya. Nairobi: Uzima Press, pg63.

⁴⁴ Anderson, D. (2006). Histories of the hanged: Britain's dirty war in Kenya and the end of empire. London: Phoenix.

⁴⁵ Fadiman, pp1ff.

⁴⁶ Stated earlier, the British borrowed chief leadership ideology from West Africa and policing from India. No know ethnic group in Kenya which was ruled by a Chief. This was a British misconception that all African culture were the same and homogenous. Without understanding that different ethnic groups had diverse ways of pointing things and each ad their own character.

this culture was sanctified in the colonial administration by creating an occupation called the internal security.⁴⁷ This composed Provincial Commissioner (PC), District Commissioners (DC), District Officers (DO), Chiefs, and Administration police (AP)⁴⁸. These offices offered little services to the local natives.⁴⁹ All those served in the above offices dressed in police ‘semblance khaki attires and wore colonial lord’s hat, creating a culture of fear as representatives of the colonial regime. Bates argues that the British set up bureaucratic structures; local governments (provincial administration) and Administration Police between 1895-1915. These structures were meant to protect the British and to keep order between the locals and the British land owners.⁵⁰

Per Ngugi, what the colonial government did to the native Kenyans was passed over to the Kenya independent government. Which indicated brutality and fear, and thwarting those holding different ideologies. Ngugi argues, “.... A colonial affair.... now we are independent.... that’s the difference...he says. A colonial affair in an independent country, eh? The British jailed an innocent Kenyatta. Thus, Kenyatta learnt to jail innocent Kenyans. Is that difference?”⁵¹ That is why the 2010 Kenya Constitution created devolved system of government and needed to eliminate the Provincial system of governance⁵² which was under the Ministry of the Internal Security.

However, those in leadership went ahead and retained the Provincial administration under the new constitution against the will of majority. They retained this office which is supervised by Cabinet Secretary in charge of the Interior and Coordination of National affairs (CS-Interior). They did this despite the fact PC, DC, DO and Chief ‘were relics of the oppressive colonial

⁴⁷ Wa Thiogo. N. (1989). *Detained: A writer’s prison diary*. Nairobi: Heinemann.

⁴⁸ The Administration police was under different leadership and command from Kenya police until after the 2011 Police reforms.

⁴⁹ The Provincial Administration were mainly to; ensure that faring was going well in British owned farms, see to it that Kenyan remained in their ‘African reserves’, Kenya carried I.D (*kipande*), ensured that tax was paid and ensured that Kenyans attended school etcetera., Berman, B and Lonsdale, J. (1992). *Unhappy valley: Conflict in Kenya and Africa. Book two: Violence and ethnicity*. Oxford, UK: James Currey.

⁵⁰ Bates F. (2015). “British Rule in Kenya”, in Spring Post 2015, <https://history.libraries.wsu.edu/spring2015/2015/01/19/british-rule-in-kenya/>.

⁵¹ Wa Thiogo, pg4

⁵² The provincial system of governance entails the PC, DC, DO, and Chiefs.

regime and under one-party rule system in Kenya'.⁵³ Those in leadership amended the 2010 constitution to retain the above offices. They did this to 'contain the citizens' for their own interests, hence denying citizens their voices. This was witnessed during the 2017 elections, where provincial administration were accused of openly campaigning for the ruling regime.⁵⁴ This shows bureaucratic measures still exist within the current system. It is within this framework; this study is done.

1.7. **Related literature review**

I consider some literature, and researches conducted by different authors nationally and internationally on the topic related to this study. I have been inspired by Thompson and Lee (2004), who defines police brutality as any instance in which a police officer uses unnecessary, excessive and arbitrary force to or while interacting with members of public while performing his or her duties. These brutalities take two forms; physical and non-physical. Physical includes actions such as killing someone and non-physical includes verbally abusing the public.⁵⁵

I find the work of Gary (2003) relevant in this study. He writes on the police brutality as part of South African colonial history. Gary relates police brutality with the history of the apartheid. He argues that during apartheid regime, most people (majority blacks), and the poor living in the South African townships suffered more brutality from the hands of the police than the whites and the elites.⁵⁶ I see Gary's arguments relating to this study due to the historical and socio-economic perspectives in relation to the police brutality in Kenya.

A Kenyan scholar, Mutunga, W. M (1990), has covered areas such as; arrests by police officers, custody in the police stations, first court appearance and rights of bail.⁵⁷ Being a Kenyan and having written within the Kenya context, his study is relevant because it highlights the real contextual cases of brutality.

⁵³ Mwiria. K "it is right that chiefs will be retained under new devolved government' in Standard Digital (2013), <https://www.standardmedia.co.ke/article/2000074343/it-is-right-that-chiefs-will-be-retained-under-new-devolved-government>.

⁵⁴ Wainaina. N, "Blame game, complaints cloud Jubilee Campaigns", in Standard Digital (2017), <https://www.standardmedia.co.ke/article/2001242883/blame-game-complaints-cloud-jubilee-campaigns>.

⁵⁵ Thompson. B. and Lee. J. pp. 381 – 410.

⁵⁶ Wainaina. N. "Blame game, complaints cloud Jubilee Campaigns", in Standard Digital (2017), <https://www.standardmedia.co.ke/article/2001242883/blame-game-complaints-cloud-jubilee-campaigns>.

⁵⁷ Mutunga, W. M. (1990). *The Rights of an Arrested and Accused Person*. Nairobi: Oxford University Press.

Chtalu K. A. Bruce (2011) wrote a thesis on *the challenges related to police reforms in Kenya: A survey of Nairobi county, Kenya*. He focuses on the challenges of the police reforms in Kenya.⁵⁸His research on reforms is relevant to this study, whereby it helps in answering my research question, ‘why there is still visible police brutality in Kenya regardless of the reforms’?

1.8. Research outline

Chapter one-The introduction sets the research background, presents the problem and research question. Presents the method and methodology used to answer the research question.

Chapter two-Presents the context of study, which entails; the political, social and economic. Additionally, the chapter mentions the human rights in relation to the policing in Kenya.

Chapter three-Chapter gives the historical development of policing. The use and abuse by the colonial regime and consequent use and abuse under different independent regimes.

Chapter four-Chapter presents and analyses cases of police brutality.

Chapter five-Discusses police brutality in Kenya context, related to the historical, socio-cultural and structural challenge.

Chapter six-This is the conclusion chapter of the study.

⁵⁸ Chtalu. B. K. A. (2011). “The challenges related to police reforms in Kenya: A survey of Nairobi county, Kenya”,

Chapter 2

Political (electoral), and socio-economic context in Kenya

In this chapter, I define the context under study. The definition entails the political (electoral), and social economic context in Kenya. Additionally, I mention little regarding the human rights in relation to the policing in Kenya; regional and international human rights instrument. I present this chapter for the reader to understand the nature of Kenya elections, where the stakes of the race are always high because of the ‘winner takes it all’⁵⁹ scope of Kenya politics.

2.1. Political (electoral) Context

Kenya electoral context has always experienced tensions and contestation since independence, due to the consolidation of power in the executive branch of leadership. The elections in Kenya have been marred with continuous high-levels of corruption, human rights violations and other forms of injustice. Then came the period of multi-party politics, which ushered ethnic-party politics, moving from individual to community perception of the winner takes it all. This distorted the meaning of democratisation, with numerous ethnically charged post-election’s violence.

The promulgation of the new constitution brought a period of a relative peaceful elections in March 2013. This was a milestone forward in Kenya’s transition from political crisis, electoral injustices and respect of the rule of law. However, in 2017 things went back to the old trend, where the elections were marred with mistrusts following the mysterious murder of the key information technology (IT) electoral official Christopher Chege Msando.⁶⁰ After elections, there were claims of electoral malpractices, which led to its cancellation by the Supreme court on 1st September 2017.⁶¹ It is such mistrusts, lack of transparency and free-and-fair elections which led to boycotts and also triggers demonstrations from the opposing sides. The police were called to contain the crowds and police were more brutal to the opposition demonstrators, in favour of the government. Following, is the context of multi-party politics in Kenya.

⁵⁹ European Union Election Observation Mission, “Final Report Republic of Kenya General Elections 2017” (2018), in https://eeas.europa.eu/sites/eeas/files/eu_eom_kenya_2017_final_report_0.pdf.

⁶⁰ BBC, “Kenyan election official Chris Msando ‘tortured to death’” *Africa news* (2017) <http://www.bbc.com/news/world-africa-40807425>.

⁶¹ BBC, “Kenya presidential Elections cancelled by Supreme Court” *Africa news*, (2017) <http://www.bbc.com/news/world-africa-41123329>.

2.1.1. Multi-party politics

To understand the Kenya political (electoral) tensions, it is important to look at the arc of history. Kenya attained its independence from the British in 1963. Immediately after independence, Kenya adopted a centralised Westminster model of government⁶². The model vested power to the president to hire and fire cabinet ministers, dissolve parliament, appoint members of the judiciary and command police. President Jomo Kenyatta abused this position to create an autocratic regime, using police and his ethnic majoritarianism. Two parties were formed, by those who were discontented by his approach, these are; Kenya People's party (KPU) and Kenya African democratic Union (KADU). Throup and Hornsby (1998) argue, "from the beginning of multi-party politics in Kenya, ethnicity and question of land distribution proved to be more powerful than ideology in determining political loyalties."⁶³ President Jomo Kenyatta became intolerant to any differing voice or opinion, hence; banning KPU and KADU political parties, detaining opposition political leaders and assassinating them. Since then, until 1992, Kenya remained a *de jure* one-party state under KANU.

After Kenyatta's death in 1979, his long serving vice-president Daniel Toroitich Arap Moi assumed the office. President Moi under KANU continued with progressive intolerance and oppressive policies. Under his leadership, there were; massive corruption, detention without trial, assassination, massive intimidation of media, denying freedom of speech, excessive use of police force and other human rights abuses.⁶⁴ Within this kind of context; the International communities, law society of Kenya, the civil society, the clergies, nation Christian organisations, university students and labour movement came together and demanded change towards multi-party system.⁶⁵ Through such demands and pressure, President Moi bowed and repealed Section 2 (A) of the constitution and permitted the registration of the political parties. It was since then Kenya became a pluralistic and multi-party democracy society.

⁶² Widner. A. J. (1992). *The Rise of a Party-State in Kenya: From Harambee! To Nyayo*, Nairobi: University of California Press.

⁶³ Throup. D. and Hornsby. C. (1989). *Multi-party politics in Kenya*, Nairobi: East African Educational Publishers. pg9.

⁶⁴ Mueller, S. (2008). *The Political economy of Kenya's crisis*. *Journal of Eastern African studies*, 2 (2), 185-210.

⁶⁵ Throup, pp54ff, and Appleby. R. S, (2000), *The ambivalence of the sacred: Religion violence and reconciliation*. Oxford: Rowman and Littlefield Publishers Inc.

Despite the milestone, Kenya remained tied to the authoritarian, centralised and powerful president who abused the office at will.⁶⁶

The second wave of the multi-party politics in 1992 just like that of 1960s bred to ethnic divisions and politics. This made President Moi to win easily for two terms in 1992 and 1997⁶⁷ consecutively against an ethnically divided opposition parties, even though he was accused of rigging. Within ethnic politics rivalry, Kenya democracy was founded which has remained to date. Tug-of-war between ethnic groups and an ethnic-contest with less political ideologies are visible examples witnessed in contemporary Kenya. Kenya democracy has revolved around ethnic-alliances and ethnic majoritarianism which a Kenyan political analyst Mutahi Ngunyi referred as tyranny of numbers.⁶⁸As I stated earlier, the winner takes it all perspective has become ethnically powerful, which is perpetuating violence. Regardless of change of political system, the ethnic factor has remained constant within the Kenya democracy. Amid these ethnically tensed political landscapes, police have found themselves in the middle, compromised in taking sides in favour of the government and violating the rule of law and constitution.⁶⁹

2.2. Socio-economic context

Githongo (2008) argues that, “what we have in Kenya is a contradiction within the political elite that has led to a failed election fracturing the nation along historic faults of resources inequality.”⁷⁰The way resources have been distributed, remains a factor that makes elections competitive and leadership positions lucrative in Kenya. Per Kwatamba the main reasons for the tribalization of politics are competition and confrontation over how resources are distributed.⁷¹ Those seeking position exploit tribalism for their own self-serving ends. Despite Kenya being the largest economy in East Africa and experiencing periods of economic growth, wealth has not been distributed equally among ethnic groups. Though the nation has seen some slight changes through devolved funds, per the United Nations Development

⁶⁶ Throup, pg92.

⁶⁷ Branch (2011).

⁶⁸ Amukowa, A. and Atancha, J.O, (2013). “The Tyranny of numbers and ethnic political patronage in Kenya: Lessons from the United States of America’s electoral college system.” *The International Journal of social sciences*. 28th March 2012, Vol.9 No. 1, ISSN 2305-4557.

⁶⁹ Jina Moore, “Political Clashes in Kenya leave several dead”, in *the New York times* (2017), <https://www.nytimes.com/2017/11/17/world/africa/kenya-police-raila-odinga.html>.

⁷⁰ Githongo, J. (2008). Kenya-Riding the tiger. *Journal of Eastern African studies*, 2(2), 359-367, pg363.

⁷¹ Shilaho Western Kwatamba, “Ethnicity and political pluralism in Kenya” in *University of Witwatersrand, Johannesburg* (2008), <https://www.eisa.org.za/pdf/JAE7.2Kwatamba.pdf>.

Programme (UNDP) Kenya is among the most unequal societies by income, gender, and regional distribution of resources.⁷²

Some regions, like Northern, Coast, and Upper-Rift valley parts of Kenya have always remained marginalised from the days of colonialism and present regimes. The Kenya National Assembly Official Record (Hansard) (2001), records statement from a Member of Parliament saying that, “North Eastern region was under the emergency law even during colonial times. When other Kenyans were struggling with independence, we were not even sure whether we were part of other Kenyans (...) Successive regimes in the country have capitalised on this very unfortunate situation.”⁷³ Most youths in these regions lack nation identity cards,⁷⁴ a violation of their right to citizenship and a basic right of all Kenyans. Poverty is highest in these regions, which are mainly semi-arid and arid. The regions have therefore witnessed some elements of radicalization, especially among most unemployed youths from the Somalia Islamist militia (Al Shabaab).⁷⁵ This has made even those innocents to be subjected to police brutality, being associated with the Al Shabaab activities.⁷⁶

2.3. Human rights instruments and policing in Kenya

Context where elections campaigns are volatile, ethnically divided and always held under a winner takes it all, disputes and demonstrations are inevitable mainly from the losing sides. The police are called to be non-partisan and to act in compliance with the Kenya 2010 Constitution and various regional and international legal instruments. These legal instruments require human rights to be respected, protected, fulfilled and promoted by state as well as individuals. Police officers are the primary duty bearers, tasked with ensuring that human rights are not violated and equally bound to observe the rule of law in highly-charged electoral periods. From an International law of enforcement, police as law enforcement agents

⁷² Victor Juma, “Kenya ranked among most unequal societies”, in Business Daily Africa (2010), <https://www.businessdailyafrica.com/corporate/Kenya-ranked-among-most-unequal-societies/539550-1047230-i34iilz/index.html>.

⁷³ Kenya National Assembly Official Records (Hansard) (2001), pg.2990

⁷⁴ Kenya National Commission on Human Rights (KNCHR), “An Identity crisis? A study on the issuance of National Identity Cards in Kenya”, in KNCHR Report (2007), <http://www.knchr.org/Portals/0/EcosocReports/KNCHR%20Final%20IDs%20Report.pdf>.

⁷⁵ Al Shabaab, which means in Arab ‘the youth’ is a jihadist fundamentalist group based in East Africa (base in Somalia) which has been designated as a terror organisation.

⁷⁶ Masheti Masinjila, “Youth Radicalization in Kenya or Unemployment Crisis” in Collaborative Center for Gender and Development (CCGD), file:///C:/Users/User/Downloads/Youth_Radicalization_in_Kenya_or_Unemplo.pdf.

have the statutory right to use force, including deadly force in certain circumstances.⁷⁷ However, their actions should not violate human rights. International laws and standards are clear, whereby they limit police power and show to what extent they can use force.

Where force has been used, the police must account for and in case of unlawful killings or arbitrary use of excessive force, under human rights violation the police officer involved must be held criminally accountable. But, based on various sources, Kenya police have been accused of their failure to comply with the 2010 Constitution and International laws when handling election related disputes, demonstrations and protests. Mostly, they side with the government side, rather than being a non-partisan body meant to keep laws and orders protecting the interests of all Kenya citizens.⁷⁸

⁷⁷ United Nations High Commissioner for Human Rights Centre for human rights, “International Human Rights Standards for Law Enforcements” in <http://www.ohchr.org/Documents/Publications/training5Add1en.pdf>.

⁷⁸ Kimani. N. and Peter W. W. (2015). Kenya’s 2013 General Election: Stakes, Practices and Outcomes, Nairobi: Twaweza Communications Ltd. pg. 179.

Chapter 3

History of partisan policing in Kenya

This chapter gives a brief history of partisan policing or politics of police abuse in Kenya. The idea behind a brief analysis of this history is because, this study reflects on the historical perspectives shaping the contemporary Kenya policing brutality. The genesis of the policing brutality in Kenya dates to pre-independence times. Decades later, Kenya is still struggling with reforming its police which is fettered in many challenges; corruption, brutality and crimes among numerous other challenges. The constitution promulgated in 2010 made demands for structural and welfare reforms to be carried out in the National Police Service. However, the culture of brutality in the police service still contributes to too many cases of gross violation of human rights and mistrust by citizens being witnessed even today. It is within that background this chapter is written in brief.

3.1. Colonial Period

According to the Kenya police service strategy plan 2003-2007 (KPS report), the Kenya police traces its history in 1887 from the Imperial British East Africa (I.B.E.A).⁷⁹ It is held that Sir. William MacKinnon interested in his business security and protection formed a small security force along the coastal town of Kenya.⁸⁰ Thus, the original 'concept' of police was to 'wade away intruders' from individual business premises, centered on protection.⁸¹ The security members were mainly Indians,⁸² who operated under the Indian Criminal procedure code and the Indian Act and Police Ordinance.⁸³ The 1902 construction of the Kenya Railway opened the Kenya interior region, causing demands for more police manpower to guard and

⁷⁹ Kenya Police Service; Strategy plan 2003-2007.

⁸⁰ Before the arrival of the British in Kenya, the Kenya coast had well established trading towns, with vibrant commerce that linked the coast with Arabia and India; being run by local Africans, Arabs, Indians and individuals from all over the world. More of this can be found in Myles Osborne book, *Ethnicity and Empire in Kenya: Loyalty and martial race among the Kamba* (2014), Cambridge University Press: Cambridge.

⁸¹ This MacKinnon concept of 'private ownership' was a strange concept in most Kenya communities. In most Kenya communities there was 'collectivism aspect' in land ownership This was communitarian to land management. We can now say that the disappearance of collective management of land ownership and distribution is traceable to the dawn of colonialism and imperialism conquest of the traditional African system of governance. Terms like 'trespass' emerged during colonial period, hence there was a need to hire a '*mbwa kali*' (fierce dog), real dog or a police officer to wade away any intruder. It is this concept which later developed to 'policing'.

⁸² In East Africa coast, according to Mazrui, the indigenous Africa communities got inter-married with Arabs, forming what is currently known as Swahili culture. The Swahili people being an 'hybrid' of two cultures, have a unique culture, which has borrowed from both the Africans or Arabs cultures-a Swahili culture. Their language is Swahili and religion Islam. Tim Stapleton in his work, 'Police and policing in Sub-Saharan Africa' in pre-colonial period holds that, the Coast Swahili community had some centralized rulers who maintained a small group of men to enforce societal norms and judicial decisions. It was an egalitarian approach under Sharia laws. There were no para-military officers for internal maintenance of norms, only outside aggressions.

⁸³ Kenya Police Service: strategy plan 2003-2007

protect new business centers and the British settlers. This prompted recruitment of the locals, mostly Somalis and Sudanese Nubians; khaki shorts dressed, barefoot 'askaris, a Swahili word meaning soldiers. John Kamau say that the IBEA askaris were very ruthless.⁸⁴

The period from 1920s, show Kenya change its name from East Africa Protectorate to Kenya Colony. The title of the police force was also changed to Kenya police force. This was done to align police force to the ideologies of the British government, having a police force under state control.⁸⁵ Robert Reinar in his work expressing British police functions says that “the British police ideology has always rested upon the myth of a fundamental distinction between their model of community-based policing and an alien continental state-controlled system.”⁸⁶Reinar means that the British policing traces direct lineage between the ancient tribal forms of self-policing and the contemporary Bobby. However, in his view, this model which he refers to as ‘British model’ was only for the home consumption. But for the colonial purposes, he argues that the police system was organized along military lines, with a training of military in nature purposely tailor made for colonial aims. He states that, “the supposedly benign ‘British model’ was in any case for home consumption only. A more militaristic and coercive model was from the outset exported to colonial situations.”⁸⁷

The aim of police as argued by Kamau was social control⁸⁸, ensured by the assistance of the local Chiefs and administration police under the Tribal Police Ordinance act.⁸⁹ Where both the chiefs and police, enforced tax, controlled the movement of the natives and livestock within areas called African reserves.⁹⁰ After declaration of the state of emergency in 1952, police had a need to respond to the Mau Mau⁹¹ uprising. A period the police used massive brutality; torture, detention and killings of a suitable number of Africans members of Mau

⁸⁴ Kamau, J. (2015). “How service has changed from colonial time guards”, in Daily Nation: Kenya history Column (2015), <https://www.nation.co.ke/news/Kenya-Police-History/1056-2776378-12p61uuz/index.html>.

⁸⁵ Kamau, 2015.

⁸⁶ Robert. R. (2010). *The Politics of the Police* (4th.ed) Oxford: Oxford University Press. pg.7

⁸⁷ Reiner, pg.7.

⁸⁸ Kamau, 2015.

⁸⁹ Kamau, 2015.

⁹⁰ Overton. J. D. “Social control and social engineering: African reserves in Kenya 1895-1920”, in *Environmental and Planning D: Society and Space, Volume 8, pages 163-174*.

⁹¹ Mau Mau was an armed rebellion against the British colonialism, between the period 1952-to Kenya independence in 1963/4.

Mau group.⁹² A claim which the British government accepted in 2012 that “the British colonial forces tortured and abused the Mau Mau.”⁹³

3.2. Independent period

I divide this section into two parts in relation to KANU leadership (under one party rule and multiparty politics). Part one, KANU 1963-2001 (Kenyatta and Moi leadership), and part two from 2002-to present (new political party leadership, new constitution and police reforms). I have purposely divided the parts under KANU because for any contemporary form of police brutality Kenyans holds, ‘stop taking us back to KANU era or dark days’.⁹⁴

3.2.1. 1963-2001, KANU regime

After Kenya independence in 1963, the Kenya police force underwent some administrative changes. The leadership changed from British to a Kenyan serving as Police commissioners. The Police Commissioner was a direct appointee of the president, reporting directly to the ministry of the Office of the President. There was also an increase in police units to address the growing demands of an expanded population. The police force also became aligned to the independent Kenya constitution. However, as KPS report holds, the training, structures, polices and personnel remained the same, as inherited from the colonial government.⁹⁵ Previously, the Kenya police policies revolved along the British colonial policies. After independence, the independent police force had to follow the directives of the Kenyans led government policies.

The independent Kenya police force found itself entangled in the tribal political affiliations of the new government. Korwa and Munyae states that, “during Kenyatta’s presidency, the political realm was dominated by Kikuyu elites, the so-called Kiambu mafia, from Kenyatta’s home district.”⁹⁶To suppress leaders of other communities and those whom disagreed with

⁹² Rennell. T. “Justifiably the British are accused of brutality in 1950s Kenya. But why aren’t the Mau Mau butchers also in the dock”, in Daily Mail UK (2011), <http://www.dailymail.co.uk/news/article-1375967/Kenya-Mau-Mau-atrocities-1950s-dossier.html>.

⁹³ BBC, “Mau Mau Case: UK government accepts abuse took place”, in BBC News (2012), <http://www.bbc.com/news/uk-18874040>.

⁹⁴ Macharia Gaitho, “Stop Jubilee mandarins from taking Kenya back to dark age”, in *Daily Nation* (2018), <https://www.nation.co.ke/oped/opinion/Stop-Jubilee-taking-Kenya-back-to-dark-age/440808-4329686-12ep263z/index.html>.

⁹⁵ Kenya Police Service: Strategy Plan 2003-2007.

⁹⁶ Korwa G. A. and Isaac M. M. “Human rights abuse in Kenya under Daniel Arap Moi, 1978-2001”, in <https://www.csbsju.edu/Documents/Peace%20Studies/pdf/Human%20Rights%20Abuse%20in%20Kenya%20Under%20Moi.pdf>, pg3.

Kenyatta policies, police were used. Some politicians like Pio Gama Pinto, Tom Mboya, and J. J. Kariuki were allegedly killed by police,⁹⁷ while others had long term imprisonment without trial following Jomo Kenyatta criminalisation of political debates and restricted freedom of expressions.⁹⁸

Following the death of Kenyatta in 1978, vice-president Moi assumed the position as president. Moi, a Kalenjin by ethnicity was viewed an outsider by the Kikuyu elites. His first agenda therefore was to clean the long hatred among Kenyans. For Moi, circumstance were different. He reassured Kenyans he will not tolerate tribalism and corruption.⁹⁹ He released 26-political detainees and fired the long serving Police Commissioner Bernard Hinga (a Kikuyu) in 1978.¹⁰⁰ In due course and mostly argued, persistent harassment by Kikuyu elites led by then attorney general Charles Njonjo and the failed coup in 1982, Moi became more interested in neutralising those perceived to be against his leadership.¹⁰¹ He vowed to follow Kenyatta *Nyayo* (Swahili word for footsteps).¹⁰² Throughout the 1980s to 2001, the police force were used to suppress critics to his regime and leadership.¹⁰³ It is under Moi's regime that the worst cases of police brutality, massacres and impunity took roots.¹⁰⁴ Khamisi argues, "... the police (...) among others emerged as the new frontier for sleaze in government."¹⁰⁵

3.2.2. 2002-post KANU period.

To defeat Moi, potential contenders from different ethnic groups, education and political backgrounds formed a coalition National Rainbow Coalition (NARC) between Liberal Democratic Party (LDP) and National Alliance of Kenya (NAK) through a memorandum of understanding (MOU). In 2002, NARC defeated KANU and brought it four decades of leadership to an end. The jubilation run all over the country, with a renewed hope that '*yote yawezekana bila Moi*' (all is possible without Moi) as Kenyans sang during Kenya 3rd President Kibaki (2002-2013) inauguration.¹⁰⁶ However, on seizing power mistrust ensued

⁹⁷ Korwa, pg5

⁹⁸ Branch (2011)

⁹⁹ Throup, D. W. (1987). The construction and destruction of the Kenyatta state. In M. G. Schatzberg (ED.), *The political economy of Kenya* (pp.33-74), New York: Praeger.

¹⁰⁰ Korwa, pg5 and Branch, pg206.

¹⁰¹ Khamisi, pg7ff

¹⁰² Korwa, pg6

¹⁰³ Korwa, pg6

¹⁰⁴ Umoja, 1989, *Moi's reign of terror: decade of Nyayo crimes against the people of Kenya*, London: Umoja Publishers.

¹⁰⁵ Khamisi, pg7

¹⁰⁶ Mueller, S. (2008).

among the coalition members over the MOU, regarding; divisions of power, constitution change and how to handle historical injustices.¹⁰⁷ NARC coalition fell apart, impunity, corruption and ethnic political divisions re-emerged. Kibaki continued with the known tradition of using police for regime security. This became more evident during president Kibaki reelection, which triggered the 2007-2008 post elections violence.¹⁰⁸ Before the violence, the Daily Nation newspaper reports that on the election day police officers of the General Service Units (GSU) stormed the main counting hall at KICC and threw everybody out, including the opposition leaders (ODM party), election observers and the media.¹⁰⁹ Finally, the Electoral Commission Kenya (ECK) chairman announced President Kibaki as the winner of the elections at a closed-door function guarded by police. After the violence, the Human rights watch reported scores of deaths and numerous assaults which may have been done by the police.¹¹⁰

Regardless, Kibaki regime ensured Kenyans a new Constitution. The 2010 constitution became another instrument towards police reform. The reforms aim was; make the police more professional, prevent corruption, promote transparency and apply these principles in practice. Under the 2010 Constitution, the National Police Service Commission (NPSC) Act was established. Its mandate was to curtail political interference with police personnel management, practices, recruitment, promotion, transfer and disciplinary sanction of police officers. The Constitution further curtailed the CS in charge of the Interior ministry and Coordination of National government from giving directives to the police. In cases the CS gives directives, it must be in writing and made public.¹¹¹ However, under president Uhuru Kenyatta, the government has directly violated the constitution and amended the NPSC Act. Through direct command from president and CS, police ruthlessly act and crackdown any person critical to Uhuru Kenyatta policies. Police have also ruthlessly stopped opposition

¹⁰⁷ Khamisi, pg10

¹⁰⁸ Gifford, P. (2009). Christianity, politics and public life in Kenya. London: Hurst and Company, pg32.

¹⁰⁹ Wanyonyi, T and Mugonyi, D. (2008), 'Police on the spot over the number of deaths in Nairobi', in Daily Nation news, <https://www.nation.co.ke/news/politics/1064-480820-89cw3fz/index.html>.

¹¹⁰ Human Rights Watch, "Ballots to Bullets: Organized political violence and Kenya's crisis of Governance" in Human Rights Watch (2008), <https://www.hrw.org/report/2008/03/16/ballots-bullets/organized-political-violence-and-kenyas-crisis-governance>.

¹¹¹ Amnesty International, "Police Reform in Kenya: A Drop in the Ocean", in *Amnesty International Publication* (2013), https://www.amnesty.nl/content/uploads/2016/11/kenya_afr_32_001_2013.pdf?x62907.

party's peaceful demonstrations and gagged the media.¹¹²The CS-Interior together with the IG have severally defied court orders on matters related to police brutality.¹¹³

Most times, when police brutality and lawless actions are reported to police leadership and authority they dismiss the report as cheap propaganda and blame; the opposition, human rights groups, media and some bad apples (within the police force albeit who remain unpunished). The police boss terms the reporting as sensational, and falsified figures. "The police boss termed as 'sensational', the reporting by the human rights body, and said that the figures were falsified with an aim of tainting the image of the National Police Service (NPS)."¹¹⁴President Uhuru Kenyatta also commended the police for being firm during the electioneering period. Displaying professionalism regardless of recorded evidences of police brutality.¹¹⁵ Media which report cases of brutality have had a share of challenges. Gagged and curtailed the freedom of journalism.¹¹⁶

¹¹² Patrick Vidija, "Matiangi orders firm, ruthless police action against criminals", in *the Star* (2018), https://www.the-star.co.ke/news/2018/02/01/matiangi-orders-firm-ruthless-police-action-against-criminals_c1707317.

¹¹³ Rael Ombuor, "Top Kenyan Officials fined for defying Court order", in *VOA* (2018), <https://www.voanews.com/a/top-kenyan-officials-fined-for-defying-court-order/4322562.html>.

¹¹⁴ Stella Cheronon, "Police disputes tally of Kenyans killed at poll", in the *East Africa* (2017), <http://www.theeastafrikan.co.ke/news/Kenya-police-disputes-tally-of-people-killed-at-poll/2558-4166626-iywmkw/index.html>.

¹¹⁵ Fred Mukinda, "President Kenyatta commends police for work during election" *Daily Nation News* (2017), <https://www.nation.co.ke/news/Uhuru-commends-police-for-good-work/1056-4210494-1227hur/index.html>.

¹¹⁶ Sam Gituku, "Media Shutdown: Journalists roughed up as gov't blocks delivery of court order" *Citizen Digital News* (2018), <https://citizentv.co.ke/news/media-shutdown-journalists-roughed-up-as-govt-blocks-delivery-of-court-order-189957/>.

Chapter 4

Data analysis-cases of police brutality

This chapter presents cases of police brutality during the election period in Kenya between the 2010-2018. Most of the cases covering the incidents are sourced from the newspapers and other forums covering police actions during election periods. From the previous chapter, and as held by various reports, the trend of using police to contain public protests is traceable back to the colonial administration days, that modelled police to align completely with the executive.¹¹⁷ This trend has continued in Kenya even after 2010 Constitution mostly during the election periods. This is when we see a widespread excessive use of force by the police with great impunity. Sorted by category; peaceful demonstrations disrupted by the police with violence, curfews, harassment, beatings, killings, arbitrary arrests, detentions, intimidation and harassment of the opponent's party.

4.1. Peaceful demonstrations disrupted violently by the police

Article 37 of the Kenya Constitution 2010 guarantee the right to peaceful demonstrations, picketing and rights to assembly. Moreover, the Public Order Acts regulates the organization of the public marches and demonstrations. Section 5 (2) states that, the conveners of the public meetings or the processions notify in writing the regulating officers at least three days but not more than fourteen days in advance for the purposes of ensuring orderliness of the meetings. The notification system, per the 2010 Constitution replaced the old permit system which curtailed people rights to assembly. This was a recommendation to reform the Public Order Acts in order to increase more freedom of assembly. However, some police and government leaders still believe they are authorised by law to license public gathering, whereby they disrupt gatherings claiming that they need to be licensed. The government spokesman is quoted by a local newspaper saying, "...they will not permit NASA protestors slated for Friday due to interferences with businesses."¹¹⁸

Despite the police reforms and a constitutional which guarantees the rights to assembly, police compliance in activities is still low and public demonstrations continue to be meet with

¹¹⁷ See Commonwealth Human Rights initiatives (CHRI) and KHRC joint report, the *Police, the People, the Politics: Police Accountability in Kenya, 2006*.

¹¹⁸ Agutu. N. "Police fire teargas as NASA supporters, Nairobi business community clash", in the Star (2017), https://www.the-star.co.ke/news/2017/10/06/police-fire-teargas-as-nasa-supporters-nairobi-business-community_c1648112.

lethal and full force of the law.¹¹⁹ Different reports show that the Kenya general elections of 2013 and 2017 were mostly plagued with violence. The police without adhering to the new police reforms and without effective skills on how to control crowds, have led demonstration to be a running battle and violent between police and demonstrators. This has resulted to serious injuries and deaths to both police and demonstrators. There are cases of irresponsible and reckless police crowd control tactics and approaches, where police injure and kill people demonstrating. There are also recorded cases of police over using teargas, batons, clubs, crude weapons such as stones and sometimes live bullets. Below, I represent some of the most recent cases.

Case 1: Violent confrontations and massive use of tear gas to disperse crowds

On May 16th, 2016 injuries and arrest marred the opposition (CORD) led demonstrations against Independent Electoral and Boundaries Commission (IEBC) before 2017 general elections. On that day, the protestors went peacefully along the Nairobi University way, chanting anti-IEBC and carrying anti-IEBC slogans. The crowd guided by the opposition leaders grew big and bigger along the way. They met the police officers drawn from the Kenya police, Administration officers and General Service Units (GSU) had already cordoned the way to the Anniversary tower, which houses IEBC where they could present their petitions. Armored personnel carriers bought for modernising police were also parked nearby. The crowd reached the Anniversary towers, where the IEBC offices are. The opposition leaders began to address the crowd and the IEBC, an event televised live. As the speeches were going on, the police started lobbing tear gas and confronted the crowd to disperse them. However, the crowd in return, confronted the police hurling stones. The result was full blown fights, injuries and arrests.¹²⁰

The Kenya government has been denying the opposition parties and those who wish to protest the right to gather claiming that the protests will result into chaos and vandalism of the properties. However, in most occasions the police happen to be the ones who disrupt most

¹¹⁹ Imende Benjamin, “You’ll meet full force of law, Uhuru warns NASA on IEBC demos”, in *the Star Daily* (2017), https://www.the-star.co.ke/news/2017/09/25/youll-meet-full-force-of-law-uhuru-warns-nasa-on-iebc-demos_c1641780.

¹²⁰ Cherono, Stella. “Injuries and arrests mar four hours of CORD city protests”, in *the Daily Nation* (2016) <https://www.nation.co.ke/news/Injuries-and-arrests-mar-four-hours-of-Cord-city-protests/-/1056/3206444/-/9fumm8/-/index.html>.

peaceful events, resulting to a running battles, chaos and loss of lives. It is understandably argued, due to the current nature of politics (mainly along the ethnic lines), those communities who have been in leadership (Kikuyus and Kalenjins), have also been the most privileged to own most properties in the city.¹²¹ The presidency in Kenya has mostly been associated with economic power, privileges and favours to the members of president's ethnic group and those close to the power proximity. In relation to the view, Ogot (1995) explains how after independence the Kenya new land policy was based on class and ethnicity. The office of the president has been associated with those privileges.¹²²

The language created by the ruling ethnic group 'we protect our properties' is of impunity, power and wealth proximity against the underprivileged demonstrators and those seeking justice.¹²³ It is a language of class, social and ethnic belonging. For to most Kenyans, ethnic association, economic values (connections to business, resources, jobs), are the core reasons to why they vote. Various researchers have found out that police officers behave appropriately in handling 'government aligned' protesters, whose protests goes on undisturbed. This was witnessed when the government supporters protested the Supreme Court cancellation of the 2017 General elections.¹²⁴ Contrary to that, the police beat, tear gas and in some instances shot to kill the opposition protesters. Research holds that in the 2017 post-elections protests, police were directly implicated in the deaths of at least 33 people, most of the deaths happened in the opposition zones and related with the opposition protesters.¹²⁵

¹²¹ Venas new, "Richest Tribes in Kenya", in Venas News (2015), <https://venasnews.co.ke/2015/09/09/richest-tribes-in-kenya/>.

¹²² Ogot. B. A. (1995). 'The Decisive years 1956-63: Reform Response to Mau Mau', in B. A. Ogot and W. R. Ochieng (Eds.), *Decolonization and Independence in Kenya 1940-93*, London, Nairobi, Athens: Ohio University Press, pg64.

¹²³ Josphat Thiongo, "Businessmen vow to 'protest' their businesses ahead of planed NASA protest", *the Standard Digital* (2017), <https://www.standardmedia.co.ke/article/2001255611/businessmen-vow-to-protect-their-businesses-ahead-of-planed-nasa-protests>.

¹²⁴ Sam Kiplagat, "You stole our victory, Jubilee supporters tell Supreme Court", in *Daily Nation news* (2017), <https://www.nation.co.ke/news/politics/Jubilee-supporters-city-demo/1064-4102524-p0grf3/index.html>.

¹²⁵ Human Rights Watch, "Kenya: Police killed, Beat Post-Election Protesters", in *Human Rights Watch* (2017), <https://www.hrw.org/news/2017/10/15/kenya-police-killed-beat-post-election-protesters>.

Case 2: Violent dispersal and running battle between police and civilians

After the repeat presidential elections on 26th October 2017, the leading opposition figure Raila Odinga boycotted the repeat of the elections and instead he toured to USA for 10 days. During the time of his return to Kenya, his supporters, elected members of parliament, senate in his coalition party informed the police of their plan to welcome him home. They organized to have a convoy, and his supporters marching from airport to an assembly ground in Nairobi central district. However, on the event day November 17th, 2017, what was meant to be peaceful homecoming turned into a real fight between police and Raila Odinga's supporters. The police used verbal orders, tear gas and live bullets to restore calm and order without much success. In turn, they created more chaos, which left five people dead, with the police and the opposition pointing an accusing finger to each other as the cause of chaos and deaths.¹²⁶

4.2. Curfews, harassment, beatings and killings by the police officers

In the election periods, there has always been high tensions caused by the government authorities and the police mostly in the opposition areas. Opposition leaders and human rights defenders are targeted. They are attacked and harassed by the police when they question modalities of police harassment, threats and attacks to the public. The aim of police targeting them is to silence them against speaking of their impunity. In accordance to various reports, the individuals and areas most vulnerable are the opposition (ethnic dimensions) and targeted human rights defenders (regardless of their ethnicity) are those highlighting issues of police intimidations in the opposition areas, slums (informal settlement) or remote parts of Kenya respectively.

Sometimes, threats, harassments and intimidations happen to an entire community of the opposition, causing some people to flee from their areas of resident. The most affected are those living in the Capital City (Nairobi) and areas where they are ethnic minorities. This causes them to flee to their ethnic rural homes, hence failing to vote. This brings the question of how the elections are free and fair. Reports from the Human Rights Watch holds that, the Kenya police who should do investigations of the allegations of interethnic and political

¹²⁶ Nation Team, "Chaos and gunshots as Raila Odinga enters Nairobi CBD", in *Daily Nations news* (2017), <https://www.nation.co.ke/news/Chaos-and-gunshots-as-Raila-enters-Nairobi-CBD/1056-4191292-98q262z/index.html>.

threats and harassments mostly fails to do so especially if the ethnic sides of those who are in the government are not the ones much affected.

Human Rights Watch reports further show that the Kenya authorities deployed many paramilitary units; General Service Units (GSU), Police Administration (AP) and units from Prisons, Kenya Wildlife Service and National Youth Service ahead of polling in mostly rival party's areas. According to the report, the presence of heavy deployment of police officers create political tensions ahead of voting. The government's own National Contingency Plan for the August elections had referred to the opposition areas as 'hotspots' meaning areas prone to violent. The heavy deployment of the police takes ethnic and political dimension, to the excessive police action that follows after the poll.¹²⁷

The aftermath of such heavy police deployment has been excessive forces to control voters, to control those who complain about visible rigging and to disperse those who question the voting modalities. This is done through beating, tear gassing, house-to-house search and even shooting.

Case 3: Curfews, beatings and killings by the police in the opposition's areas

In Mathare, mainly an opposition zone and one of the largest slums in Kenya had a heavy deployment of police. On August 12th, 2017, immediately after the announcement of the presidential results, protest broke in the slum's street. As reported, the police who were already deployed in the area reacted quickly. They started beating the protesters, throwing tear gas and using live bullets. In the process, people were killed. Among them was a 9-year-old girl by name Mokaya Moraa. The father to Mokaya said that, "Mokaya and three other kids were playing in the balcony, suddenly there was a gunshot which hit the young girl."¹²⁸

Even without demonstration, before the announcement of the presidential elections results on August 12th, 2017, report show that there was heavy deployment of the riot police officers in the opposition areas. When the opposition questioned the heavy deployment of the police officers in their areas, the Nairobi police commissioners responded, they were securing

¹²⁷ Human Rights Watch, "Kill those Criminals: Security Forces Violations in Kenya's August 2017 elections", in *Human Rights Watch (2017)*, <https://www.hrw.org/report/2017/10/15/kill-those-criminals/security-forces-violations-kenyas-august-2017-elections>.

¹²⁸ Duggan. B. Faith Karimi. F and Narayan. C, "24 killed in post-election violence in Kenya, rights group says", in *CNN news (2017)*, <https://edition.cnn.com/2017/08/12/africa/kenya-elections-protests/index.html>.

businesses as a government mandate to secure people and property. They retaliated that their work was to deal with anyone who wished to take advantage of the situation. However, those in the targeted areas suspected danger due to the heavy deployment. They realised the deployment is done in an anticipation of trouble, mostly of the elections outcome. Immediately after the result announcement, the police started a door-to-door search and a curfew, to contain the opposition people from reacting to the elections outcome. Making the deployment a case of an organized police violence against citizen. The result was injuries and deaths.

Case 4: Door-to-door, curfew, injuries and deaths

On August 13th, 2017 in Kisumu (one of the opposition areas), after the presidential elections, a section of the town reacted and disputed the elections results. Immediately, the police started a door-to-door search and put the whole area under a curfew. It is reported that, in one the houses's the police went, Pendo, a six-month-old baby was killed by police while being held by her mother. She died in her mother's arms after both were repeatedly clubbed by a police officer. Reports from Human Rights Watch (2017), hold that the police had been instructed by the area police commissioner in his own words, "to go house to house, rounding up the trouble makers". It is said, when the police entered the house, the mother pleaded with them. She told them, "I surrender, do not beat me, I have a small baby." One officers allowed her to pass, but the colleague, started hitting her from her back as she passed. When she turned, an officer who was beating her mercilessly and aimlessly hit the baby on her arms. As reported, on realising that they had hit and injured the baby, the officers left without any arrest, leaving behind injured parents and unconscious baby Pendo.¹²⁹ Few days later, baby Pendo died in ICU. The baby Pendo case outraged the entire nation, including those who supported the government. This made the Police Inspector General (IG) for once to state that they will carry investigation. But as reported, until now, not the police or the IPOA (independent police body) has given an account of the officer who killed baby Pendo.¹³⁰

¹²⁹ Rushdie Oudia, "21 people to testify in inquest into baby Samatha Pendo's death", in *Daily Nation new* (2017), <https://www.nation.co.ke/news/21-people-to-testify-in-inquest-baby-Samantha-Pendo-death-Kisumu/1056-4224608-dppxfwz/index.html>.

¹³⁰ Maggie Fick, "Special Report: Amid claims of police brutality in Kenya, a watchdog fails to bite", in *Reuters* (2018), <https://www.reuters.com/article/us-kenya-police-watchdog-specialreport/special-report-amid-claims-of-police-brutality-in-kenya-a-watchdog-fails-to-bite-idUSKCN1G7178>.

4.3. Arbitrary arrests, detentions, intimidation, harassment of the opponent's party

During elections period, there has been reported cases of the use of the police officers in criminalisation schemes as part of a broader pattern of harassment and intimidation against members of the main rival parties. They often face trumped-up charges, including in the context of duly notified peaceful protests, which are often declared unlawful just prior or during the events. They are sometimes accused of defamation, offences used to silence them. The use of police officers to arbitrary arrest and detain, while equally defying and harassing the judiciary and gagging the media undermines the campaigns of the opposition against that of the government. In turn, this brings the question of how free and fair the elections are. Disproportionate penalties or fines, criminal records, multiple arrests and summoning to appear before a police station or court entail intimidations, delegitimising and paralyzing their campaign and programs. During the analysis, I found that there are so many cases of arbitrary arrests, detention, intimidation, humiliation and harassment of rival partys' leaders by the police officers in Kenya. Below I present some of the cases.

Case 5: Arbitrary police arrests and harassment of rival political leaders

David Ndiu comes from the President ethnic group. With Kenya politics being so ethnised, the question among many people has always been why he has vividly supported the rival parties. Ndiu, an ethnic Kikuyu, a holder of doctorate in Economy from Oxford University and a managing director of Africa economics is the government's rival party (NASA) strategist. On December 4th, 2018, Ndiu was arrested by seven police officers from the flying squad and special crime prevention unit, at the Kenya Coast. That fateful day, Ndiu was on holiday with his wife in the coastal town of Mombasa. He was taken to the Diani police station in Mombasa. Later at night, without his family and his lawyer contact or notice, they drove him to over 400 kilometers, from Mombasa to Nairobi Muthaiga police station. Within that period, he was being interrogated and questioned having been denied access to his lawyer, family and friends. It is reported that, one of the police officer regarding this case said that, they had been instructed to do so, and not allow him access to a lawyer. The police officer however did not disclose the source of instruction. Later Ndiu was taken to Milimani law court and charged with incitement, where he was released on sh10,000 bond. This made the opposition fraternity to read the whole issue as police intimidation. His lawyer accused the police of intimidating

the opposition supporters, while the opposition leaders termed his arrest as a wider scheme by the government to intimidate rival political leaders.¹³¹

This culture of intimidation and harassment of the opposition leaders has been fueled by a widespread culture of impunity by the government. The police responsible for committing atrocities and violation of human rights are never held accountable. The police officers have further been harassing the opposition leaders while directly ignoring and defying court orders, a factor which is entrenching the culture of police brutality.

Case 6: Constant harassment and deportation of opposition leaders by the police officers

Miguna Miguna is an opposition leader. A Kenyan by birth of the ethnic Luo community (home of the opposition leader). Miguna is an avid critic to how the government of Kenya handled and conducted the 2017 General Elections. He called the 2017 General Elections a ‘daylight robbery, where he held that, “they soaked the sun and ratified an egregious daylight robbery”, claiming that the 2017 election was worse than the 1966’s ‘little General Election’. Following his overt criticism, the government has been on a mission to silence him. On February 2nd, 2018, at around 6:00 am, Miguna was in his house when a heavy armed flying squad police invaded his house in Runda Estate. They made a forceful entry into his house by breaking the metal door using some explosives. Once the police squad entered the house, they damaged, ravaged and ransacked it. They then arrested Miguna without informing him the reason why (what Miguna terms as abduction) and took him to an unknown place.¹³² His lawyer tried to stop his arrest by seeking the help of the court, where the court requested that he should be presented to them. However, the Police Inspector General (IG) and the CS-Interior and Coordination of National Government defied the court order. Miguna was held incommunicado for five days, without access to his family or a lawyer. During this period, he was mistreated, humiliated and locked in conditions which he described as ‘unfit for human existence’. Later, the police confiscated his passport. Since he held a dual-citizenship, he was deported under heavy security to Canada (a land he was once exiled under one-party KANU

¹³¹ Cherono, Stella, “NASA strategist David Ndii released on sh10,000 police bond” in *Daily Nation news* (2018), <https://www.nation.co.ke/news/Nasa-strategist-David-Ndii-released-on-police-bond/1056-4214478-58beciz/index.html>.

¹³² Okumu, Patel Police arrest Miguna Miguna at his Runda home”, in *Standard Digital* (2018), <https://www.standardmedia.co.ke/article/2001268198/police-arrest-miguna-miguna-at-his-runda-home>.

rule, for still being critical to the government).¹³³ Following a court order, he was to return (from Canada where he was deported) to Kenya on March 26th, 2018. However, on reaching the airport, he was met by over 40 police officers from different police units who tried to force him to go back, a new bid to deport him. He declined to board the emirate airplane and there was about 72 hours standoff at the airport. He spent nights in a toilet, whereby the whole area was cordoned off from media and his lawyer denied access. On the night of March 29th, 2018, police in plain clothes broke the airport toilet door, drugged Miguna, forced him in a Dubai bound plane and freshly deported him back to Canada.¹³⁴

In another incidence, police officers harass, intimidate and put opposition supporters and their families under seizure without any legal consent or warrant when searching their homes or invading their privacy. However, police officers always go unpunished despite lack of substantive evidences or reasons given for the police actions. Amidst growing impunity, those in opposition feel that the government is directly responsible for the police actions, hence excluded in their protection. Below, I present one case related to this.

Case 7: Government use of police to seizure and arrest their rival supporters

Jimi Wanjigi is a Kenyan, a supporter of the opposition party NASA. Like David Ndi, whom I presented earlier, they come from the Kikuyu ethnic community. Wanjigi has claimed that, his constant harassments and intimidations by the government is for choosing to support the opposition, rather than his ethnic led government. The president has been caught in the public referring to Wanjigi as his friend (what they were before Wanjigi started support opposition). President was recorded saying in Swahili, “*rafiki yangu, vita ni ya nini? Tutafutane tuongee*’ (my friend, why are we fighting?¹³⁵ We should meet and talk). His defiance to support the president party has made him to have constant brutalisation by the police. On October 16th, 2017, police raided Wanjigi’s home in Nairobi, claiming they are searching for amination. The police surrounded, condoned off, and barricaded his entire residence for three days, with guns, sledge hammers and metal cutters. The journalists (who were kept at bay), took videos

¹³³ Galgalo Bocha, “Miguna Miguna deportation illegal: High Court” in *Daily Nation news* (2018), <https://mobile.nation.co.ke/news/High-Court-deportation-Miguna-Miguna--illegal/1950946-4305640-format-xhtml-jvdj07/index.html>.

¹³⁴ Blomfield, Adrian. “Opposition leader ‘drugged and deported’ from Kenya”, in *the Telegraph news* (2018), <https://www.telegraph.co.uk/news/2018/03/29/opposition-leader-drugged-deported-kenya/>.

¹³⁵ The Nation Team, “Why Jimi Wanjigi fell out with Uhuru”, in *Daily Nation news* (2017), <https://www.nation.co.ke/news/politics/Why-Jimi-Wanjigi-fell-out-with-Uhuru/1064-3987350-4qs6hiz/index.html>.

of the police breaking some parts of his house wall. Though Wanjigi had already gone into hidings, the police laid siege at his residence, tormenting his family questioning them about his whereabouts. Later they left, but his harassment continued with several unwarranted arrests now and then. Finally, as harassment and threats continued upon him, one top Kenya newspaper published and announced the death of a living Jimi Wanjigi. Wanjigi read this obituary message as a coded 'death promise' part of the ongoing harassment and threats by the government using police, sending threats to political opponents. However, regardless of all the harassments, Wanjigi insisted that the ruling regime is coming to an end, and he affirmed his support for the main opposition, as it advanced its claim to seeking justice for many Kenyans killed by police.¹³⁶

¹³⁶ Political, "Dawn is not far-all this will end -Uhuru will fall-Jimmy Wanjigi", in *Political, latest news (2018)*, <https://political.co.ke/latest-news/dawn-not-far-will-end-uhuru-will-fall-jimmy-wanjigi/>.

Chapter 5

Discussing police brutality

In chapter 4, I have analysed cases of police brutality in Kenya. The study identified cases of police brutality during the elections times by police as the ‘hand of the government’. In this chapter I will discuss police brutality in relation to the cases provided in chapter 4. I will further discuss why police brutality is a prevalent and continuous ‘culture’ within the Kenyan context. A ‘culture’-typical and emblematic. My approach in this discussion is inspired by historical, social-anthropological and post-colonial perspectives. The aim is to unpack why emblematic cases of police brutality within the Kenya context.

5.1. Dimensions of police brutality in Kenya

To aid this discussion, I take a historical overview as was seen in chapter 3, and in relation to the data analysis in chapter 4. From a historical perspective, I base police brutality as a product of the context. This emerged historically from an alien social-political structure. These structures shaped and created police system and how it should function in Kenya. Police as an institution in Kenya is a result of a historical changes and interactions between a group seeking to protect its interests and to control others. No one puts this better than Shashi Tharoor (2017), in his work *Inglorious Empire: What the British did to India*, studying British imperialism in colonial India. He shows that British imperialism ‘enlightened despotisms’ for their own benefits, and not those it ruled.¹³⁷ Holding onto Tharoor’s argument, police in Kenya was a ‘creation’ of a ‘colonial ruling class and meant to protect the colonial elites’ interests. A status that has been maintained in the present ‘neo-colonial’¹³⁸ Kenya context.

We find that the British established a culture of extreme protectionism, fear, suppression and oppressing their subjects (refer to chapter 3). British colonial government accompanied their policies of governance with policing. To achieve that, the British government trained police to protect their interests, hence training a ‘fierce dogs’ *‘mbwa kali*, and creating a culture of brutality, which functioned as an instrument of their dominance. Ali Mazrui (1980)

¹³⁷ Tharoor S. (2017). *Inglorious Empire: What the British did to India*. London: Hurst Publishers.

¹³⁸ In this case, the object of neo-colonialism is understood as the change of alignment that happened in independence in 1963 against imperialism but replaced the power in the hands of those who have forsaken the national interests to advance themselves.

conceptualises history of brutality in Africa as historical.¹³⁹ Thus, the historical and contemporary socio-political dimensions in Kenya have cemented a ‘culture of impunity’, hence the use of police brutality. This is discussed further in section 5.1.1.

On the other hand, this study views police brutality as a product of ‘social-cultural dimensions’ (discussed in 5.1.2). This is where the society and the context indirectly embed forms of ‘violence’. This study shows police brutality as a form of ‘violence’ embedded within the Kenya social-cultural structures. Brutality is held within the context under patriarchy; hegemonic masculinity, class consciousness and ethnic supremacism as part of ‘social control mechanism’. It is not strange that, several feminist scholars’ show links between militarism, militarisation, violence and conflict.¹⁴⁰ In a strong patriarchal society like Kenya, brutality might be viewed as a form of masculinity, which is translated into ‘cultural and political hegemony. Within the same context, brutality in general (including that of police) may be implicitly a consequence of corporal punishments at homes and schools. This is a long-engrained culture, where kids grow being spanked as a punitive measure for their offences (minor or major). I hold, the society may have grown to view any form of punitive measures (including brutal ones) as permissible and admissible. The police officers also under the cognisance of the contextual corporal punishment, may be familiar with the use of force and brutalism as the only means of stopping offenses. Lastly, I discuss endemic corruption and impunity, a factor which may be aiding police brutality within the context (discussed in 5.1.3)

5.1.1. Historical dimensions to police brutality

From an historical perspective, the social-political dimensions which may have exacerbated the problem of police brutality in Kenya are related to the British colonial forces. Within their accompanying domination policies and strategies, the administrative approaches of British colonialism entrenched some historical cultural imbalances by enhancing ethnic boundaries among Kenya communities. Impunity through a culture of inequalities generated a social-political hierarchy between the ruling-elites and the marginalised-suppressed. Caroline Elkins (2005) states that, “the British military launched punitive expeditions that established an

¹³⁹ Mazrui. A. A. (1980). *The African Condition: A Political Diagnosis*, Cambridge, New York: Cambridge University Press.

¹⁴⁰ Sunila Abeysekera, “A brutal Manifestation of Patriarchy”, in *Open Democracy: Gender, Sexuality and Social Justice* (2012), <https://www.opendemocracy.net/5050/sunila-abeysekera/brutal-manifestation-of-patriarchy>.

enduring pattern of virulent racism and white violence, and their social acceptability with the colony.”¹⁴¹ This was done through the British policy of divide and rule. Divide and rule was the colonialist obsession with classifying Kenyans into defined ethnic groups and categorising the best among them. The British exploited Kenya ethnic diversity and created ethnic animosity. After establishing the social and class hierarchies (divide and rule), the British were able to control the system by positioning themselves on top of those who deserved the outmost protection,¹⁴² by using all sectors of the society. This culture of dominance continued to build itself after independence from colonialism within an African-majority government elitism which took an ethno-political perspective.

The *modus operandi* of establishing the police in Kenya by the colonial government was based on; suspicion rather than trust and control rather than freedom. The aim was to establish a colonial dominance, and a colonial hegemony. This resulted to impunity becoming a behavior and a culture. This impunity was a result of imperialism patronage protected by the same systems they created. These impunity systems consisted; government, security forces and judiciary, hence viewed as one and the same ‘*serikali*’ by the people. Ngugi wa Thiong’o argues that,

The real aim of colonialism was to control the people’s wealth: what they produced, how they produced it, and how it was distributed; to control, in other words, the entire realm of the language of real life. Colonialism imposed its control of the social production of wealth through military conquest and subsequent political dictatorship. But its most important area of domination (forming a culture) was the mental universe of the colonized, the control, through the culture, of how people perceived themselves and their relationship to the world.¹⁴³

What British did using police was not just shaping ‘behaviors’, but creating an ideology of centralised power¹⁴⁴, which later developed into a culture; in fact, that ‘culture’ was the tool of the empire or imperialism.

¹⁴¹ Elkins. C. (2005). *Imperial Reckoning: the untold story of Britain’s Gulag in Kenya*. New York: Henry Holt and Company. pg.3

¹⁴² This was a racial and class segregation, with British on top, followed by Indian, Arabs and then black Kenyans.

¹⁴³ Wa Thiong’o. N. (1986). *Decolonising the mind: the politics of language in African literature*. Nairobi, London, Harare: Heineman. pg.16

¹⁴⁴ Elkins, 121ff

The police ideology did not change even after independence. The structures persisted serving the interests of post-colonial rulers. The new rulers entrenched a new culture, from imperialism patronage to ethnic patronage. This culture is for powering those who took over leadership from the British colonialism, and also used to contain those who oppose them. Neo-colonial form of control is based on the powerful ethnic groups. The marginalised ethnic groups feel they do not belong, in relation to a predetermined formation of state and in relation to controlled elections in a democratic nation Kenya. The police in turn operate with impunity, working in favour of themselves and those who are in leadership.¹⁴⁵ This form of contextual ethno-political-impunity can be condensed in one ‘sheng’¹⁴⁶ word ‘*utado*’ (meaning, what will you do?), commonly used by the youths within the Kenya context. *Utado* is a question of the domineering force against the weak ones. A question commonly put to the victims of brutality by their perpetrators, asking them; what will they do, where will they turn to for help and if they can change anything?

This indicates, context ignores the victims of the police brutality solely due to the thin dichotomy of the contextual meaning of the word *serikali* and ethno-politics. The victims of police brutality mostly end up being brutalised by the society; where, some receive warnings and frowns from the society for ‘*kucheza na serikali*’ (messing with police/government). Every police action and approach are underpinned by an ethno-political interpretative perspective. They think that all individuals in the opposition parties’ aim is to see the government downfall. The Ethnic communities in the government, mostly view themselves as the only ones who should rule in relation to those whom they assume as consistent losers, an issue portraying lack of elements of nationalism in Kenya. Studies have found that majority of Kenya citizens are ignorant of their constitution enshrined human rights.¹⁴⁷ Thus, they are unable to identify any human rights violations, siding with the government even as it continues to violate human rights with impunity, hence in support of the ideology ‘do not mess with police.’ Data analysis reveal cases of Wanjigi, Ndi and Miguna as a ‘do not mess

¹⁴⁵ Mkutu. K. *Guns and Governance in the Rift Valley: Pastoralist Conflict and Small Arms*, Oxford: James Currey, pp. 41-42.

¹⁴⁶ *Sheng* is a Kenya informal language formed from a creative combination of many vernacular, Swahili and English terminologies. The language is very common with the youths, and it is often used as a language of mimicry.

¹⁴⁷ This was a 2018 survey done by the IPSOS Research group, cf. Hillary Orinde “Survey reveals how Kenyans are ignorant of their Human Rights”, in *the Standard Newspaper (2018)*, <https://www.standardmedia.co.ke/article/2001276119/survey-reveals-how-kenyans-are-ignorant-of-their-human-rights>.

up with police' form of brutality. Perspective of silencing individuals who oppose the government. The powerless and those in state of hopelessness have resigned to their fate. They have been subjected to an *utado* by the untouchables against the rule of law entrenched in a culture of impunity, group thinking and fear among the masses.¹⁴⁸

The list of incidences where police have repeatedly ignited brutality and tribal nuances are endless in Kenya context. They emanate from rampant corruption, general disregard to the rule of law, issues of ethnic hegemony, poverty, inequalities, regional imbalances, lack of national cohesion and inequitable distribution of resources and opportunities. Brutality hinges on the powerful individuals, hiding under the support and backing of their tribal leaders. Thus, those in authority abuse their office and police in most situations, informed by the ephemeral of the ethnic alliances during the elections periods, rather than building upon the goodwill of every citizen. Rutere (2011) analyses the police response to the post-election violence in 2007-08 (like in 2013 and 2017) where he points them as 'more than political tools'. His argument is that, during election period, the police easily realigned their loyalties along the ethnic lines, while others operate for their personal benefits.¹⁴⁹ Thus, the marginalised ethnic groups have retired into their miseries and their oblivion within the perspective of hopelessness.

5.1.2. Contextual dimensions to police brutality

An Independent Consultant on Police Reforms in December 5, 2012 stated that, 'fundamentally (the) police is a mirror of the Kenyan society, a reflection of who we are as a society'. Police brutality in Kenya is a product of the Kenya social-cultural dimensions. In this section, I discuss some of social-cultural issues like patriarchy, corporal punishment, endemic corruption and impunity, and how they contribute to aspects of violence, which implicitly may be the source of police brutality in Kenya.

Patriarchy

The form of patriarchy in Kenya can be looked in two ways, that is; indigenous-patriarchy and the contemporary form of patriarchy. Some anthropologist and African traditional

¹⁴⁸ Oyunga Pala, "Rule of law and impunity: We must meet our moment of truth", in the SDE (2016), <https://www.sde.co.ke/article/2000190848/rule-of-law-and-impunity-we-must-meet-our-moment-of-truth>.

¹⁴⁹ Rutere, Mutuma, "More than Political tools: The Police and Post-Election Violence in Kenya", in *African Security Review*, Vol. 20, No, 4, pp.11-20.

researchers such as Marimba Ani, and John Mbiti etcetera., have shown that the traditional form of patriarchy was brutal mostly to women though the creation of the gendered roles,¹⁵⁰ which separated the roles of men and women, and valued men more over women.

The contemporary patriarchy in Kenya is both a combination of the colonial influences and the traditional-indigenous patriarchy. This is a form of hegemonic patriarchy, which presents an intellectual class and cultural domination over others.¹⁵¹ The basis of its origin is from the colonial trajectories, where they projected themselves as prominent, exceed authority and intellectualism. The colonial policies of social stratification in Kenya, of the British on top, followed by Indians and Kenyans becoming the last 'ratified further the patriarchal tenets kind of chauvinism away from the 'social-egalitarian (Ubuntu)',¹⁵² aspects of 'most communities' prior to colonialism. Nobel Peace Prize Laureates Desmond Tutu (1999) describing Ubuntu states that,

Africans have this thing called Ubuntu (...) it embraces hospitality, caring about others, willing to go extra mile for the sake of others. We believe is a person through another person that my humanity is caught up, bond up and inextricable in yours. When I dehumanize you, I inexorably dehumanize myself. The solitary individual is a contradiction in terms and, therefore, you seek to work for the common good because your humanity comes into its own community, in belonging.¹⁵³

Under colonialism, the Ubuntu philosophy was adulterated. Kenyan men emasculated by the colonialism and being least on 'male' hierarchy¹⁵⁴, could only exercise their autonomy power and force within the only place the colonial apparatus could not touch, the home. Kenyan women became the worst recipient of this form of the hegemonic masculinity.¹⁵⁵

¹⁵⁰ Mbiti. S. J. (1994). *African Religions and Philosophy* (revised edition), Heineman Education Publishers: Nairobi, London, Harare and Ani. M. (1994). *Yurugu: An African-centered Critique European cultural thoughts and behavior*, African Word press, Inc: Trenton, New Jersey.

¹⁵¹ Ani (1994).

¹⁵² African 'social-egalitarianism' was held with the Ubuntu philosophy, see, Tutu. D. (1999). *No Future without Forgiveness: A Personal Overview of South Africa's Truth and Reconciliation Commission*, London: Doubleday Publishers.

¹⁵³ Tutu, pg.22

¹⁵⁴ The first in the hierarchy during colonialism was a white male, followed by a white woman. Then Indian male, Arab male, Indian woman and Arab woman in that order, and then Kenyan (but also divided along British ethnicity preference) man and the least Kenyan woman.

¹⁵⁵ I look upon hegemonic masculinity as it was built by the Australian sociologist Raewyn Connell. A form of masculinity that controls culture and individuals. It is the power of 'men' dominance in society by subordinating women and other marginalised ways in the society- R.W. Connell, *Masculinities* (2nd ed.), Blackwell Publishers Ltd: Cambridge (2005).

This colonial system further eroded the traditional gendered roles, basically due to the social-economic arrangement and challenges under the colonial power. Power was centralised, away from the African-traditional communalism (community leadership). The coalescence of the traditional-indigenous African and colonial patriarchy built a new form of patriarchy, which in turn was brutal, starting from homestead and permeating the society. This new form of ‘patriarchy’ is of power and privileges, which arose from men who are brutal to women, a class of elites who are brutal in general to those underprivileged, with an agenda of maintaining a status quo.

The hegemonic attitude of the contemporary form of patriarchy in Kenya has permeated the society. Arranging the society in hegemonic masculinity (men controlling women), ethnic hegemony (tribal superiority) and class hegemony (rich vs. poor). Traditionally, there were different ethnic groups, but the differences did not count much. Each community was autonomous, free to mingle and interact with the bordering communities. However, colonialism reinforced a hierarchy of individual elitisms, class consciousness and ethnic supremacism in Kenya. This happened to the dialectical changes to the functioning colonial economy, which determined the social superstructure (culture and political). To reinforce this, the British used all the instruments of power to keep the structures. The elites, and the ruling ethnic groups (mainly Kikuyu and Kalenjin) in Kenya since independence, have equally done the same. The common factor between the two, is the use of the police to maintain that social structure, a hegemonic dominance and cultural imperialism.

Corporal Punishment

I do not attribute corporal punishment as a direct factor towards police brutality in Kenya. However, social learning theories posit direct and universal effects of parenting behaviours on children adjustments through parents’ modelling of behaviours to challenging problems. Maccoby and Martin (1983) argues that, parental use of physical disciplines teaches children that aggression is appropriate in some situations or all situations.¹⁵⁶ Studies have shown that, corporal punishment, child beating, and spanking is a widespread practice in most homes and schools in Kenya, as a form of discipline.¹⁵⁷ Basing on the social learning perspective, I don’t

¹⁵⁶ Maccoby E.E and Martin J.A, “Socialization in the Context of the family: Parent-Child Interaction”, in Mussen PH, Hetherington EM, editors. Handbook of child psychology: Vol. IV. Socialization, personality, and social development. 4th ed. New York: Wiley; 1983. pp. 1–101.

¹⁵⁷ Human Rights Watch, ‘Kenya Spare the child: Corporal Punishment in Kenya Schools’, (1999), in Human Rights Watch, <https://www.hrw.org/legacy/reports/1999/kenya/>.

know how much we can claim that the Kenya police brutality, or forms of violence, is a product of ‘child’ upbringing adjustment approaches. However, contrary to the popular believes, punitive corporal punishment is not intrinsically part of the indigenous culture. I do not intend to create only a romantic perspective of the pre-colonial Kenya indigenous-societies. For in pre-colonial Kenya communities, just like any other communities of the world there were endless manifestations of brutalism, unkind, cruel and destructive human behaviours. Though there are exceptions to it as to any generalizations, thus, those actions of brutality were never systematized. Patrick Mawusi Amos (2013), shows that punitive corporal punishment and beating was never part of African parenting. As he argues, African parenting was done through cultural ethos of love and attention passed through the folktales, through the extended families, and rites of passages, beating, if be, was the last resort, when all other approaches have failed.¹⁵⁸

In similar view, Ngugi wa Thiong’o (1986) shows that corporal punishment, and beating was part of colonialism in instilling their cultural practices, while taming African culture. He states that one of the humiliating memory when he was a student during the colonial period was how the students were beaten for speaking their native Kikuyu language instead of English. A quote from his work,

The culprit was given corporal punishment-three to five strikes of cane on bare buttocks-or made to carry a metal plate around the neck with inscriptions such as I AM STUPID, or I AM A DONKEY. Sometimes the culprits were fined money they could hardly afford. And how the teachers catch the culprits? A button was initially given to one pupil who was supposed to hand it over to whoever was caught speaking his mother tongue (native language). Whoever had the button at the end of the day would sing who had given it to him and the ensuing process would bring out all the culprits of the day. These children were turned into witch hunters and in the process were being taught how lucrative value of being a traitor to one’s immediate community.¹⁵⁹

Taking the social learning theory, I can argue that the aspects of the colonial brutality, ingrained in corporal punishment in schools and other sectors became a norm, which spread

¹⁵⁸Mawusi. A. P. (2013). “Parenting and Culture – Evidence from Some African Communities”, in *Maria Lucia Seidl-De-Moura, Parenting in South American and African Contexts*, IntechOpen, DOI: 10.5772/56967. Available from: <https://www.intechopen.com/books/parenting-in-south-american-and-african-contexts/parenting-and-culture-evidence-from-some-african-communities>.

¹⁵⁹ Wa Thiong’o, 1986, pg.11

within the wider society. In the end, this cultural spill-over makes the use of physical discipline normative. When the police become brutal in containing individuals regarded as social misfits and a threat to the government, the actions of police are justified and admissible, indicative of the already ingrained aspects of punitive corporal punishment. Utterances such as ‘violent crimes demand a violent response’¹⁶⁰ are common among the senior police officers and the general public, normalising the vice. Thus, general and specific culture of corporal punishment affects the actions of police. With the politicians using those already existing loopholes to achieve their political goals.

Endemic Corruption and impunity

Everyone in Kenya knows and understands what is ‘*kitu kidogo*’, which means ‘something small’. *Kitu kidogo* is corruption language in Kenya, that you must rub someone hand for things to be done. This shows that corruption or graft permeates all levels of Kenya society. Eric Wainaina, a Kenyan musician sang a song which referred to Kenya as ‘*nchi ya kitu kidogo*’ (a nation of small thing)-meaning a ‘corrupt nation’.¹⁶¹ The leader of majority in Kenya is quoted stating that corruption is an endemic,¹⁶² practice in all arms of the government, social settings, and also being experienced within the villages. Several reports, including the most recent 2018 survey by the Ethics and Anti-Corruption Commission, have placed the Kenya police as the most corrupt institution in Kenya.¹⁶³

Due to corruption, regardless of the 2010 police reforms, it has been observed that corruption in Kenya police force is hindering efforts of arresting the police officers who have been involved in brutality and human rights violations. Failure to arrest them has further cemented impunity; with corruption playing a key role to lack of compliance with the rule of law and implementing the reforms. Endemic corruption and impunity has seen those in government and authority repeatedly use police officers as tools of oppression. Corruption in the police has been its greatest ‘Achilles heel’ towards the reforms. The general perception is that those in authority are not willing to enact the reforms, compounded by the belief that the ruling

¹⁶⁰ Maggie, Fick, ‘Amid claims of police brutality in Kenya, a watchdog fails to bite’, (2018), *Reuters*, <https://www.reuters.com/investigates/special-report/kenya-police-watchdog/>.

¹⁶¹ BBC, ‘Kenyan dance against graft’, (2001), in BBC Africa news, <http://news.bbc.co.uk/2/hi/africa/1550448.stm>.

¹⁶² James Mbaka, ‘Corruption is endemic in Kenya, says Duale’, (2015), in the Star, https://www.the-star.co.ke/news/2015/10/30/corruption-is-endemic-in-kenya-says-duale_c1233380.

¹⁶³ Martin Makangu, ‘Kenya police tops corruption list’, (2018), in Daily Nation news, <https://www.nation.co.ke/news/Kenya-Police-tops-corruption-list/1056-4359964-sc80d3z/index.html>.

class controls the police, and this control contributes to the reason and failure to address its corruption.¹⁶⁴

5.1.3. Structural dimensions of police brutality

I state emphatically that the condition of Kenya politics has entrenched the culture of police brutality. I argued earlier that the culture of police brutality emerges from the contextual dimensions within the Kenya society and has a long history. This was inherited from the political and social institutions created by colonialisation. Most Kenyans have conceptualised some form of violence and brutalism. An extended period of centralised system of government has played a significant role in impacting and influencing most sectors of Kenya society. This factor is one inhabiting changes and reforms. This runs from colonialism, to independent Kenya under one-party state.¹⁶⁵ Nothing profound was done to promote democracy or lay down foundation for development of democratic structures. The ideas of governance model conceptualised by the current heads of state, heads of the governments in Kenya and police still reflect brutality. The method of present governance tends to emulate the old regimes regardless of the reforms. The government has continued to dictate the legal procedures and policing in order to win their political agenda and goals. This has made it impossible to implement reform policies and provisions in 2010 constitution, which its agenda is championing police reforms and protecting the rights of those facing the police brutality. The consequences are; entrenchment of impunity, hegemony, brutalism and disrespect to the rule of law.

In 1992, Kenya became a multiparty democratic society, away from one party dictatorship. In 2010, there was promulgation of new constitution, followed by the police reforms in 2011. The Police reform enacted the National Police Service Commission Act 2011.¹⁶⁶The NPSC Act 2011 merged the Kenya police, and the Administration Police under one hierarchy and established the office of IG. Under the same police reforms, article 41 of the NPSC, laid down police operation procedures. It particularly placed the amount of force which an officer may use dealing with an offender. The Act states that, “an officer may use force and firearms, if

¹⁶⁴ Amnesty International, ‘Police Reform in Kenya: “A Drop in the Ocean”’ (2013), London: Amnesty International Publishers, <https://www.amnesty.org/download/Documents/12000/afr320012013en.pdf>.

¹⁶⁵ Branch, 2011.

¹⁶⁶ National Police Service Commission Act, No. 30 of 2011, ‘Laws of Kenya.’

and to such extent only as is extremely necessary”¹⁶⁷. The NPSC also established a civilian board to oversee recruitment, appointments and vetting of the police. This is to review the standards, qualification and receive complaints from public. The body in charge, as established by the Act 2011 is referred to as the Independent Policing Oversight Authority (IPOA),

It is ironical, despite these clear-cut reforms and numerous changes to make the police efficient, and adherent to the rule of law, police brutality is still happening. Those involved are facing little or no disciplinary measures or criminal prosecution for their actions. NPSC key role under the police reforms was to ensure that public image of Kenya police was improved. This was to happen by ensuring that those who were to be appointed in the top command of the Kenya police, were supposed to undergo some serious scrutiny on accountability and professionalism. The NPSC Act¹⁶⁸ provided for a panel consisting of representatives from state and non-state agencies, which would identify candidates and forward their names to the president later to parliament for approval.¹⁶⁹ However, in July 2014, the Jubilee party majority in Senate successfully pushed for the enactment of the National Police Service (amendment) Bill.¹⁷⁰ The bill denied the NPSC exclusive powers to recruit the IG and deputy IG in the event the posts fall vacant, instead they vested powers to president and parliament.

The amendment was contested by the opposition parties claiming that, it was unconstitutional and effectively returned power over the police to the president, something the new constitution had been designed to end. Though the constitution provision clearly sought to incorporate different stakeholders in the process, under the amendment, the NPSC has been sidelined. Under the amendment, during the appointment of the current IG, in December 2014, the president announced the nomination of Joseph Boinet, and transmitted his name to parliament for approval without the input of the panel.¹⁷¹ This created great political wrangling in the parliament, mostly from the opposition politician’s claiming the entire process was flawed and imposed against the will of Kenyans. Nevertheless, due to the

¹⁶⁷ NPSC Act 2011

¹⁶⁸ Kenya Constitution 2010.

¹⁶⁹ NPSC Act 2011

¹⁷⁰ Kenya Gazette Supplement, Senate Bills, 2014.

¹⁷¹ Simbiri-Jaoko. F. (2016). ‘Participation and inclusion in police reforms in Kenya: Opportunities and challenges since 2008’, in *Saferworld preventing violent conflict. Building safer lives*, pp.4-6 <file:///C:/Users/User/Downloads/participation-and-inclusion-in-police-reforms-in-kenya.pdf>.

government parliamentary advantage, the appointment remained. Thus, as it was under the single party system, the appointment of the IG held similarities regardless of the police reforms. The appointment was done based on the numerical advantage of the majority appointed members of parliament, mostly consisting of two ethnic groups (Kikuyu and Kalenjin)¹⁷². Per Simbiri-Jaoko, the appointment also affected the context of the Security Laws Amendment (SLA) Acts of 2014, which gave the president more powers to act over police.¹⁷³ This amendment targeted various security laws with far-reaching implications for policing security in general. The government justified the amendments claiming that terror threats required the executive to have more effective control over security forces, and more freedom to make decisions.¹⁷⁴ This eroded all gains made under the police reforms.

Similarly, under the IPOA in accordance to NPSC top Police Officers were supposed to undergo some serious vetting. In this exercise, members of public are invited to come forward with any complaints or information about individual officers. However, as witnessed during the previous vetting process, some members of the team conducting vetting resigned, citing intimidation from the top authorities within the government and police department. This derailed the entire process.¹⁷⁵ Since then, the vetting process has been engulfed and held hostage by the politicians and executive, with IPOA complaining they lacked support of goodwill from those in authority and with limited financial support.¹⁷⁶ On the other hand, the IPOA, whose mandate is; to conduct impartial, independent investigations, inspections, auditing and monitoring the National Police Service, preventing impunity and enhancing professionalism in the interest of citizens suffers a challenge whereby they lack the ability to conduct investigation on their own and relies on the Kenya police to conduct effective investigations and arrest those who have committed crimes.¹⁷⁷ At the end, this has seen the police covering up crimes of brutality committed by their colleagues. Thus, so far, no meaningful impact has been created under the NPSC.

¹⁷² This was a leverage to their coalition elections campaign bargains for positions, favours and other opportunities.

¹⁷³ Kenya Gazette Supplement, Acts, 2014, 'the Security Laws (Amendment) Act, 2014.

¹⁷⁴ Florence Simbiri-Jaoko, pp.4-6.

¹⁷⁵ Ochieng, Lillian, 'Kenyan Police vetting goes at snail's pace', (2014), in *Institute for war and peace reporting*, <https://iwpr.net/global-voices/kenyan-police-vetting-goes-snails-pace>.

¹⁷⁶ Osse, A. (2016), "Police reform in Kenya: a process of 'meddling through'" *Journal Policing and Society*, an International Journal of Research and Policy, Volume 26, 2016-Issue 8.

¹⁷⁷ Kiarie, Joe, "Is the Independent Policing Oversight Authority (IPOA) the new toothless bulldog in town?", (2014), in the Standard Newspaper, <https://www.standardmedia.co.ke/article/2000105207/is-the-independent-policing-oversight-authority-ipoa-the-new-toothless-bulldog-in-town>.

My conclusion is that, due to the structural limitations, and lack of political goodwill to enforce police reforms, Kenya still witness cases of police brutality. The factor which have stalled or made the police reforms to go at a slow pace. Corruption, ethnic and political interference is heavily reflected in the appointment of the police leaders. There are financial limitations and lack of clear political support in order to reform police. There is also intimidation and lack of manpower, as reflected during police vetting, which has derailed and slowed down the entire process.

5.2. Suggestion to the way forward

The question here is how do we reform the police? This study suggests an approach which may provide a way forward in relation to the above question, a response to police brutality in general. In relation to the study, I suggest, to achieve a better police service in Kenya, there is a need for an ‘integrated model’, that is, from below and from above.

From below

From below, I mean the county governments can effectively support the grassroots-community policing. The county government is a devolved system of governance established by the 2010 Constitution. Through constitution, the 47-county government were created and mostly along the Kenya ethnic lines. Similarly, section 41 of NPSC Act established a provision for County Policing Authorities (CPAs). In this case, I suggest the police recruitment and training can be done along the ethnic lines, within the local counties. I also suggest, police officers can serve within their local counties, and particularly within their ethnic communities. Further, I suggest policing can incorporate the local interest’s groups such as teachers, religious leader and local think tanks. The policing can also incorporate the local cultural norms, towards achieving the principles of community participation.

From above

From above, this can be achieved through structuring the state institutions. This an idealistic suggestion whereby police leadership, appointment, recruitment and training are detached from the executive and legislative authorities, hence restoring the original NPSC Act. For the police reforms process to move forward, there must be strict adherence to the constitution and

rule of law. There should also be less interference in the police reform process. The IPOA should also try to impact much in the grassroots to change the perception of ‘who police are’. For currently, though important, their approach has been on ‘how police should work’. Forgetting that by and large, police are human-persons and products of their immediate society, whose perception may impact much to how police work.

Reviewing the police recruitment and reviewing their training curriculum is another suggestion. Currently, the police recruitment exercise in Kenya has been tainted by corruption and ethnic nepotism.¹⁷⁸To achieve better police, there is need of efficient and effective recruitment and police training. This will be achieved by having the right and qualified police candidate. Currently, those recruited in the police force are mostly individuals who attained the lowest grade in their high-school exams. I do not purport an elitism, in this approach. However, the recruitment regulations should be balanced, in terms of academic qualifications, gender equality and ethnic balancing. This will promote internal diversity and ensure professionalism. The police training period should also be increased from the current¹⁷⁹ to at least 2 to 3 years. Through this, the police will not only learn combat skills, but social ethics, human rights and other relevant training which will help them to achieve professionalism. The 2010 Constitution and 2011 Police reforms were clear in the building of the new institution which could change policing in Kenya.

¹⁷⁸ KNCHR, ‘Police recruitment exercise tainted by corruption’ (2016), in *Ebru Tv*, <http://www.ebru.co.ke/knchr-police-recruitment-exercise-tainted-by-corruption/>.

¹⁷⁹ After the 2010 Constitution, the NPSC Act made police training to 15 months, from the initial 9 months. However, I hold that 15 months is still not enough to conduct proper police training.

Chapter 6

Conclusion

This is conclusion chapter presenting the research findings and way forward.

6.1. Research findings

In chapter 3, we find that police history in Kenya is associated with British colonialism and their rule in Kenya. Further, in chapter 4, I presented and analysed cases of police brutality, mainly during elections period. In chapter 5, in relation to data, there was discussion. Police brutality was discussed as typical and emblematic due to its persistence in Kenya. The study found that, the persistence police brutality is a product of an engrained historical culture of brutality. Brutality is also related to the social-cultural issues within the Kenya society such as; hegemonic masculinity-patriarchy, persistent importance of group thinking, and persistent ethno-based governance.

Through the study, I learnt how the colonial government policies benefited by abusing the police to brutalise their subjects, a pedigree of the contemporary governments in Kenya. The post-colonial governments in Kenya are using the advantages of the structures, using the police officers in containing their political opponents. Irrespective of the various police reforms, the police *modus operandi* remains that of brutality with perpetrators facing no justice.

Culture of impunity is central in relation police brutality. How police act and conduct themselves during the elections periods is due to impunity. Where, the protagonists of the brutality, including those who kill do rarely face the justice or face inadequate justice. I therefore state, there is an abuse of police by those in leadership. This is the reason why there is persistence police brutality and mostly during the election periods. It underscores the view that, using police to brutalise those who oppose their leadership, means, retaining their leadership position. Ethno-politically, police brutality is a contextually accepted manipulative and abusive way of winning an election and retaining power.

I found the catalyst to the police brutality are discords among the citizens. Communities have been politically pitted against each other, which undermines the national unified voice against police brutalism. Elections are viewed as an ultimate prize towards political supremacy. The

abuse of police by those in leadership is decisively meant to make them win this prize, which comes with resource control.

The way forward suggested a from below and from above approaches in addressing cases of police brutality. This is where both the local citizens and national elites can participate towards police reforms. It is also an engagement of both legal and social-cultural perspectives towards policing.

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Appendix-pictures of police brutality in Kenya



Fig.1. Police officer beating a demonstrator, in full presence of media-level of impunity.



Fig.2: A demonstrator merciless beating by police officers.



Fig: 3. A political cartoon-display the challenge facing the IPOA.

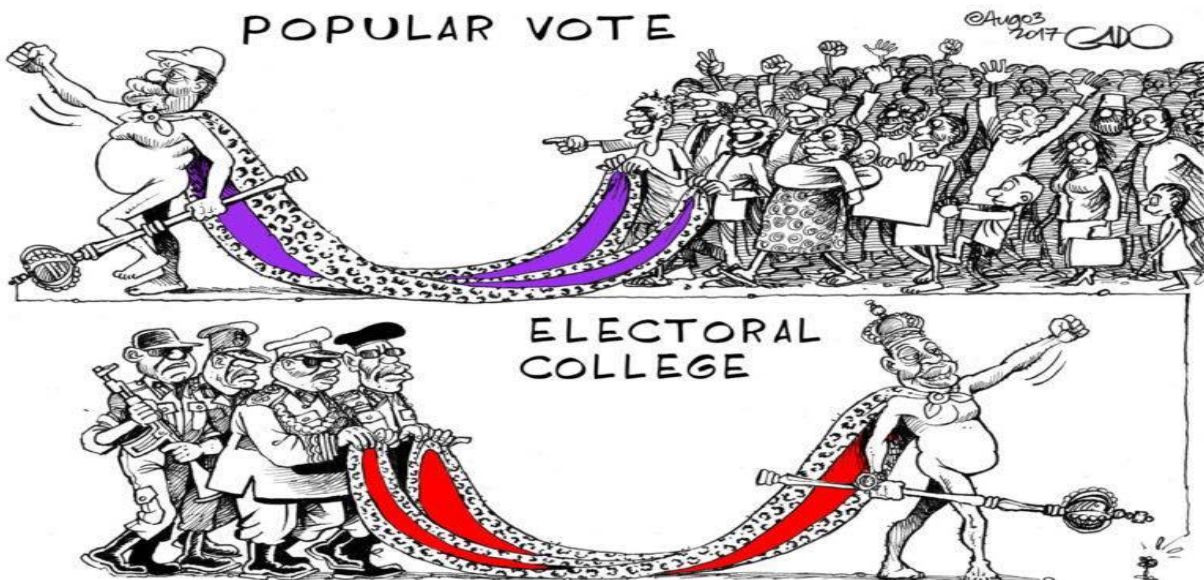


Fig: 4. An editorial political cartoon-display police influence on the elections in Kenya