

# An appraisal of police reforms in kenya criminology essay



**ASSIGN  
BUSTER**

Police Services form part of the executive arm of the Government. Before the promulgation of the Constitution 2010, on 27th August 2010 they were referred to as Police Forces and were under the Ministry of State for Provincial Administration and Internal Security.

The two Police Forces were the Kenya Police and the Administration Police Forces established under the repealed Police Act Chapter 84 and Administration Police Act Chapter 85 respectively. Together with other three sister departments in the Ministry, that is the NACADAA, the Government Press and the Provincial Administration, the five key departments are all answerable to one Accounting Officer under the Ministry.

The Commissioner of Police has been the in charge of the Kenya Police Force while the Commandant of Administration Police, who before 27th August, 2010 operated under delegated authority[1], has been in charge of the Administration Police Force. More often than not the Police have found themselves in crossroads with members of public and Civil Society Organizations. This has led to them being viewed as the key violators of Human Rights[2]. They have earned a title violators rather than protectors and keepers of Human Rights. The Alston Reports[3] on Judicial killings laid blame on Police on deaths and disappearance of youth without anybody accounting for them. Several shootings of innocent individuals have been associated with the Police guns.

The duty imposed on Police of Protection of life and property has been reduced to perception that they are to eradicate life and property of innocent people. The experts on commission for enquiry and thinkers of reforms came

up with recommendations in their report after the 2007-2008 Post Election Violence which associated most loss of life to the excessive use of force by police amongst other vices and omissions. Waki Report[4] indicate that the “ security forces were powerless against the violence”.

Often, when we think of police reforms, the people concerned many a times tend to either forget or neglect the primary reason and function of the police service right from the initial stage it was formed to where they focus it to be, which is of great importance and should always be taken seriously.

Peaceful co-existence and calmness in the society is the recipe for experiencing and enjoyment of freedom and human rights. With breach of this, society is bound to be in a chaotic state, confusion and fear. This is why police work always comes in handy if professionally applied backed with strong laws and reliable independent judicial systems.

The society creates laws and puts in place the justice system to deal with law breakers; police on the other hand has a responsibility to enforce these laws within the society for the purpose of sustaining peace and calmness.

When a society enjoys relative peace and order, it signifies that people obey the laws laid down with offenders being subjected to justice promptly. Strict justice systems and societies law obedience always ease the work of police.

You can institute police reform, you can reorganize service delivery but you cannot alter the fundamental principles of policing and police operations.

Reformers and reform agendas must be cognizant of another reality that police officers and police services are delivering something that some people

in the society are opposed to. No one wants to be a victim of crime. No one wants the law, criminal or regulatory, enforced on them.[5]

Police reform or review will not make this disappear and no matter how you package or tidy up service delivery or the players, there will always be displeasure with the police. So we mostly find that the performance of any organization depends on the principles on which it is founded and the tempered actions of its officers.

Violations of the founding principle of an organization lead to straying away hence corruption, inefficiency and partisan personnel who can easily be misused by influential who have personal interest of enriching themselves. It is because of this, that the police have found themselves being misused by politicians as they serve as agents of political executives rather than as an instrument of a democratic state. This leaves a weak police Service heavily reliant of its masters who politicize and destabilize the police hence vices.

The police force had been marked with a reputation of applying the law selectively against opponents, whether political or personal, at the behest of person of influence. Impunity has reigned supreme and hence reforms appearing to be a distant reality.

Security is a basic human right as it is underlined by Article 3 of the Universal Declaration of Human Rights. As a member of the family of nations, Kenya subscribes to this Declaration. As a country, we regard security as a matter of national priority.[6]Security of person's as a basic human right is also one of the most significant factors contributing to the

quality of communities worldwide. Security provides an enabling  
<https://assignbuster.com/an-appraisal-of-police-reforms-in-kenya-criminology-essay/>

environment for citizens to live and work in, and it stimulates social, economic and political development.[7]

Kenya's transition, and prospects of development, hinge to a great extent on the country's ability to guarantee security within her borders. This is a goal that the current Government is committed to attain. It is also a good that many Kenyan's are longing for.[8]

It is against this background that there have been attempts by the Kenyan Government to institute police reforms. Though the Government had initiated the Police Reforms since 2004 when the NARC Government first came to power, on platforms of Reforms, these reforms were

largely operational and administrative as they did not address the structural policy and legislative reforms that were fundamental in transforming the Police.[9]

Consequently, the Government appointed the National Task Force on Police Reforms on the 8th May, 2009, led by The Hon. Justice (Rtd) Philip Ransley in Kenya Gazette Notice No. 4790. 1[0]

The Task Force was mandated with the following Terms of References:-1[1]

Examine the existing policy, institutional, legislative, administrative, and operational structures, systems and strategies and recommend comprehensive reforms taking cognizance of the recommendations contained in agenda 4; Kriegler, Waki and other Police related Reports so as to enhance police efficiency, effectiveness and institutionalize

professionalism and accountability.(Special focus to be given to <https://assignbuster.com/an-appraisal-of-police-reforms-in-kenya-criminology-essay/>

recommendations on Police Service Commission; Independent Police Oversight Authority; Policing Policy; and National Security Policy);

Examine the existing competence, skills knowledge and attitudes of the Police at all levels and make recommendations aimed at enhancing shared core values, policing excellence and benchmarking against international best practices.

Review the human resource management and development policies with a view to examine current standards and practices in recruitment, deployment, training, career progression, exit, post-exit management and recommend implementation of changes that enhance morale, meritocracy and professionalism;

Review the tooling, logistical and technological capacity and recommend changes necessary to sustain modern security management, disaster management, conflicts and early warning/rapid response systems and joint operational preparedness strategy;

Review the state of preparedness of the police to combat insecurity and other forms of emerging security challenges occasioned by national and international threats such as terrorism, piracy, organized gangs, drug/human trafficking, industrial espionage, cyber crime, money laundering, and economics crimes;

Review and recommend strategies to harmonize and fast-track partnership between the community and security agencies in policing;

Design a continuous monitoring and evaluation mechanisms to track police reform gains and consistency of policing needs;

Recommend appropriate institutional arrangement to oversee the implementation of comprehensive police reforms;

Prepare a draft Police Reforms Bill to embrace the comprehensive Police reform agenda;

Make any other appropriate recommendations that add value to police reforms; and

Develop a prioritized implementation matrix clearly categorizing the immediate, medium, and long- term police reforms and the attendant budgetary requirements. Within two and half months to submit to the President its findings and recommendations.

The task Force submitted its report on October 2009 having made various recommendations summarized under four headings:-Professionalism, accountability, operational and administrative reforms and institutional policy and legislative reforms

On 8th January, 2010, the Government established the Police Reforms Implementation Committee charged with the responsibility of coordinating, supervising, providing, technical guidance, facilitation as well as mobilizing resources, communicating, monitoring and evaluation of reforms in the police. 1[2]

The promulgation of the Constitution of Kenya, 2010 on 27th August, 2010 marked a milestone on the issue of the Police Reforms in Kenya. To crown it all, Article 243 to 247<sup>1</sup>[3] constitutionally provided a departure from the previous regime organizations of the police matters.

## **1. 1. Objectives of the Study**

The study intends to appraise police reforms in Kenya and recommend the best approach to reforms, hence contribute to the process of reforming the police in Kenya to be more effective and accountable in their service. The research will also act as an informative tool and strengthen the knowledge of the readers, researchers, and any other interested parties. Specific objectives of the study were:

To identify indicators of police reforms;

To identify appropriate analysis and measurement tools to measurement the level of police reforms in Kenya;

To gauge the level of police reforms and to benchmark with that of other countries;

To recommend measures for the realization of police reforms in Kenya.

## **1. 2 Problem Statement**

The following points summarize problem statement concerning police reform in Kenya that this research seeks to address:

Not much has been done in terms of realistically appraising police reforms in Kenya.



There is lack of continuous expert evaluations along the way. In certain cases, internal evaluations that are deficit of technical analysis are carried out, the reliability of the findings may be questionable;

The police still have outdated colonial cultures and brutality with deep rooted corruption rate which is a concern of the public, the Kenya Government and the international community;

Lack of professionalism; ineffective supervision and poor managerial skills; inadequate and oversight accountability and oversight mechanisms in the police;

Slow pace of enactment of necessary legislations to speed up the reform process;

### **1. 3. Scope of the Research**

It was necessary to clearly define boundaries of the research to focus on the objectives of the study and to eliminate ambiguities. The focus of the research was to assess the successes, failures and challenges of police reforms by identifying reform indicators and gauging reform activities using them. The goal was to shed light into the realities of police reform efforts by highlighting achievements and by benchmarking with other exemplary strides in Africa and the world. This research, being an appraisal, meaning judging the nature/value of the reform process or making considered opinion on quality/extent/status, the research dwelt on aspects that closely correlated with reform evaluation.

## 1. 4. Theoretical Framework

There are various theories which justify reforms. These theories explain the relationship between the ways things are and how they ought to be, the realisms and the idealisms.

The Natural Law vie propound true law as the right reason in agreement with nature. 1[4]That law is universal, eternal and unchanging and that there is only one source of law and the enforcer of this eternal and unchanging law is God. That law is a rule whereby man is induced to act or restrained from acting. Principles common in all natural law theories are that1[5]there are absolute values against which the validity of law should be tested.

That there exists an order which is rational and which can be known by man.

That man can become aware of the universal, eternal and comprehensible values, if he observes nature and understands it correctly. And that from these values man may derive appropriate value-statements.

That, that which is good is in accordance with nature and which is evil contrary to nature.

That a law which lacks moral validity is wrong and unjust.

Positivism refers to a system of philosophy based on things that can be seen or proved rather than ideas. The basic premise of positivism lies in the derivation of 'positum' meaning that the law is something posited or laid down. The positivist law argues thus that true law is law enacted by the sovereign and backed by sanctions1[6]:-

Law is a social fact;

The idea of law being a command emanating from a sovereign power;

The idea that law must embody a medium of sanctions;

The separation of law from morals or ethical concerns;

That society must be in habitual obedience of the law;

Idealism refers to the practice of forming or pursuing or believing in ideas, even when this is not realistic. It is the belief that ideas are the only things that are real or about which we can know anything. 1[7]

The theoretical framework of this study is therefore to be based on the natural and positive school of thoughts which are related in that positivism arose to answer defects in the naturalists understanding of law1[8]. But more to the ideas of the two theories, the study is based on idealisms, what ought to be rather than what is.

## **1. 5. Conceptual Framework**

There are a number of concepts that explain policing e. g. problem-oriented policing, evidence-based policing, community policing, predictive policing and intelligence-led policing. This research proposes the framework of predictive policing to analyze police reforms in Kenya. Predictive policing is defined as any policing strategy or tactic that develops and uses information and advanced analysis to inform forward thinking crime prevention1[9].

Predictive policing concept involves data mining, geospatial prediction, statistical probability and social network analysis. Since this research

involves much of data mining and intense use of statistical methods, the concept suits this research.

Predictive policing approach originated from a number of sources including intelligence and business analytics<sup>2</sup>[0]. This approach was adopted because the criminal justice system in Kenya currently has inadequate tools and research to the development of evidence-based practices. This concept is embraced as the police services continue developing intelligence-led policing

To be able to use this approach, the research proposes a “boiling pot” model with a pot of reform factors on a three stone hearth acting as pillars firing the reforms. The pillars support the police organization and energize management, administration and the entire police structures. These pillars are capacity & legal environment, personnel, budget & compensation, personnel, training & equipment. The results of the “boiling pot” are reduced crime rate, observance of human rights, police-public cooperation, public acceptance of the police service, political independence of the police, incorruptibility and reachable police service with authority.

Figure 1 The boiling pot model of police reform Source<sup>1</sup>/<sub>4</sub> Author

The “boiling pot” model was proposed in this research as an innovative way of explaining police reforms in the context of predictive policing since a lot has to be in place to facilitate boiling. The reform process needs support and should any one pillar crumble, effects are seen in the results which are squarely dependent on input from the pillars. Again, if the boiling heat goes down, expected results are delayed, half-realized or not achieved at all.

Figure 1 illustrates police reforms boiling pot model.

<https://assignbuster.com/an-appraisal-of-police-reforms-in-kenya-criminology-essay/>

## **1. 6. Limitations of the Study**

There were obstacles that possibly limited the validity of results of this study to some extent. Limited time and hurdles of data collection ranging from resources to field visits were cumbersome. Questionnaire questions are possible sources of error; so great care in constructing them is essential if valid information is to be gained from the survey<sup>2</sup>[1].

Some of the interviewees declined to answer questions or were busy or lacked interest hence could give unreliable information. This research addressed this limitation, according to guidelines by Barbara and Robert (1980), “ A Practice Guide to Behavioral Research”, pp. 20, using interview techniques like probes and other means of avoiding socially desirable response-statements and other undesirable interviewer/respondent interactions.

Availability of data on police reforms is highly limited especially in Africa<sup>2</sup>[2]. Available police data from the Kenya Police and Administration Police is ad hoc and not systematically collected and cannot be very reliable in appraising the successes and failures of police reforms in Kenya.

## **Chapter 2. Literature Review**

Berkeley<sup>2</sup>[3]notes: “ reform is such a strong word (which) is often misapplied in regard to police service delivery”. Too often it becomes the term for what should be called organization or structure review. Reform is defined as a change for the better or improvement by removal of faults<sup>2</sup>[4]; it means to fine-tune and restructure without radical changes<sup>2</sup>[5]. Police reforms therefore mean restructuring the police services with the aim of improving

them; changing them for the better and fine-tuning the services. In respect to security sector reforms, SSR, police reform is defined as the transformation of a security system, including all the actors, their roles, actions and responsibility to manage and operate the system in a manner that is consistent with democratic norms and sound principles of good governance” 2[6].

## **2. 1. Police Reforms in Africa**

Policing in Africa is still inadequately documented and has been shaped by colonial rule that was greatly concerned with protecting interests of the colonial power compared to safeguarding safety and security needs of the people2[7]. After colonial rule mostly during the 1960s, development of more personal, impulsive and arbitrary neo-patrimonial rule played a role in shaping the police. Incumbent regimes utilized colonially inherited repressive capacity of the police to defend regime interests2[8].

Since many countries in Africa have faced internal civil war, brutality and destruction, the police became perpetrators, targets and casualties. The 2008 violence in Kenya saw role of Kenyan police forces with large scale brutality and extra-judicial killings in a large scale2[9].

Dynamics of police reform in Africa is understood within the context of policing environment for example in conflict-ridden areas, rural area policing, role of politics in reform process among others. In conflict areas, general policing is always seen as irrelevant or as part of the problem since more of military approaches are adopted. In such cases, new armed units which “ act

as roving agents of repression and control” 3[0]are created to defend the interest of the power of the day.

There are proofs of intimate connection between police and politics in Africa3[1]. Police reform is regarded a political endeavor and political interests are fundamental to the reform process. Police reforms envisaged in Africa involve changes in structure, function and legitimacy. Structurally police change from centralized to decentralized form; functionally the police change from emphasizing defense of regime to protection of citizens, and regarding legitimacy the change is from regime-based to people-driven legitimacy3[2].

## **Police Reforms in South Africa and the United States of America**

It is important to do comparative analysis of police reforms in Kenya with that in the USA and South Africa as benchmarks. The two countries are chosen as pinnacles of police reforms with South Africa giving a realistic African example.

### **2. 2. 1. Police Reform in South Africa**

Police reform in South Africa is understood within the unique political context. Apartheid system had racial status as its main feature and security institutions were organized in a similar way[38]39. South African Police and the judiciary were dominated by white officers at the senior level. Apartheid was known for brutality of security forces and widespread violation of human rights. During 1960 - 1990, about 78, 000 people were detained without trial by the police because of political activism against apartheid[40]. Seventy-

three executions in detention by police were recorded during that period of formal apartheid.

In recent years, security forces were responsible for high levels of torture, extra-judicial executions and disappearance of pro-democracy activists. The coercion of unpopular racist laws created a deep crisis of legitimacy in the pre-reform criminal justice system in South Africa. In the late 1980s, the state of apartheid was in serious crisis forcing the police, army and bureaucracy to invent strategies, one being National Security Management System (NSMS) to defeat the liberation movements. The police and military suppressed protests during the State of Emergency declared in 1985 and there were mass arrests, trials, persecution, and murder.

Police reform was shaped by negotiated political settlement after apartheid, that agreed to retain all employees of the apartheid government, police officers included. The settlement also created a Government of National Unity and Truth and Reconciliation Commission which dealt with some police abuses in apartheid.

As negotiations were going on, the police were already involved in framing new arrangements for the management of public order and security of elections under the auspices of the National Peace Accord multi-party experience that gave the police a preview of the style required by democratic government.

The police reform process was given highest priority in the first period of transition and state institutions relevant to effective combat of crime were put in place[41]. Mandela government had a challenge to build trust  
<https://assignbuster.com/an-appraisal-of-police-reforms-in-kenya-criminology-essay/>



between state agencies, including the police, and the citizens. The police was given legitimacy of being associated with the new regime and was attached to repression of apartheid. Police-community relationship was to be built to allow the basic functionality of the police institution[42].

The initial steps to police reform in South Africa were shaped by clear strategic decision taken by the government with strong emphasis on accountability and oversight. In the second term of the democratically elected government, after political control and legitimacy has been achieved, the government started to emphasize the role of police in fight against crime. With many unresolved issues in initial stage of police reform, the government gave great importance to several strategic priorities and policies leading to great ideas in paper but inadequate capacity to implement policies in the police institution. Though South African experience of police reform is cited as a model for other African states, the process was laborious and often agonizing for members of the police organization[43].

### **2. 2. 2. Police Reform in the United States of America**

Initial efforts of reform were through establishment of external commissions that outlined reforms and left the burden of implementation to the police. Important changes in policing, in respect to civil rights and constitutional law, were realized through a number of court decisions[44]3. Court decisions between 1961 and 1966, especially Mapp versus Ohio and Miranda versus Arizona, were highly influential and thus began to set national policing standards[45]3[4].

During the 1970s, special commissions were used to create changes in police and other law enforcement agencies. Permanent external oversight agencies were used to improve police accountability. The agencies focused on individual improvements<sup>3</sup>[5] and left out broader organizational issues that could result to long-term reform initiatives.

Enactment of Violent Crime Control and Law Enforcement Act in 1994 allowed for suits against law enforcement agencies with regard to abuses resulting into many departments signing memorandum of understandings to reform<sup>3</sup>[6]. The United States Department of Justice conducted investigation on abuse patterns in police and brought legal action to force changes. “ Less-than-lethal” weapons like chemical sprays were introduced as alternatives to deadly force<sup>3</sup>[7]. Police reform encouraged police officers to try to deescalate situations with verbal warnings and persuasion and consider use of force continuum<sup>3</sup>[8].

### **2. 3. Key Lessons from South Africa and USA**

The following are clear from the two experiences<sup>3</sup>[9]:

Substantial resistance to police reform efforts is highly expected from economic elite who gained from the old system and institutions which control public security apparatus;

Sectors that feel insecure would champion for citizen-oriented policing;

There is possibility of politicians taking selfish advantage of the reform process and thus violating the spirit of police reform;

The government in place may form parallel police units that undermine development and legitimacy of the reform process or even favor particular police units compared to the others;

In attempts to demilitarize the police, attention should be focused on composition, mission, doctrine and hierarchical separation of the police from military command;

Participation of previously neglected groups in policing helps to ensure that policing is effectively representative of and responsive to the society.

International actors can provide assistance with issues of composition and doctrine, as well as advice.

To achieve effective reforms, there is need to strengthen and equip crim