Implications of Police Reforms on Human Rights Practice During the Democratic Transition in Kenya, 2003-2009

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Abstract
Globally reforms in the security sector have been influenced by the need to safeguard human rights. This paper examines the nexus between police reforms and human rights practice in Kenya during the democratic transition in Kenya (2003-2009). The paper argues that while there have been numerous police reforms, the police institution has continued to engage in acts of human rights violation in complete disregard of international human rights provisions. The findings revealed that during the democratic transition between 2003 and 2009 reforms in the police institution were enacted to protect human rights. However, impunity, resource scarcity and lack of political goodwill continuous to slow down security sector reform progress.
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1. Introduction

Globally, the history of policing is replete with disproportionate use of force (Savage, 2007). Therefore, reforms have been undertaken with the ultimate goal of improving the way the police protects the citizens while enforcing the rule of law (Rauch & Elrena, 2011). However, scholars have raised questions whether the reforms have brought about changes in the policing. Seen from a global perspective, institutional changes in the police were initiated to bring about innovations in the styles of police management with regard to efficiency and effectiveness of service delivery (Moran, 2005). It is in this respect that the concept of good governance and public management became a yardstick for evaluating the changes in the police institutions in the United Kingdom (Bislev, 2004). In the United States of America (USA) the waning rate of managed crime has widened the gap between the citizens and the police (Skogan, 1993). The gap has particularly been wide between marginalized populations and ethnic minority groups igniting strong criticism and calls for complete overhaul in the security sector. In Northern Ireland a comprehensive plan was drawn up to enable a new beginning to policing (Skogan, 1993).

In African countries, the pursuit of transforming the police was motivated by the perceived inefficiency in the police force, common suppression of human freedom and the need to change the role of the police from safeguarding colonial masters to providing security to all citizens (Waller, 2012). For instance, Bruce (2003) has contended that in post-apartheid era South Africa the cardinal structures of police institution tended to enshrine efforts to improve access to security services in areas that for a long time had suffered discriminatory practices in the ruthless hands of the oppressive apartheid system.

In Kenya, the prevailing wave of democratic governance ensuing from the election of Kibaki as the president in 2002 heralded new momentum, hope and expectation that the police force would be changed to be more efficient and effective. Since then progressive steps have been made to make the police institution more responsive to the needs of the citizens (Ruteere & Pommerolle, 2003). Before the election of Kibaki's regime, human rights violation were a concern as police officers constantly abused the enshrined human rights and freedoms. These violations continued to occur despite the fact that Kenya had ascribed to the ideals of African Charter on Human and Peoples' Rights (ACHPR) and the International Covenant on Civil and Political Rights (ICCPR).

Evidently, the Kibaki's administration tried to spearhead the formulation of policies and legislation in conformity with the international and regional non-discriminatory expectations of the police force. However, the police have been found to be culpable of human rights violations (Gimode, 2007). For instance, the Alston Reports on extra-judicial killings blamed the police for deaths and disappearance of youth in Kenya (Alston, 2009). Similarly, the report observed that loss of life emanated from indiscriminate application of force to quell protests during the violence following the general elections of 2007. Furthermore, the security forces opted to become uninvolved in the wake of violence when they had the capacity to contain it. Thus, the efforts to transform the police did not produce the expected impact as instances of police brutality continued unabated. Analysis of scholarly works in this area has been categorical of what is needed to be done but the orientation of these studies seemed to be focusing on the present state of affairs without looking at the root causes of impunity and complicity in the police institution. To address this problem this paper examined the transformations in the police force in the period of democratic and constitutional transition in Kenya from 2003 to 2009.

2. Literature Review

The international human rights instruments such as the International Covenant on Civil and Political Rights (ICCPR), Universal Declaration on Human Rights (UDHR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) oblige member countries to observe and protect citizens' rights. These instruments not only specify members' duties to safeguard human rights but also offer guidance on the interpersonal relationships. In this regard, the international treaties not only call upon governments to desist from directly disrespecting human rights, but also to take practical measures to hold suspecting offenders and all those responsible for human rights violations to book. From a strictly historical standpoint, violation of human rights occurred when the colonial governments failed to enact policies to protect human rights. This has been supported by Garland (1996) who recommended practical approaches in transforming the police institution. In Kenya, the real transformation in the policing was shaped during the democratic transition when the National Rainbow Coalition (NARC) government ascended to power in 2003. Subsequently, many scholars have examined the impact of democratic and constitutional transition on police reforms in Kenya. For instance, Nyachoti and Kaguta (2016) noted that the NARC government was credited with setting the roadmap for substantive and potentially more progressive police reforms. Ransley (2009) noted that the extensive presidential powers as well as the patrimonial structures that defined the political landscape had suffocated efforts to change the police institution. This was because there were no legal foundations required to drive the reform agenda. Ogada (2016) concurred that the police institution continued to face serious challenges that impeded the smooth implementation of the proposed reforms. This is why the popular transition to multi-party democracy in 2002 came with a great hope and expectation of reforms in the political, economic and security dimensions. In particular, it was envisaged that reform in the security sector would end the dismal paradigm of policing and replace it with a new dispensation of popular policing oriented to the general protection of the rights of the citizens. Kempe (2015) concurred that police reforms in Kenya took on a new impetus following the widely reported unprofessional and unethical behaviour of police officers during the disputed 2007 presidential elections. This incidence is particularly significant in the history of police reforms because it fuelled the agitation for democratic policing as complicity, corruption, brutality and senseless use of firearms were outstanding features of the police institution. Kagwanja and Southal (2009) conceptualized the post-election crisis of January 2008 as the genesis of police reforms in Kenya. However, Sihanya (2006) averred that the momentum for change was punctured by the realization that the Kibaki administration was indeed uninterested in fighting ineptness in the force.

3.0 Theoretical Framework

While various theories have been developed to explain police reforms from a historical perspective, this paper was guided by three theories that link police reforms to human rights practice. These theories are the protest theory and the predictive model. The protest theory is considered to be significant in determining change. The protest theory is a combination of sub theories on human rights founded by Dembour, Douzinas and Baxi in 2011. Protest scholars firmly believe that human rights are moral, must be raised when they are not socially recognized, and should concern everybody. The theory further maintains that human rights have their origin in struggles, and they remain in a continual fight, because of their challenging messages and demands. The theory is called protest because the proponents are not satisfied with the established legal and political discourse pertaining to civil liberties. The idea of safeguarding civil liberties as a radical vision for the people can become positive if laws that ensure human freedoms are safeguarded. The theory was considered relevant given that it aptly emphasizes candidly on maintaining a pluralist democratic dispensation that allows people to organize and feel committed to groups or collective identities, interest groups, cultures, traditions, religions and languages that promote change. In this context, police reforms are viewed as representing diverse imaginations and hopes among those who suffer police brutality.

Since the study aimed at predicting the impact of police reforms on human rights discourse, the predictive policing model was also considered relevant. In its critical conceptualization, the model is built on the pragmatic belief in enhancing the probability of addressing crime when the place and time of its occurrence can be predicted. This can be adequately achieved by using sophisticated information gathering equipment (Stuart, 2012). Therefore, the predictive policing model can be construed as a strategy in which information is collected and analyzed to help with crime prevention (Loveday, 2005). This approach is adopted because Kenya's criminal justice system is empirically supported and evidence-based yet it continues to undergo reforms as an aspect of the boiling pot model. In this regard, the study envisioned a pot of reform factors sitting on a three stone fireplace acting as pillars firing by the capacity, legal environment, welfare and training equipment. The major result of the boiling pot is protection of human rights among other factors. Even in the democratic transition, a lot needed to be put into the boiling pot to facilitate the implementation of police reforms. However, police reforms initiatives have to factor in sociopolitical variables especially if they have to impact on human rights practice.

4.0 Methods and Materials

The study employed the exploratory study design. The study was carried out in Nairobi County because all the major organs of the government in charge of the conduct of the police such as the executive, the legislature as well as human rights bodies are situated in Nairobi. The target population comprised of senior serving and retired police officers, county government administrators, members of community policing, human rights activists and scholars conversant with police reforms and human rights and former political leaders and political activists. The researcher's interest in these groups lied on the fact that they were directly involved in matters pertaining to police operations and human rights advocacy. Owing to the huge number of persons involved in policing in Kenya, it was not possible for the researcher to interview all the informants. Hence purposive sampling technique was used to identify the study informants. The inclusion criteria included willingness to take part in the study and familiarity with the reforms in the police institution in Kenya. The researcher sampled a total of 116 informants; nine FGDs, 19 oral interviews and 34 key informant interviews. Document analysis, interview schedules and focused group discussion were employed in data collection. The data was summarized and sorted according to the objectives and interpreted focusing on the major themes emerging from the interviews and FGDs.

5.0 Results and Analysis

Enduring discourses on police reforms started in 2003 when NARC government under president Kibaki ascended to power. The new government heralded a different political dispensation that promised to uphold the rule of law (Ashimala, 2014). It is evident that Kibaki's regime rekindled a new hope and promised good governance with the security sector reforms being the critical issues of immediate concern. For police officers, there was renewed hope of a better service delivery to the general public. The NARC government was premised on a better future characterized by accelerated economic growth and intolerance to corruption, ineptness and complicity (Ashimala, 2014). The excitement for economic and institutional transformation was captured in the police institution as noted by the police spokesperson at the time:

> "We in the police also are hopeful that police officers, guided by our Motto *'Utumushi Kwa Wote'* shall individually try to uphold the rule of law and learn to always carry their responsibility with the required professional fairness, while ensuring that rights of the civilians are respected. We promise to act professionally, compassionately and courteously in the enforcement of all laws and regulations with respect to human rights, cultural, religious and political diversity (*International Federation for Human Rights, Workshop on the Role of the Police in the Administration of Justice: 2-6 April 2001, Nairobi*).

In support of these assertions, Mbote and Aketch (2011) observed that Kibaki's government ushered in a new era of good governance which made it easy to implement the proposed reforms. For the police officers, there was a renewed hope of fairness in discharging police duties. Therefore, police reform programs became more profound in Kenya during Kibaki's era. The first police reform programs such as Governance, Justice, Law and Order Sector (GJLOS) and community policing were introduced in 2003 to seek to professionalize the police force.

5.1 The Governance, Justice, Law, and Order Sector Reform Program (GJLOS)

GJLOS was an inclusive reform programme originally launched by the government with the generous support from development partners to help end the perceived endemic corruption and poor governance in Kenya. Weak governance institutions and structures particularly the police institution and the associated security agencies, the incessant deteriorating standards of service delivery, rampant corruption and the frequent denigration of legal representatives influenced the formation of GJLOS. The police institution was perceived to be an outmoded culture of complicity and impunity that had predominantly remained subservient to change. In this regard, the police institution had failed to deliver security services resulting into increased security threat. The reform program highlighted persistent institutional neglect, inadequate capacity in terms of advanced knowledge and technical skills, accompanied by unattractive conditions of service as well as inadequate training and lack of sophisticated operational equipment as the major factors behind the present state of affairs in the police institution (GJLOS, 2006). From this argument it is apparent that GJLOS considered police reforms as vital since police officers were always recognized as the pivotal state institution which played key roles in the criminal justice. GJLOS recommended key police reforms including reviewing the code of conduct, establishing control mechanisms and enhancing accessibility to police stations. The GJLOS recommendations provided impetus for salary review in the police service in order to ensure that promotions and recruitment was done only on merits. Mbote and Aketch (2011) ascertained that GJLOS influenced the introduction of an anti-corruption sensitization program to minimize police corruption and the introduction of the prevention and rapid response equipment for dealing with corrupt practices in the police force. This concern is summarized in the sentiments by a senior serving police officer who noted that:

A drastic but sustainable approach to holistic culture transformation should urgently be adopted because low morale of officers will result into lawlessness. As it is now the public prefers to pay bribes instead of being taken to court. In some cases the courts also forgiving some offenders, accusing the police of inadequate investigation. You can see the problem does not lie entirely with the police but with the judicial system.

5.2 Community Policing and Nyumba Kumi Initiative

Ruteere and Pommerolle (2003) observed that community policing remerged under the beacon of transformation in the police institution within the tenets of economic recovery and wealth creation strategy. Hyped as the best bet to guarantee public safety, community policing was viewed as a noble program engendered on the idea that a police service supported by the community was more dependable in addressing security challenges. Originally the concept of community policing was meant to strengthen the relationship between the police and the citizens which had drastically worsened over the years. The philosophy behind this initiative was the need to involve everyone in the provision of national security. The concern, however, was whether such an initiative would translate into the protection of human rights. This was particularly relevant given the longstanding suspicion characterizing the police and the public. Involving the citizens in their own policing could have a far-reaching and long lasting civil order and overall human rights protection (Kivoi & Mbae, 2013). The philosophy and principles of community policing focused on how the community fits within the wider communal conflict management strategy (Kivoi & Mbae, 2013). Cordone (2004) observed that community policing strategy complemented the police efforts to improve the security through the creation of local crime alertness programs and outreach activities. The community policing programme had the objective of bringing all community policing activities such as *Nyumba Kumi* initiative under one framework. *Nyumba Kumi* initiative is a system that brings security management to the level of the 'household' by creating clusters of 10 houses that consist of local residents and stakeholders. The idea is that these clusters meet regularly, share information with each other, and, when needed, provide this information to the relevant levels of the national administration. Initially, *Nyumba Kumi* operated through the colonial system of the provincial administration, that is, the chiefs and sub-chiefs. In this arrangement, it acted as a parallel structure to the police, and many police officers shared feelings of resentment towards the scheme. In addition, *Nyumba Kumi* exists in lower-income neighborhoods and poor urban settlements that faced high-terror-related incidents. The perception that the security of the state assumes precedence over human security limited the strategic latitude with which policy makers designed both the *Nyumba Kumi* and community policing interventions programs. For instance, the daring organizations like Al Shabaab, Baghdad Boys, Chinkororo and Sabaot Land Defense Force had continued to escalate in spite the presence of these initiatives. Critics of these initiatives contended that they lacked an ideological backup that would have endeared them to the population and the implementers.

5.3 Police Strategic Plan; 2003-2007

The formulation of the police strategic plan was one of the major developments in the police reform agenda during Kibaki's regime. The strategic plan envisioned a police institution that was committed to safeguarding the fundamental rights of all citizens and promoting positive relations with the broader society. According to Kivoi and Mbae (2003) the strategic plan recommended a raft of changes including upgrading the capacity of the security agencies to ensure that all citizens and their property were safeguarded. The strategic plan set the stage for accelerated police accountability through the creation of the internal affairs unit, vetting of police officers and operational and institutional framework to strengthen the police service in general. However, institutional changes required political goodwill, commitment by all officers and adequate resources. According to Kagari (2003) the plan required a pragmatic effort and political good will to implement the recommendation. However, the prevailing state of the service could not pass the integrity test because the strategic plan was created unilaterally without involving the public.

5.4 The Post-Election Violence and Police Reform Task Force

It was during the post-poll violence of 2007 that the momentum for institutional police reform was revived and placed in appropriate context. During this difficult period, the police received widespread condemnation for gross human rights violations when the government imposed a blanket ban on public demonstrations as the police hovered around denying the citizens freedom of association, speech and expression. According to Bayne (2008) the ban was not only illegal and unwarranted but also contravened the international standards of good governance and professionalism. Although the ban was viewed as necessary to prevent violence and further destruction of property and loss of life, it turned out that those enforcing the ban contributed to incessant violation of human rights. For instance, the police officers enforcing the ban responded indiscriminately and often used excessive force, claiming hundreds of lives even in circumstances where the use of lethal force was not justifiable. Bayne (2008) recounted how the police officers used live ammunition to disperse demonstrations

and riots only to end up killing innocent civilians including children and mothers. In an interview, a human rights activist observed that:

> The police acted violently and recklessly by shooting unarmed protesters and bystanders as well as women and children, without even first attempting to use the required non-lethal force.

This position was supported by Prunier (2008) who recounted how live ammunition was used to disperse protesters in Nairobi. Bayne (2008) contended that unofficial *shoot-to-kill* order was issued as no officers were held culpable. This raised the question as to why the police officers failed to exercise their profession discretion in deciding to use firearms. A senior serving police officer in Nairobi explained:

> Ideally, we were acting on order to do some bad things. It was not easy to think that the people were shooting were our brothers and sisters. You know that we act on orders and for us order has to be obeyed. As of now shoot to kill is not allowed unless things get out of your hands (Senior Serving Police Officers).

Although the police officers were overwhelmed, the officers could have responded in a starkly professional manner. For the police officers who empathized with the situation, it was difficult to act impartially because of political influence. For example, more evidence of use of lethal force in the opposition occurred in the slums of Nairobi and Kisumu and the police officers acted even in circumstances where their lives were in danger. This was a clear manifestation of biasness in the application of force. With the full knowledge of the consequences of their actions, the question raised here was why the irresponsible policemen were not held accountable for their actions. It was conceivable that these malpractices could only be remedied by comprehensive constitutional, legal, policy and institutional reforms to prepare the police to deal professionally with similar and related eventualities in the future. In his report on the Extrajudicial, Summary or Arbitrary Executions, Alston (2009) recommended the suspension of the police death squads, criminal prosecution of perpetrators of torture and unlawful killings by the police and prosecutions of those responsible for the post-election violence. Alston (2009) also recommended the dismissal of the police commissioner and to investigate the extrajudicial killings and the subsequent arrest and prosecution of the police involved.

4.11 Police reforms and Human rights Practice during Kibaki Administration

During the Kibaki's regime, the fundamental aim of police reforms was to strengthen the entire governance system for fair administration of justice. The envisaged development considered institutional adjustment as a critical component of the criminal justice system. In particular, it was common discourse that the police lacked harmonized internal management mechanisms encompassing codes of conduct and oversight mechanisms with autonomous investigative powers. In order to realize the envisaged reforms, there was need to improve the police response to corruption through anti-corruption sensitization programmes, rapid response mechanisms as well as superior investigative nuances to help with evidence gathering. The ultimate result was to entrench a proactive policing approach that was receptive to human rights protection. Mutuma (2013) contended that visible evidence existed to delineate the milestones made in regard to the adoption of the professional best practices in crime reporting procedures, increased intelligence-led investigations and the employment of relatively sophisticated techniques and operational equipment. It was expected that the improvement in the overall welfare of the police officers with regard to strengthening of the police code of conduct and ethics, better salary and gradual and transparent promotions would be reflected in the manner the police officers addressed security concerns and handled human rights issues. Mutuma (2013) believes that the institutional changes in the police contributed immensely towards safeguarding civil liberties. However malpractices and culpability continued to threaten the positive gains. For instance, impunity and the cycle of police brutality were frequently reported without a corresponding effort to prosecute perpetrators. Cordone (2000) observed that impunity could not be deterred when the victims of police highhandedness faced monumental obstacles in seeking legal redress including being accused of being complicit in their own victim situation. An oral interview with a member of a human rights group in Kenya concurred that the measures instituted failed to deter impunity in the police institution. Various civil society organizations in Kenya including the government sponsored KNCHR also documented and denounced police brutality expressing concern that many obstacles must be eliminated to enhance human rights provision. Although the police reforms sought to bridge the suspicious gap between police officers and the citizens, with the reforms remaining entirely an operational farce, the infrastructure required to adopt human rights issues seemed to have taken a back seat and the mutual trust eroded. A key informant interview with a retired police officer in Rongai noted that the mutual trust was eroded when the police remained culpable of excessive use of force with members of the public becoming the causalities of torture, extra judicial killings and intimidation (Retired senior police officer, K.I.I, 2018). Therefore, the reforms seemed to have failed to promote a cohesive democratic society given the upsurge in criminal activities and the subversion of civil liberties.

4.12 Conclusion

This paper has explored the police reforms in the democratic and constitutional transition in Kenya between

2003 and 2009 and the impact of the reforms on human rights practice in Kenya. It is evident that President Kibaki's regime ushered in a new impetus for police reforms. The NARC administration created an opportunity for police reforms. The efforts to transform the police were enhanced by the GJLOS, the police strategic plan and the police reform task force. GJLOS considered police reforms as a vital component of good governance. Thus, the GJLOS suggested key police reforms which helped to enhance transparency, public participation and the relationship between the community and the police. The strategic plan recommended a range of structures and processes meant to improve police performance and enhance a change in attitude in the police service to match other world class police systems. In spite of the implementation of the reform initiatives, mistrust, police misconduct and complicity undermined the progress to full realization of the proposed reform recommendations. Consequently, instances of human rights violations remained rampart as corruption, extra judicial killings, excessive use of force continued to characterize the police institution.

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