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POLICE ADMINISTRATION OF LAW AND ORDER  
IN KENYA

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(An examination of the police and their  
functions in their legal and social context)

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A Dissertation submitted in partial  
fulfilment of the Requirements for the L.L.B Degree  
University of Nairobi.

\* \* \*

BY,  
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It will help in the maintenance of law and order and also create a more constructive atmosphere within which efforts aimed at social integration and Nation-Building in Kenya can bear fruit.

As far as the legal aspect of police functions, the paper intends to examine how true it is to claim that the Police have the obligation of .....0.....

police's relationship. Kenya, like every other country, adheres to Human Rights as defined and protected in the Universal Declaration of Human Rights, the European Convention on Human Rights and the Charter of Fundamental Rights. While the police are entrusted with the duty of maintaining law and order on one hand, it is imperative that human rights be respected on the other hand.

## I N T R O D U C T I O N

The purpose of this dissertation is to critically examine how members of the Kenya Police Force conduct themselves in their function of maintaining law and order. It is essentially an examination of the functions of the Kenya Police in their legal and social context. My duty will be to find out to what extent the Kenya Police Force adheres to the law in exercising the function of maintaining law and order. I shall also examine how the Police relate to other members of the general Public in Kenya.

My opinion is that such an analysis of police functions is important because it helps us to understand what rôle, if any, is played by the Kenya Police in the maintenance of the doctrine of rule of law in our Country. My belief is that since the Police is essentially an arm of the state, the attitude which members of the public have towards the Police can affect the manner in which the Public responds towards the state in general. Thus it is important that any intricate antagonisms within Police - Public relations should be adequately surveyed and any necessary and relevant recommendations made towards the improvement of their relationship between the Police and the Public is important since it will help in the maintenance of law and order and also ensure a more conducive atmosphere within which efforts aimed at Social integration and Nation-Building in Kenya can bear fruits.

As for the legal aspect of police functions, the paper intends to examine how true it is to claim that the Police impinge upon the operation of our legal system. In other words, how far is the policeman law-abiding. Kenya, like many other countries, believes in Human Rights as defined and Protected in the Universal Declaration of Human Rights, the European Convention on Human Rights and in Chapter Five of our Constitution. While the police are entrusted with the duty of maintaining public order and security on one hand, it is imperative that human rights be respected at the same time.

THE POLICE AND THE LAW RELATING TO ARRESTS

It is within this background that I intend to examine the Kenya Police in relation to their duty of maintaining law and order.

In a dissertation like this where one wants to understand how the Police and their exercise of power touch upon members of the Public, the most obvious vantage point is the Public. To gain Public responses, one can either live in a particular community and observe or one can employ survey techniques and ask individuals to talk about their own experiences with the police. Part of what I have produced in this paper is the result of my survey conducted in the form of questionnaires<sup>1</sup> distributed among workers and students in Nairobi and Mombasa. But I shall not hesitate to illustrate a point by giving my own personal experiences where necessary.

I shall also include in this dissertation views expressed by the Officer-in-charge of Central Police Station Nairobi (Mr. James B. O. Abiero) and Mr. Peter O. Muga (Officer Commanding Police Division, Mombasa) both of whom I had the privilege of interviewing in Nairobi and Mombasa respectively during my research.

The ideology of democratic bureaucracy emphasizes initiative rather than disciplined adherence to rules and regulations. By contrast the rule of law emphasizes the rights of individual citizens and concentrates upon the initiative of legal officials. This tension between the operational consequences of ideas of order, efficiency and initiative, on the one hand and legality on the other constituted the principal problem of police as a democratic legal organization.

In a democratic society like ours, two interests invariably compete: the interest of the state to detect and apprehend criminals and interest of preserving individual liberty and freedom under the law. The law and practice relating to arrests should always try to reconcile these two interests and I am now going to examine how far the police try to reconcile these two interests while carrying out their functions.

THE POLICE AND THE LAW RELATING TO ARRESTS

It must be emphasized from the start that in a democratic Society like ours where the rule of law is supposed to be upheld. The police inevitably face problems in the execution of their duties which have been laid down as, inter alia, "the maintenance of law and order, the preservation of peace, the protection of life and property, the prevention and detection of crime....." <sup>really?</sup> 2 One of the problems the police face is whether criminals and suspected criminals should be apprehended and prosecuted at all costs - that is - even when such apprehension and prosecution violates the criminal or suspected criminal's rights under any law. It is obvious that the police are bound to obey the law <sup>2(I)</sup> but the issue here is how far they in fact obey it when making an arrest. Jerome H. Skolnick<sup>3</sup> seems to have addressed himself to this problem when he said:

"The Police in democratic Society are required to maintain order and to do so under the rule of law. As functionaries charged with maintaining order, they are part of the bureaucracy. The ideology of democratic bureaucracy emphasises initiative rather than disciplined adherence to rules and regulations. By contrast the rule of law emphasizes the rights of individual citizens and constraints upon the initiative of legal officials. This tension between the operational consequences of ideas of order, efficiency and initiative, on the one hand and legality on the other constitutes the principal problem of police as a democratic legal organization"

In a democratic Society like ours, two interests invariably compete: the interest of the state to detect and apprehend criminals and interest of preserving individual liberty and freedom under the law. The law and practise relating to arrests should always try to reconcile these two interests and I am now going to examine how far the police try to reconcile these two interests while carrying out their functions.

DEFINITION OF ARREST

Section 21(1) of the Kenya Criminal Procedure Code provides that in making an arrest, the Police Officer shall actually touch or confine the body of the person to be arrested unless there be a submission to the custody by word of mouth. According to Halsbury's Laws of England<sup>4</sup>, the mere pronouncing of arrest is not an arrest unless the person sought to be arrested submits to the process and goes with the arresting officer." To amount to arrest, the person arrested must be equivocably shown that he is not free anymore. It must be brought home to the arrested person in sufficiently express terms that he is henceforth under police custody and will not be allowed to go free. This seems to have been the rule laid down in R V. JONES EX. P. MOORE<sup>5</sup> where the court decided that where a person accompanies policemen voluntarily and not in consequence of a command, he is not arrested. Thus in the MOORE case, MOORE had been suspected of store-breaking. He accompanied the police to the police station but he had not been told the nature of any charge against him, nor had he been told that he was under arrest. The police later purported to have arrested him. The court held there was no arrest. It would appear therefore that had MOORE escaped from the police, they (the Police) could not legally have been able to get him (MOORE) convicted on a charge of escaping or attempting to escape from a lawful arrest.

Probably the best judicial definition of arrest is that given by Lord Devlin in HUSSEIN V. CHONG FOOK KAM<sup>6</sup> where he said:

"An arrest occurs when a Police Officer states in terms that he is arresting or when he uses force to restrain the individual concerned. It occurs also when by words or conduct he makes it clear that he will, if necessary use force to prevent the individual from going where he may want to go. It does not occur when he stops an individual to make enquiries".

When a policeman arrests a person for having committed or about to commit a cognizable offence, there is no obligation on the policeman to have conclusive evidence that in fact such cognizable offence has been committed or is about to be committed. The policeman can arrest "on suspicion" so long as the suspicion is reasonable.

### WHEN CAN A POLICEMAN ARREST?

This Section 77 (1) of the Constitution which provides

In Kenya, offences are categorized into cognizable and non-cognisable offences. A cognizable offence is an offence for which the police officer may arrest without a warrant. A non-cognizable offence is that for which he cannot arrest without a warrant. Thus where a policeman is making an arrest under authority of warrant, his work is simply to apprehend the person named in the warrant as soon as he sees him and informs him (the person named in the warrant) that an arrest is being made. The problem arises where there is no warrant but the policeman has reasons to suspect that a person has committed or is about to commit an offence. Both the common law and the Criminal Procedure Code<sup>8</sup> give the police powers to arrest persons who commit offences in their presence or who are escaping from lawful custody or who are suspected of having stolen property etc. No warrant is necessary in making such an arrest. Police Officers are therefore given wide powers. The reason for such wide powers, can be said to be that since our Criminal Procedure Code was enacted during the Colonial Era, it was desirable to give the police wide powers in order to enable them cope with any opposition to the administration. Also, it would be difficult for the police to maintain law and order if they had to obtain a warrant all the time they wanted to make an arrest. Thus the reasons for such wide powers are both Historical and for purposes of administrative efficiency in police functions. However, the warrant plays a vital role in that it acts as a check against arbitrary arrests by the police. Such a warrant is normally issued and signed by a magistrate naming the person to be arrested and directed to a police officer directing that the person so named be arrested. It is submitted therefore that if a policeman purports to arrest (X) without a warrant for an offence in respect of which it is provided the offender (X) cannot be arrested without a warrant, such an arrest is unlawful.

When a policeman arrests a person for having committed or about to commit a cognisable offence, there is no obligation on the policeman to have conclusive evidence that infact such cognisable offence has been committed or is about to be committed. The policeman can arrest "on suspicion" so long as the suspicion is reasonable.

Thus Section 72 (1) of the Constitution which provides instances when one can be deprived of his personal liberty provides under Paragraph(d) that one can be arrested "upon reasonable suspicion of his having committed under the law of Kenya." It has been said that "reasonable suspicion" cannot be equated with prime face proof that an offence has been committed. Thus in the case of DUMBELL V ROBERTS<sup>9</sup>, Scott L.J. Said:

"The protection of the public is safeguarded by the requirement, alike of the common law and, so far as I know, of all statutes, that the constable shall before arresting, satisfy himself that there do in fact exist reasonable grounds for suspicion of guilt. That requirement is very limited. The police are not called upon before acting to have anything like a prima facie case for conviction....."

This quotation indicates therefore that a policeman doesn't have to be satisfied beyond reasonable doubt that an offence has been committed before he can make an arrest. In Kenya, reasonable suspicion has been interpreted in M'IBUI V. DYER<sup>10</sup> to mean that the arrester must have reasonable grounds for suspecting that an offence has been committed, or is about to be committed. From my reading of the judgement, it appears that even if the suspicion or belief is based on incorrect grounds, the arrest is lawful so long as the suspicion is genuine, bona fide and reasonable in the particular circumstances. It is also immaterial whether the arrester is a policeman or a private citizen. In the M'IBUI case the defendants had shot at the persons whom he suspected were stealing sheep in a lorry. Infact what was in the lorry were sacks of 'miraa' and not sheep. It was proved that thefts of sheep were prevalent in that area. The Court held therefore that the arrester had reasonably suspected plaintiffs to be thieves in the circumstance. As I intend to show later, this provision that a policeman can arrest on suspicion has been interpreted by the police to give them wide powers and thus create room for the abuse of arrest powers. What amounts to "reasonable suspicion" in practise is the opinion of the policeman and not what is

infact the real state of affairs at that particular moment. Such opinion that a policeman may hold will not always reflect the true position in most cases. For example, it is not always reasonable to suspect that a man in possession of a new radio has stolen it simply because he has no receipt or cash sale for it. Lack of receipt could be attributed to many things such as loss and also the radio may have been a present to him. 10(a)

### ESSENTIALS OF A VALID ARREST

Having established that a policeman has power to arrest on mere suspicion, I intend to examine how the police exercise their powers relating to arrest in Kenya. But, before I do this, I think it is important that we examine what constitutes a valid arrest.

An arrest is the first step to criminal process or what is often called "pre-trial incarceration". "It is therefore essential to know if an arrest is valid under the law because if it is not valid, one can sue for wrongful imprisonment. In this paper we shall only confine ourselves to arrests made by police officers although a private person can also make a valid arrest". Under the Police Act,<sup>12</sup> a police officer means an officer of the Force and the Force means the Kenya Police Force. Under the criminal Procedure Code (Section 2) a Police Officer is defined to include an administrative officer. It would appear therefore that an administrative officer is a police officer for the purposes of the Law of arrest in Kenya. In Uganda, the situation is different if the decision in TENYWA V. UGANDA<sup>13</sup> in anything to go by. In that case it was held that an officer of the Busogo District Administration could not exercise the powers conferred on the police by the Criminal Procedure Code and therefore an administrative officer had <sup>no</sup> power to stop and search.

1. If a policeman arrests without warrant upon reasonable suspicion of felony, or of other crime of a sort which does not require a warrant, he must in ordinary circumstances inform the person arrested of the true ground of arrest.

According to Glanville Williams<sup>14</sup> the following are the requisites of a proper and effective arrest.

1. The Person arrested must be deprived of his liberty
2. It must be intended to step up a criminal process
3. Subject to some exceptions, the reason for arrest must be communicated to the person at the time of arrest.

The arrest will be effective by touching of the person to be arrested or by showing him the warrant of arrest.

The Criminal Procedure Code echoes Glanville William's first requisite of a valid arrest for it provides under Section 21(a) that in an arrest there must be a touch or confinement. Confinement here means handcuff or tying but this is only necessary where the person being arrested tries to escape. No excessive force is to be used in making an arrest but only that force that is reasonable. Under Section 24 of the Criminal Procedure Code, the person arrested shall not be subjected to more restraint than is necessary to prevent escape. The third requisite of a valid arrest as expressed by Glanville Williams finds expression in Section 72(2) of our Constitution which says that a person who is arrested or detained has a right to be informed of the reasons for his arrest or detention.

The Criminal procedure Code is our major source of the Law relating to arrests. Sections 21 to 39 deal, inter alia, with the manner of arrest, who can arrest, rights of arrested persons and disposal of arrested person. This Code has its origin in the Indian Criminal Procedure Code of 1898 which embodies English principles. Therefore, English decisions are important in helping us to understand what is the proper law as regards arrests. One such decision is the one in CHRISTIE V. LEACHINSKY<sup>15</sup> where Viscount Simon laid down the five principles that should guide the police while making arrests. He laid down the following propositions at page 587:

1. If a policeman arrests without warrant upon reasonable suspicion of felony, or of other crime of a sort which does not require a warrant, he must in ordinary circumstances inform the person arrested of the true ground of arrest.

2. If a citizen is not so informed but is nevertheless seized, the policeman, apart from certain exceptions, is liable for false imprisonment.
3. The requirement that the person arrested should be informed of the reason why he is seized naturally does not exist if the circumstances are such that he must know the general nature of the alleged offence for which he is detained.
4. The requirement that he should be so informed does not mean that technical or precise language need be used.
5. The person arrested cannot complain that he has not been supplied with the above information if he himself produces the situation which makes it practically impossible to inform him e.g. by immediate counter-attack or by running away.

Our reason advanced for the rules in the CHRISTIE case is that a person improperly arrested has a right to defend his freedom by force, consequently unless the person arrested is informed of the reason for the arrest, he cannot form an opinion whether to submit.<sup>16</sup> Principles of this case have been imported into Kenya via the decision in MWANGI s/o NJOROGE V. R<sup>17</sup>. It is obvious therefore that it is a condition of lawful arrest that any man arrested should be entitled to know why he is arrested. No citizen is bound to submit unresistingly to an arrest in ignorance of the charge made against him. As Lord Simonds observed in the CHRISTIE case at page 591, "Blind, unquestioning obedience is the law of tyrants and of slaves."

#### THE LAW OF ARREST AND POLICE POWERS AS PRACTISED IN KENYA

With the background material as to what constitutes a valid arrest and as to when a policeman can arrest without a warrant, we can now examine how the police in Kenya exercise their powers in effecting an arrest.

#### GIVING THE REASON FOR AN ARREST

As mentioned earlier on in my introduction, Kenya believes in Human Rights and it is for this reason that we have a Bill of Rights in our Constitution<sup>18</sup>. The Constitution protects

fundamental rights and freedoms of the individual but it also provides exceptions under which arrests can be made. Thus individual rights are subject to respect for the rights and freedoms of others and for the public interest. Accordingly, a person may be deprived of his liberty for the purpose of bringing him before a court in execution of a court order or on reasonable suspicion of having committed or about to commit a criminal offence under any law of Kenya.

Among the protections given by the Constitution is that an arrested person is entitled to know the reason for his arrest.<sup>19</sup> This, as we saw earlier, was one of the rules laid down in the English case of CHRISTIE V. LEACHINSKY. However, in the Kenyan case of MWANGI s/o NJOROGE V. R (Supra) one of the issues raised during the appeal was that nothing was said to the appellant at the time of his arrest which would indicate to him why he was being arrested. He had been convicted of the possession of a home-made firearm without lawful authority and one of the irregularities in the case was that he had not been cautioned before being interrogated by the police. Allowing the appeal, Sir NEWHAM WORLEY and BRIGGS J.A. expressed concern over the fact that local police officers were ignoring the common law principles as laid down in the CHRISTIE case. They added that this was an ancient rule of the Common Law and there was "nothing which abrogates or supersedes it in any of the local enactments which give the police power to arrest without warrant on suspicion...." "The Court further said that "From our study of a great number of appeal records we have the impression, however, that this rule either is not generally known to Police Officers in Kenya, or, if known, is too generally disregarded". (Emphasis added).

The case of MWANGI s/o NJOROGE V. R (supra) is illustrative of the assertion that the police in Kenya invariably ignore such elementary rules relating to arrests. It would appear that first and foremost, their intention is normally to bring to custody and eventually prosecute anyone suspected of having committed an offence. They ignore the fact that under our law, even a suspect has some fundamental Constitutional rights which must be respected. My recommendations would be that such policemen who make unlawful

arrests should have some measure of disciplinary action taken against them. <sup>At the</sup> same time civil proceedings should be brought against them and any evidence obtained following an illegal arrest or search should not be admitted in court.<sup>20</sup> This would act as a safeguard against what I would refer to as "Unconstitutional arrests" by members of the police force.

If the police had personal liability imposed against them in the event of their making such unlawful arrests (E.g. by failing to indicate the reason for an arrest), this would help in ensuring that the Police always adhere to the law during the performance of their duties. Much as one would like the position in Kenya changed, it has been laid down however following the decision in the case of KURUMA s/o KANIU V. R<sup>21</sup> that even if the arrest, search and detention of a person are unlawful and amount to a trespass and an assault this does not preclude the court from receiving evidence of articles found upon him or discovered in consequence of a search made at the time of the unlawful arrest. The position in Kenya is therefore very different from that obtained in America where the rule is that any evidence obtained in violation of one's Constitutional right shall not be admissible in Court<sup>22</sup>. My opinion is that such a rule makes it difficult for police officers to disregard legal requirements while making arrests. Accordingly, where an arrested person is not told as soon as possible the reason for his arrest, such an arrest is unlawful and anything he might have said following the arrest should not be admitted in evidence against him. a case, arrest without warrant is not justified

As things now stand in Kenya, it is not uncommon to the police <sup>to</sup> act as if they have unfettered discretion. Slightly over 50% of those who answered my questionnaire indicated that one of the things they have always wanted to complain about was police misuse of power. Apparently, most policemen are over-anxious to secure arrests without due regard to individual rights as set out in our Bill of Rights. In so doing, the police (basically an administrative organ of the government) ignore some basic fundamental privileges that the law has given to all

after having been arrested for being drunk and disorderly.

all members of the Public in this country. Ghai and McAuslan have written the following about Kenya's Bill of Rights:

"It is hard to escape the conclusion that the Bill of Rights has had little impact on government and administration in Kenya. Public Order rather than human rights remain the dominant theme of the Government."<sup>23</sup> (Emphasis added).

The Kenya Police Act requires policeman to act in accordance with the law. That is why it provides for the possibility of policemen being prosecuted should they infringe other laws<sup>24</sup>.

Thus it is obvious that the rule of law as defined by A.V. Dicey<sup>24(1)</sup> is recognised in Kenya. <sup>defined the rule as embodying three</sup> Dicey principles one of which is that a man is only punishable for a distinct breach of the law. This principle (principle of legality) requires for the absence of arbitrary arrests. There is therefore no general power of arrest in Kenya. However, my research has revealed that in Kenya, there are cases of people being arbitrarily arrested by police with no good reason to warrant such arrests. Cases have been reported where some policeman arbitrarily arrest a person and claim that the arrested person obstructed them in the performance of their (Police) duties. It is later discovered that infact there was no such obstruction. For example, in the case of SADRUDIN IBRAHIM V.R<sup>25</sup> a man who had been arrested and charged for the offence of obstructing a policeman was set free because the court discovered that there was infact no such obstruction of the police in the execution of their duties. RUDD Ag CJ said at page 520:

"In such a case, arrest without warrant is not justified unless the police officer has actually been obstructed in the execution of his duty and it is not enough that the police officer should merely conceive that he has been obstructed in the execution of his duty."  
(Emphasis mine).

Cases have also been reported where a person is arrested by the police for being drunk and disorderly but it later turns out that the person so arrested and charged infact never takes beer at all! Recently in Mombasa<sup>26</sup> a man was brought to court after having been arrested for being drunk and disorderly.

In order not to lose his job, he paid the 40/- fine but is quoted as having said: "I had not tasted a beer when I was arrested". He was also not told that he was being arrested for being drunk and disorderly until the following morning when he was being taken to court! In such circumstances it would be almost impossible for one to adequately prepare his defence or contact his lawyer should he wish to do so. If policeman adhere to the legal requirement of informing arrested person the grounds of arrest, this can minimise the number of unwarranted arrests as well as save the courts valuable time. In the case of R V. FLORENCE NAMBOSO<sup>27</sup> accused was arrested for failing to register as an alien from Uganda contrary to rule 4(1) of the Alien Registration Act No.5 of 1973. While making the arrest the police never bothered to tell her why she was being arrested. The police were apparently acting on information received from an informer to the effect that accused was a Ugandan who had not registered herself. The truth was that infact the accused had registered herself and was only not in possession of her registration document at the time of her arrest. The magistrate asked her to go and get it and reprimanded the police for failing to make adequate investigations. This was an embarrassment on the part of the police and obviously a wasting of the court's limited time. Such a state of affairs would have been avoided if the police were courteous enough to explain to the accused that she was being arrested for failing to register herself as an alien.

The Law in Kenya is that every arrested person shall be presumed to be innocent until proved guilty.<sup>28</sup> The Constitution also prohibits the treatment of persons in an inhuman way unless such treatment is authorized by law(S74). Thus where a court orders an offender to be given three strokes of the cane, this shall not be deemed contrary to the Constitution. Sometimes however, the tactics employed by the police in effecting arrests are very much inhuman and degrading. Arrested persons are at times beaten up and treated as if a court of law has already pronounced them guilty and ordered that they be punished. Press reports of such incidents of police beating are numerous.<sup>29</sup> This bad police behaviour of exercising their muscles upon members of the public has resulted in severe criticism of the police from both politicians and Journalists. In one such criticism,

the Weekly Review<sup>30</sup> wrote the following:

"Most Kenyans are agreeable that the task of the police force, like anywhere else in the world is a difficult one, but Kenyans, like everyone else, have a right of basic human treatment even when they are in Police hands. The Kenya legal system demands that a suspect is innocent until proved guilty but in practise it has tended to be the opposite" (emphasis added).

Generally therefore, one observes that the law of arrest as practised in Kenya leaves a lot to be desired. Most policemen, as I have shown, ignore such basic requirements as informing the arrested person the reason for arrest. In addition, arrests are accompanied by a flagrant violation of basic individual rights as enshrined in our Constitution. Such violations of people's rights by the police adversely affects the relationship between the police and the public as I will show in chapter four of this paper. It is this violation of our Bill of Rights by the Kenya Police and other administrative bodies that has made people like Ghai and McAuslan refer to it (the Bill) as not being protective enough and thus becoming simply "a facade concealing abuses of power"<sup>31</sup>. In any democratic Society like ours, two interests invariably compete: the interest of the state to detect and apprehend criminals and the interest of preserving citizens rights as provided by the law. From the foregoing, it appears that the practise of the law relating to arrest in Kenya has failed to balance these two competing interests and instead tilts towards crime detection at the expense of individual freedom and liberty. To our policemen, "the end justifies the means," appears to be the rule. This state of affairs should not go unchecked. The police should be called upon to exercise their powers of arrest in a better way than they are currently doing. This will go a long way in helping the police and members of the public to work side by side in the duty of detecting criminals within our society.

FOOTNOTES CHAPTER ONE

1. See Appendix 'A' - PAGE 53
2. See Section 14(1) Police Act Cap. 84 Laws of Kenya
- 2(1) Section 66 of the Police Act recognizes the fact that police have a duty to obey the Law. Thus it provides for the liability of their prosecution under the law.
3. JEROME H. SKOLNICK "JUSTICE WITHOUT TRIAL: Law Enforcement in Democratic Society" New York (1966) page 6.
4. 10 Halsbury's Laws of England, 342
5. As discussed in 1965 Criminal Law Review Page 222
6. (1970) 2 W.L.R. 441 of page 444
7. Section 2 Criminal Procedure Code - Cap. 75 Laws of Kenya
8. Section 29 Criminal Procedure Code - Cap.75 Laws of Kenya
9. (1944) 1 ALL.E.R. 326 of page 329
10. (1967) E.A. 315
- 10(a) Recently, one BEN OMUTERE wrote to the Press complaining that policemen had harrassed him on the ground that he was not in possession of the receipt showing that the bicycle was his, He wondered how he could be expected to have a receipt for a bicycle he purchased many years ago. See THE STANDARD May 3 1981 page 6.
11. Section 21 Criminal Procedure Code says both a policeman and a private person can make an arrest. Similarly under the Prisons Act (CAP. 90) a prison officer can arrest a person deserting from the service - Ref S10.
12. CAP. 84 Laws of Kenya Section 2
13. (1967) E.A. 102
14. GLANVILLE WILLIAMS "REQUISITES OF A VALID ARREST" 1954 CRIMINAL LAW REVIEW page 6
15. (1947) A.C. 573
16. Per Lord du Parc at page 598 *ibid*
17. (1954) 21 E.A.C.A. 377
18. Chapter five of the Constitution

POLICE SWEEPS

19. Section 72(2)
20. See generally HARTMAN PAUL'S paper "Admissibility of Evidence obtained by illegal search and seizure under the United States Constitution" Vol.33 MODERN LAW REVIEW page 298.
21. (1954) 21 E.A.G.A. 242. (1955) 1 ALL.E.R. 236
22. MAP V. OHIO 367 U.S. 643 (1961) as discussed by Hartman Paul ref. footnote 20.
23. Y.P.GHAI and J.P.W. B McAUSLAN, "PUBLIC LAW AND POLITICAL CHANGE IN KENYA" Oxford University Press(E.A.) 455
24. 566 Police Act - Cap.84
- 24(1) A.V. DICEY "INTRODUCTION TO THE STUDY OF THE LAW OF THE CONSTITUTION" 10TH EDITION (1960) page 188
25. (1958) E.A. 518
26. See "DAILY NATION" March 10 1981 <sup>at</sup> page 12
27. Mombasa Resident Magistrate Court, Criminal Case No.3980/80 - Unreported.
28. Section 77(2) (b) of the Constitution
29. See for Example report in "THE STANDARD" March 17th 1981 at page 2 under the title "Police Officers beat me up, man they tells court". In the report, one John Oyugi told the court that following his arrest he was beaten up by a police inspector.
30. See WEEKLY REVIEW of November, 17th 1978 at page 13
31. Y.P. GHAI and J.P.W.B. McAUSLAN "PUBLIC LAW AND POLITICAL CHANGE IN KENYA" Oxford University Press (E.A) at page 440.

POLICE SWOOPS

WHAT IS A SWOOP? According to the COLLINS ENGLISH GEM DICTIONARY a swoop or the act of swooping means a "sudden attack". In this context a police swoop (or a police round-up as it is sometimes referred to) is the process whereby a group of policemen (usually armed) converge in an area and carry out a sudden but systematic rounding up and locking-in of people who are suspected of having committed certain offences. This is usually done without any prior notice or warning. The intention, it would appear, is to catch the suspected criminals unaware. Thus such swoops are normally accompanied by the entering and searching of dwelling houses and other premises.

This procedure of police swoops as a means of netting criminals is very common in Kenya. It is normally used in attempts to get hold of prostitutes, vagrants, brewers of illicit beer, aliens who have failed to register themselves with immigration officials, people suspected of robberies, PEOPLE DRINKING after hours and those who are suspected to belong to notorious gangs within a particular area. If the police decide to carry out a swoop in one area of the town, they normally drive there in their big lorries usually during the hours of darkness. Wielding their batons they will then force any one they suspect within that vicinity to enter into their lorries and vans. Normally no-one is allowed to question them. After being rounded up, the suspects are taken to police cells and it is only the following morning when they appear in court that they know why they were picked up. It is not always that all people rounded up in a swoop know immediately why they have been picked.

...of carrying out "illegal activities that are being carried out on a large scale in a particular area".

Given the small size of our police force and given also the rising rate of criminal activities as reported almost daily in our press, one cannot deny that indeed the device of police swoops is essential as an efficient way of dealing with urgent matters as they arise. However, as I am just about to illustrate below,

REASONS FOR EMPLOYING THE DEVICE  
OF SWOOPS

According to the Police Officer Commanding the Mombasa Division (O.C.P.D Mombasa) Mr. Peter O. Muga, the device of police swoops is an effective way of dealing with emergency cases which require immediate attention. For example if it is required to arrest all the prostitutes in say, Ziwani Estate, it would be futile if the police were to carry out individual arrests every day. Thus the best way to ensure that all, or at least most of the prostitutes are arrested is to carry out a swoop in that estate. If you arrest them individually on different days, word would go around that prostitutes are being arrested and the others would flee. In this way the device of police swoops will curb prostitution in that area immediately; at least for sometime to come.

Secondly, Police swoops save time as well as labour. Ours is a small police force and obviously the government cannot afford to misuse the few policemen we have by for instance asking them to trail and investigate everyone suspected of engaging in such activities as the brewing of illicit brew or of prostitution or of possessing implements for committing crimes. Accordingly, where the police suspect that a particular crime is prevalent in one area, it is cheaper to carry out a swoop in that area rather than investigating each individual case reported in that area. In such a manner even those criminals who might have been carrying out their illegal activities underground are likely to be unearthed. The police therefore resort to the device of swoops because police swoops are, according to Mr. Muga, the most effective and efficient way of curbing "illegal activities that are being carried out on a large scale in a particular area".

Given the small size of our police force and given also the rising rate of criminal activities as reported almost daily in our press,<sup>2</sup> One cannot deny that indeed the device of police swoops is essential as an efficient way of dealing with exigent matters as they arise. However, as I am just about to illustrate below,

this device of police swoops has invariably been misused to infringe upon the legal rights of many people in this country. The Constitution guarantees and protects one's freedom of movement.<sup>3</sup> Restrictions on one's movement can however be imposed in the interests of defence, public safety or public health inter alia. Unless a curfew has been imposed each individual in this country is free to move as he wishes so long, of course, as the interests of others are respected. Each citizen of Kenya is also protected from inhuman treatment,<sup>4</sup> deprivation of his property<sup>5</sup> and the arbitrary search of one's person or premises.<sup>6</sup> In the remaining part of this chapter, I intend to examine how police swoops have been carried out in this country and whether the police have bothered to respect people's rights while carrying out police swoops.

#### THE PRACTISE OF POLICE SWOOPS IN KENYA

My major complaint about police swoops in this country is the unnecessarily brutal and strict manner in which the police conduct themselves during these manoeuvres. Obviously the advantages of the device of police swoops as a means of getting rid of the undesirables in our country is well known. However, the police must be cautioned that not all those people rounded up in a swoop are necessarily criminals. Thus it is essential to treat them with some courtesy and humanity. Secondly, the police should be restrained from acts of inconveniencing law-abiding members of the public while in their houses. At times, police swoops usually culminate in policemen entering innocent people's houses and unnecessarily harassing them. On 6th March, 1981 in the Changanwe area of Mombasa, I personally witnessed a police swoop which I later learn't was aimed at clearing the town of thugs. On the material day at around 8 p.m. policemen started moving around picking anybody they believed was a thug. No-one was given the time to explain whether or not he or she was a student, employee in town or simply a mother going to the shops. Whoever tried to complain risked being beaten up. People were told to reserve their explanations for the Magistrate in Court. Worse still, the swoop was not confined in the streets. The police entered people's houses where they caused unnecessary inconvenience to people peacefully resting in their houses. In short, the swoop was conducted

and searched without due respect of one's personal property. All these acts are unconstitutional as per chapter five of our

in a very unpleasant manner. It did not come as a surprise therefore when two days later, an Assistant Minister for Labour, Hon. Shariff Nassir blasted the police over the manner in which the swoop had been carried out. The Press<sup>7</sup> quoted Hon. Nassir as saying that although swoops are necessary as a means of ending acts of thuggery, it was bad for the police to inconvenience wananchi in their homes while carrying out their swoops. Hon. Nassir added:

"We will co-operate with the police when they carry out their swoops against thugs in the street, but they should not disturb wananchi in their homes late at night"<sup>7</sup>

What is even more unfortunate is that sometimes, people who are netted in such swoops and against whom the police have no evidence to prove that they are thugs are simply charged with the offence of being "drunk and disorderly". Infact of late, this offence of being drunk and disorderly has been so much abused by the police following the arrest of innocent persons after a police swoop. For example in the police swoop of 6th March, 1981 at Changamwe Mombasa, the press<sup>8</sup> reported that police laid an ambush near the bus stops and arrested people alighting from buses! Those who were found not to be thugs were taken to court for being "drunk and disorderly." However, one victim of the swoop was surprised about the whole purpose behind the charge because according to him, he "had not tasted a beer" when he was arrested.<sup>9</sup> It would appear therefore that policemen are too anxious to charge every person they pick up following a police swoop. If they find they cannot charge you with the offence of armed robbery or prostitution or failing to register as an alien, that is not the end. They can always charge you with being "drunk and disorderly." It is immaterial whether you were infact drunk or disorderly but somehow they will try to prove it in court.

The device of police swoops as illustrated above, is used by our policeman in a very arbitrary fashion. People are inhumanly treated and their houses are arbitrarily entered into and searched without due respect of one's personal property. All these acts are Unconstitutional as per chapter five of our

Constitution. Sadly enough, my observation has been that where people are picked up following a swoop and charged with being drunk and disorderly, most of the time the burden is on them to prove that they were not drunk and disorderly. Since the fines are normally small, most people plead guilty not because they are guilty, but because they want to be released and go back to their work. Both the police and the court (surprisingly) treat such as guilty and it is up to them to prove their innocence. This is improper.

Other police swoops are carried out under the powers granted by the Vagrancy Act.<sup>10</sup> Section 2 of the Act defines vagrants as, inter alia, persons without lawful employment to provide them with necessities, persons with no fixed abode or persons wandering about and begging for alms. From the Act it is obvious that prostitutes are vagrants since Section 2(a) says that prostitution shall not be deemed to be lawful employment. Section 3 provides for the arrest of any vagrant and provides also that a police officer shall arrest any person whom he suspects "upon reasonable grounds" of having committed an offence relating to vagrancy. Thus it is clear why prostitutes usually fall victims during police swoops.

Though the law is that a police officer can only arrest a person "upon reasonable grounds" that the person is a vagrant or has committed an offence relating to vagrancy, this section of the Act has been interpreted so widely by the police <sup>so that</sup> swoops that have been meant to bring in vagrants have invariably resulted in innocent members of the public being charged improperly as being vagrants. This is because during most swoops some policemen do not bother to establish upon reasonable grounds whether in fact the person being picked up is a vagrant. What matters is what the police think ~~is~~. I shall illustrate by a case. In R V. MOHAMMED AHMED the alleged "vagrant" was found walking along Digo Road in Mombasa at around 8 p.m. He was stopped by the police and charged for being a vagrant. At the hearing of the case, the alleged vagrant told the court that he was a fifth form student at

Allidina Visram High School. He explained that he lived with his parents along Digo Road and that he had been arrested about two blocks from his home while going to a shop. The Magistrate found the alleged vagrant's explanation fairly satisfactory and released him. This case illustrates that at times, policemen act in a rather perfunctory manner while rounding up vagrants. They do not bother to satisfy themselves that infact one is a vagrant as required by the law. At least they should have taken the trouble to question Ahmed and see whether, on reasonable grounds, he fell within the definition of a vagrant.

Equally unfortunate is the insistence on the part of the police of emphasizing on individual identification cards and other documents. Failure to carry one's identification Card is no conclusive proof that one is a vagrant. In answer to Question II of my questionnaire<sup>12</sup> one Julius Sakwa complained that he was once picked up and locked up as a vagrant simply because he wasn't carrying his identity card. He was only released the following day when one of the police officers said he knew him. My submission is that the police should not round people in police swoops and charge them with vagrancy offences simply because of failing to produce an Identity Card. This is the wrong criterion of identifying vagrants and it only results in innocent people being subjected to unnecessary inconveniences.

In conclusion therefore I would submit that there is plenty of room for improvement in relation to police swoops and the manner of carrying them out. Police swoops should be organized in a more orderly fashion. If a swoop is meant for brewers of illicit beer or for those who drink beyond drinking hours, then only those who fall into that category should be rounded up in the swoops. It is both unfair and inhuman on the part of the police to pick up even an innocent by-stander who does not bre<sup>v</sup> the said beer nor is drunk and disorderly. Only those persons who fall into the category of criminals for which the swoop was intended should be picked up. People should not be picked up arbitrarily during police swoops nor should the police use swoops as a means of harassing innocent persons. Extreme patience should be observed by the police/swoops.

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Mr. Justice G.N.S. Pillay ruled:

In our view, Mr. Kanan (deceased) could not therefore

All persons who wish to give any explanations should be allowed to do so rather than being told to shut up and reserve their explanations for the court. In this manner, I am convinced police swoops will eventually be made to play a much more useful role in the maintenance of law and order in this country. The police should realize that where a member of the public feels he has been unfairly treated, he is no longer motivated to obey the law. This could even turn him into a more hardened criminal. Such a situation should not be allowed in this country.

#### USE OF GUN BY THE POLICE

Before completing this chapter, I would like to say something as concerns the use of guns and firearms by the police. This relates to the use of firearms by the police during the making of arrests as well as during police swoops.

Strictly speaking, nowhere under the Kenya Law is the use of a gun recommended. The police are only authorized to use "reasonable force"<sup>13</sup> in effecting an arrest. Of course what is reasonable force depends on the circumstances of the case. Where an armed gangster challenges a policeman and threatens to shoot, it would be reasonable for the police to shoot at the gangster. The policeman, like any other person is entitled to defend himself by all possible means so long as they are reasonable in the circumstances of the particular case.

However, what I am concerned with here are the indiscriminate acts of some of our policemen. It has been known that during police swoops or night patrols, some trigger - happy policemen do not hesitate to shoot at innocent persons and claim later that they (the victims) were escaping from lawful arrest. Recently the Kenya Court of Appeal dismissed an appeal against a sentence of death imposed on a police officer for shooting and killing a young man at Kitale. The accused police officer had tried to convince the court that he shot and killed the deceased because the deceased was seen trying to steal a car and on being challenged to stop he(deceased) tried to run away whereupon the accused shot him in the legs. Infact medical evidence showed that deceased had been shot through his jaw and into his brain at close range. Holding that the police officer must be hanged, Mr. Justice C.B. Madan, Mr. Justice Eric Law and Mr. Justice C.H.E. Miller ruled:

"In our view, Mr. Kamau(deceased) could not therefore have been trying to run away as claimed by the appellant."<sup>14</sup>

As this case clearly illustrates some of our policemen think they are licensed to kill. They believe they can always shoot to kill and get away with it by claiming that the victim was an armed robber trying to escape arrest. I should submit that even where one is attempting to escape from the police it is always desirable that he be shot in the legs only. A robber who is shot in the legs and not killed instantly can be helpful later because he can be made to disclose the hiding place of his accomplices or even his boss. Such valuable information can not be got from a dead thief. It should not be imagined that I am against the idea of shooting dead armed criminals who are seen killing and robbing innocent people. Far from it. What I am elucidating upon is the fact that not all those shootings we read of are really justified. In March, 1979 for example, one Mr. Alfred Ongetta was wrongfully and unlawfully shot and killed by the police in Nairobi. Deceased's wife successfully sued the Attorney-General and it was ordered that deceased's family be paid 330,000/- as compensation.<sup>15</sup> Obviously not many families can bring such action when a member of their family has been unlawfully shot and killed by the police. This requires legal service which is beyond the reach of many people in this country.

In Kenya, the Attorney-General Mr. James Karugu has clearly stated that it is illegal under the rule of law for policemen to shoot or shoot to kill suspects unless "extreme circumstances" make this necessary.<sup>16</sup> The rule of law as enshrined in Sections 71(I) and 72(1) of our constitution guarantees it's citizens the sanctity of life and liberty. The government therefore has a duty to ensure that the law is maintained and respected and that any infringements on the law are punished. This can be efficiently done by letting it be known to the police that unless it is extremely necessary, the police gun should always remain in the holster. Courts have infact on occasion given strong reprimand to trigger-happy policemen.<sup>17</sup> I would therefore submit that it is most desirable that the police should be advised to be careful in their use of firearms. Indiscriminate acts of shooting

even at innocent wananchi only makes members of the public hate and fear the police and under such circumstances, we would not expect the public to co-operate as fully as required in the task of maintaining law and order in our country.

I support the view that tough measures should be taken against thugs and killers. However, the measures we would like to see taken are measures which fall within the scope of the law and are considered reasonable by all right thinking people. I do not think that it would be reasonable to respond to the current crime wave by shooting suspected robbers on sight. Even if Parliament were to pass legislation empowering the Police to kill people suspected of armed robbery, that would be bad law.

1. Section 41(1) of the Constitution
2. Section 74(1) " "
3. Section 73(1) " "
4. Section 74(1) " "
5. See 'LAWY NATION' of March 9, 1961 at page 4 under heading "Nation blasted over charges"
6. See 'DAILY NATION' Thursday March 10 1961 page 17 heading "30 in 24 hrs. shot"
7. Ibid
8. Chapter 26 Laws of Kenya
9. Unreported Mombasa District Magistrate Court (Mombasa) case No. 1498/71
10. See Appendix A
11. See Section 71(2) of the Constitution  
" " " " Criminal Procedure Code
12. See 'DAILY NATION' Tuesday March 17 1961 Page 3  
heading "Police officers' appeal dismissed"
13. See 'DAILY NATION' Thursday December, 11 1960 at page 1 under heading "State to pay family 300,000/-"
14. See 'DAILY REVIEW' June 1961 1960 at page 8.
15. See for example GIBBY V. R. (1967) E.A. 440

FOOTNOTES

CHAPTER TWO

1. Interviewed him on 12th March, 1981 in his office at the Urban Police Division Headquarters in Mombasa.
2. For example 'THE STANDARD' of March 17 1981 at page 4 in praise of Moi's announcement that robbers be detained wrote "Recently, there has been an intolerable increase in armed robberies as well as in the brutality with which such crimes have been committed. Obviously, serious measures must be taken to bring these activities to an end". The report added that "cases of robbery and allied offences rose from 4,961 in 1978 to 5,288 in 1979".
3. Section 81(1) of the Constitution
4. Section 74(1) " " "
5. Section 75(1) " " "
6. Section 76(1) " " "
7. See 'DAILY NATION' of March 9, 1981 at page 4 under heading "Police blasted over swoops".
8. See 'DAILY NATION' Tuesday March, 10 1981 page 12 heading "300 in court after swoop".
9. Ibid
10. Chapter 58 Laws of Kenya
11. Unreported Tononoka District Magistrate Court (Mombasa) case No. V2499/75
12. See Appendix A
13. See Section 71(2) of the Constitution  
" " 21 Criminal Procedure Code
14. See 'THE STANDARD' Tuesday March 17 1981 Page 3 headed "Police Officer's appeal dismissed".
15. See 'DAILY NATION' Thursday December, 11 1980 at page 1 under heading "State to pay family 330,000/-"
16. See 'WEEKLY REVIEW' June 20th 1980 at page 6.
17. See for example GITAU V.R. (1967) E.A. 449

CHAPTER III

By virtue of Section 72(1) (e) of the Constitution of Kenya, the police have the powers to arrest and put into custody any person "upon reasonable suspicion of his having committed or being about to commit a criminal offence under the law of Kenya". Where a policeman arrests a person on such suspicion, he can put him into custody and then carry out investigations later. It is not necessary that the police should investigate first before he puts the suspect into custody. This is what is commonly referred to as the principle of 'prior restraint'.

The rationale of this rule is obvious. If the police could not arrest and put a person into custody before or unless thorough investigations had been completed, then the administration of criminal justice would be impossible. Criminals would escape when they learn that they are being followed or that investigations are carried out on them. Offences would be committed with impunity and it would have required an extraordinarily large police force if every suspected criminal had to be investigated prior to arrest and remand into custody. Accordingly, in order to facilitate the administration of justice the law allows the police to arrest on reasonable suspicion anyone about to commit a crime. For the moment, I shall not dwell on the issue of reasonable suspicion. However it must be clear from the preceding chapters that sometimes the police arrest and lock up persons even where there is no reasonable suspicion that they have committed or <sup>are</sup> about to commit a crime. When this provision of the Constitution is abused, then it is inevitable that innocent persons will sometimes find themselves locked up in police custody for long periods of time (longer than is required, by the law) while investigations, if any, are being carried out by the police. This chapter seeks to examine the treatment of suspects while in police custody and their eventual prosecution when it comes.

People who have had occasion to be locked up in a police cell following an arrest or a swoop have invariably complained of the state of these chambers. Most cells are untidy with only a worn out blanket to act as beddings. Obviously no-one would recommend VIP treatment but surely it would do a lot of good if the police cells were made a little more hygienic. Of course the cells in the city and other urban areas are not too bad as compared to some

in the rural areas. My argument is that since some of the suspects locked up in custody could be innocent persons and since being in the cell alone is no conviction, the people should be treated decently.

My contention is that Police cells should be kept as clean as possible because a person who is kept in a dirty cell and given dirty utensils and beddings does not develop a good attitude towards the police. He will hate them (Police) for the poor way they treated him while in the cells and it is difficult for such a person to co-operate with the police.

I interviewed<sup>1</sup> two people who had had the misfortune of sleeping in police cells and their revelations were shocking. Both complained of uncalled for harrassment in the police cells. R. Malala for instance was arrested and charged for trespass. Apparently the police simply arrested him because a few days earlier someone had been attacked by thugs in the neighbourhood. It would appear therefore that a general swoop was being carried out. But the time of his arrest was a bit too early for any thugs to be out - 7.30 p.m. While in the cells he was not allowed even to contact his relations and inform them by telephone that he was in police custody.

When one is put in the cells, the procedure is that all articles and any money on him is taken and kept by the policeman<sup>on</sup> duty. These are later returned when the suspect is released from the cells. During my research, I discovered that at times the police do not return all the items they might have taken from the persons who were locked up in the cells. What some policemen do is that they do not record down all articles (especially money) that they may have taken from the suspects in the cells. When one tries to question this, he meets very hostile reception from the police. Alternatively, the policeman who took the articles might be off-duty at the time the suspect is eventually released and the policeman on duty might genuinely not be aware that infact some articles have been wrongfully taken and kept away from the suspect. It was precisely under these circumstances that Philip Odede's glasses and money got lost when he spent a night at the police cells at Mombasa's Central Police Station in August, 1979<sup>2</sup>. My submission is that such police activities are not only unconstitutional but they amount to theft under our law<sup>3</sup>. Although the Police are also

subject to the law and can be prosecuted for such offences, normally the person ~~from~~ whom property has been taken in the cells is too afraid to report the matter to Senior officers or at times he simply does not know who took the property. Consequently such persons just keep quiet and the only persons they may talk to are their friends and relatives. Those who usually suffer such losses are those who spend may be a night or two in the cells only to be released the following day or charged with vagrancy and then repatriated.

Probably the worst aspect of Police custody is the physical maltreatment of suspects. The Constitution prohibits torture or any inhuman treatment unless of course authorized by law such as a death sentence or corporal punishment.<sup>4</sup> However, it is not unusual to read in the press of cases, whereby accused persons complain of police beatings while in custody. I used to think only the junior staff of police did these acts but it has come to light that even the Senior Police Officers themselves mistreat suspects held in custody.<sup>5</sup> This is a poor reflection on the part of the Senior police officers because one would expect them to know the law better than their junior colleagues. This is an indication that infact such senior police officers simply ignore the law - it is not a question of ignorance. Sometimes suspects are subjected to hostile investigations accompanied by torture while in custody so that the police may get a confession out of them. Such activities and practises are not only unconstitutional but they are also illegal under the evidence Act whereby a confession so obtained is inadmissible.<sup>6</sup> On the whole, incidents of torture in police cells are quite prevalent and most of them may be attributed to reasons which are indefensible under the law. Some cases will serve to back up the above.

In R V. ABDULLAHI JARSO<sup>7</sup> a policeman was charged with murder of a person who was among a group that had been rounded up. It was alleged that the policeman had kicked the deceased in the bladder. The doctor's report showed that death had been caused by the rupture of the deceased's bladder following the kick by accused. Eight witnesses testified before

the Resident Magistrate that infact they saw accused kick the deceased below the abdomen and that infact the police had refused to take the deceased to the toilet when he so requested them. The magistrate committed the accused to stand trial for murder after hearing the Preliminary enquiry.

In the case of R V. EKULAN NAARIGOR<sup>8</sup> the accused was charged with stealing from a dwelling house contrary to Section 279(b) of the Penal Code. The facts were that on 28th July, 1980 at Rondo Estate in Nakuru, he stole Shs.310 and one hat valued at 65/- from the house of a Mr. Emande Lelelite. During the hearing, the accused alleged that the police used a pliers and pierced his urine genital system (penis). The accused who was in great agony showed the penis to the magistrate who ruled that there should be a medical examination. The examination proved this to be true and that the wound was becoming gangreneous. The magistrate ruled that the concerned police officer who was allegedly on leave, should be called back to give an explanation. Meanwhile accused was released on free bond.

These are just but a few examples that illustrate the ultimate means of demonstrating police power - use of physical force or violence. Usually this is done in order to get the suspect to confess. But at times, it is simply an expression of police aggressiveness. In a country like ours where the majority are unaware of their legal rights, such police practises pass undetected. These practises are not only illegal but they also affect the relationship between members of the public and the police and worsens this relationship. This does not augur well for our police force which has been frequently referred to as disciplined and effective. But no one wants a situation whereby justice is sacrificed for efficiency.

Since it is not particularly comfortable in police cells, the ends of justice would be better served if the police ensured that there are no unnecessarily long delays in bringing accused persons to court. In any case, the Constitution provides that once one is charged the hearing of the case must be within a reasonable time.<sup>10</sup>

arrested on bail or brought to court within twenty-four hours  
suffer both psychologically and economically while in custody.  
Some lose their jobs and have their family life disrupted. This  
is especially pathetic assuming the person is later acquitted or  
discharged by the court. Although Section 36 of the Criminal

But the police, even when they have investigated a case, take too long in some cases to prepare a charge sheet. The question of delay in fixing a hearing date should not be blamed on the courts alone. Delay caused by late preparation, typing, signing or forwarding of a charge sheet or any other documents required in a criminal process may be merely due to police indolence inertia, or incompetence. Sometimes inferences of police malice cannot be ruled out. It is not uncommon for an arrested person to remain in police custody for a long time before being formally charged with an offence. Nor is it uncommon for an arrested person to have stayed in the cells for prolonged periods merely because a filing clerk in the police records office has misplaced the file containing the charge sheet or other documents relating to the case. Recently, the chief Magistrate Mr. FidaHusseïn Abdullah blasted the police following a case whereby some accused had over-stayed in police custody simply because the police failed to bond a witness and the case had to be adjourned from time to time. The offence had been committed in October, 1980 and upto February, 4th 1981 hearing had not started because of police failure to bond a witness. The Magistrate said:

"This is very unfortunate. The accused have been in custody since October, 11 last year".

Sometimes the delay on the part of the police is caused by defective charge sheets. This can be explained in terms of incompetence, inadvertence, or laziness on the part of the police officer involved in the investigation and framing of the charge. Sometimes it could be attributed to malice on the part of the police. It is not uncommon for ignorant or malicious police officers to unlawfully arrest and confine innocent or suspected persons for lengthy periods before preferring a criminal charge against them.

The police despite being empowered to release suspects on bail for less serious offences,<sup>12</sup> they sometimes decide not to exercise this power at all. Consequently, suspects who are not released on bail or brought to court within twenty-four hours<sup>13</sup> suffer both psychologically and economically while in custody. Some lose their jobs and have their family life disrupted. This is especially pathetic assuming the person is later acquitted or discharged by the court. Although Section 36 of the Criminal

Procedure Code empowers the police to release on bail one who is not suspected of treason or murder or where it is impracticable to bring the suspect before a magistrate within twenty-four hours of his arrest, Practise has shown that the police sometimes refuse to grant bail in such minor cases as being found drunk and disorderly. It would appear that police powers under section 36 criminal Procedure Code are very sparingly exercised. Accordingly, I would suggest that a list of bailable and non-bailable offences should be posted at each police station so that the police can always refer to it where in doubt.

### PROSECUTION

This is the final stage at which the arrested and charged person finally discovers his fate. The police play a vital role in the prosecution of persons who are charged with committing various offences. And the police perform this role so zealously because of their over-anxiety to secure convictions. It is for this reason that some policemen sometimes even go to the extent of fabricating and concocting evidence against the persons they have arrested on suspicions of having committed crimes. Such cases are not uncommon and in most cases, the police get away with it because their victims have been safely kept at a disadvantage due to their long stay in custody.

The vast majority of the prosecutions are undertaken by the police and the decision whether to prosecute or not rests in each case with the police subject only to the right of the Attorney-General to enter a "nolle prosequi" - Latine for "unwilling to prosecute" - which has the effect of stopping the case. It is the duty of the prosecuting officer to obtain statement from all the prosecuting witnesses and to set them out in writing including a statement of his own evidence. He must also attach a summary of the facts on which the prosecution will need to rely.

It is an essential part of a fair trial that the prosecution witnesses are warned to attend Court and the Officer prosecuting should do so with absolute fairness and impartiality. The police should not aim at ensuring the conviction of any arrested person just because he is a suspect. He should be given ample time to consult his lawyer, if any, and to contact any persons likely to give evidence on his behalf. As D.H. Bayley<sup>14</sup> has written: "Police are to serve the ends of justice; the acquittal of an innocent accused

should be as important <sup>as</sup> ~~as~~ the conviction of the guilty".

However, police methods in Kenya, as well as in many other countries, have long been suspect. It is not surprising that the Kenya police have at times come in for their share of criticism on the score of shaping and twisting evidence in order to secure convictions. The undesirable practise of concoction has become more or less part and parcel of the present-day police working. The intriguing question is: How much of this infact goes on? This is not the kind of question which <sup>admits</sup> admist of an easy answer nor can it be put to the policemen with great expectations of obtaining candid replies. My own experience during my fourth term clinical Programme has led me to believe that the police sometimes engage in the practise of leading the witness in their testimony and asking the witnesses if such and such is true rather than allowing them to volunteer evidence in their own words. Sometimes incriminating evidence is planted on the accused. One area where the public has complained about police impropriety is the practise of planting 'changea' (illicit liquor) or bhang (Satava Cannabis) on arrested persons. It has not been unheard of for the police to force a bottle of such liquor into the hands of a person and force him to walk with it to the police station where he is then charged with possession of the same.<sup>14(a)</sup> Thus evidence is created rather than being discovered. Where there is such fabrication of evidence, it is almost impossible for the magistrate to detect it. Worse still, the accused will have been so much tortured in the cells that few are brave enough to speak out the truth to the court. In one Indian case, where Judge A.N. Mullah<sup>15</sup> was acquitting a person who had earlier been convicted on false evidence, he said:

"On the conclusion that we have reached, we have no doubt that Sir Mathusa Singh has fabricated every bit of evidence in this case". Blasting the police, he continued: "The police force seems to consist of so many undependable officers that it is almost impossible to investigate their misdeeds".

It is important to note that what judge Mullah said is not very far from what many magistrate and judges would say of the Kenya Police. It is not uncommon for the police to be blasted for poor investigation and for prosecuting persons even where they lack the necessary evidence to sustain a valid conviction. But some policemen are good at making up stories and getting away with it. In the case of R V. HAMISI ALI<sup>16</sup>

a police constable had been charged with assaulting a man whom he met in the streets. But in the court, the accused told the Magistrate that infact it was the complainant who assaulted him. The Magistrate seemed to have preferred the accused's story to the complainant and he thus acquitted the police constable. My view is that the Magistrate unnecessarily put too much trust accused. Surely in this country it is not easy for any ordinary citizen to attack a policeman in the street. Policeman in this country are greatly feared because of the wide powers they posses. Accordingly their word must not always be taken against the word of the ordinary member of the public.

Listening to the manner in which policemen carry out their prosecutions, one would be led to the conclusion that most of them are not adquatly trained as prosecutors. Surely, for strict adherence to legal regulations during prosecution, one should have thorough knowledge and practise in that field. It appears to me that in most cases, a policeman is left to lead prosecution simply because he was involved in the arrest of the suspect and the subsequent investigation of the case. It appears that no regard is really paid to the Prosecuting capabilities of the concerned officer. My submission is that Police officers should be adequately trained in the art of prosecuting so that they adhere to the legal requirements as regards the prosecution process. This will help in avoiding such problems as charging a person under the wrong law or the poor framing of charges all which unnecessarily lengthen the trial thus subjecting accused to even more psychological torment before he eventually knowg his fate. I am sure a better mastery of the prosecution formalities would help in the quick disposal of cases and hence alleviate the problem of too many people being held up in the cells.

In this country, the police arrest offenders, carry out investigations and prosecute the offenders. At least the police carry out the function of prosecuting in the District Magistrate Court, Resident Magistrate Court up to the Chief Magistrate Court. It is in these courts that the unfair tactics of the police during prosecutions are most prevalent. This is especially so in Criminal cases where the charged party is unrepresented by a lawyer. It is

therefore easy for the Police during their investigations to look for that evidence which will help them secure a conviction during the prosecution process and ignore any evidence that would help the accused. In this manner, the rules of Natural justice are flouted and the accused is not afforded a fair trial. I would add that the standard of justice is much greater in civil cases where each party (as is usual case) has a lawyer representing him.

My contention therefore is that the present system whereby the police make arrest, carry out investigations as well as the prosecution in the lower courts is not the best system. As I have indicated the concoction of evidence and the framing of cases against innocent persons is not uncommon. For example a Magistrate recently acquitted a man who had been charged with stealing heifers because the court found out that the police had framed the charge.<sup>17</sup> The police are themselves not well versed in the law. The little training they get does not prepare them into competent prosecutors. On the whole, I do not think the duty of prosecution should be carried out by the Police. I would recommend a system whereby we have a body of independent and qualified lawyers who would be entrusted with the duty of prosecuting and not the police. This would ensure that justice is done especially in criminal cases. Obviously such a system would be much more expensive but in my view it is the best way of ensuring fair trials in our courts.

17. As per Section 2(3) Constitution of Kenya  
18. D.P. MURRAY - "THE POLICE AND POLITICAL DEVELOPMENT IN KENYA" International University Press (1968) at page 174  
19(a) Revealed to us by some of the answers to my questionnaire  
19. POLICE VS. THE STATE UNIVERSITY OF NAIROBI LIBRARY Criminal Law Journal, 940 to 944  
20. Unreported Criminal Case No. 2791/60 High Court Magistrate Court, Nairobi.  
21. See GUYOT MATICH of March 6 1961 at page 19 under heading "Stock theft case fails"

FOOTNOTES

CHAPTER III

1. Rebman Malala of Nairobi University and Philip Odede of Bank of Baroda Mombasa.
2. I was doing my clinical Programme in Mombasa at that time so I got first hand information immediately.
3. Section 75(1) Constitution of Kenya
4. Section 74(1) " " "
5. In a sworn statement of defence, one Lawrence Githinji told the Embu Court that the Embu C.I.D. Boss slapped him and refused to allow him to read his recorded statement. Accused had been charged with corruption. See THE STANDARD, November, 28 1980 at pg. 3
6. S26 Evidence Act - Chapter 84 Laws of Kenya
7. Unreported Criminal Case No.2450/80 Resident Magistrate Court Mombasa
8. Unreported criminal case No.1105/80 Resident Magistrate Court Nakuru
9. Section 77 (1) Constitution of Kenya.
10. Section 77 (1) " " "
11. See THE STANDARD, February, 14th 1981 page 3
12. Section 36 Criminal Procedure Code,  
Section 72(5) Constitution and Section 23(1) Police Act.
13. As per Section 72(3) Constitution of Kenya
14. D.H. BAYLEY - "THE POLICE AND POLITICAL DEVELOPMENT IN INDIA" Princeton University Press(1969)  
at page 124
- 14(a) Revealed to me by some of the answers to my questionnaire
15. RAM SINGH V. THE STATE 1959  
Criminal Law Journal, 940 at 944
16. Unreported Criminal Case No.2991/80  
Resident Magistrate Court, Mombasa.
17. See DAILY NATION of March 6 1981 at page 10 under heading  
"Stock theft case fails"

CHAPTER FOUR

POLICE RELATIONS WITH THE PUBLIC IN KENYA

No one can deny the fact that for any police force to function effectively, there must exist cordial relationship between the police and members of the public. In an atmosphere of cordial relationship, the police can always count on members of the public to help in detecting criminals who may have gone into hiding or in making arrests. Similarly where the relationship between the police and the members of the public is cordial, the police can always find it easy to get members of the public to give evidence in court otherwise this would not be easy if members of the public are always avoiding any contact with the police. In general therefore there are various advantages that will be gained when the relationship between the police and the public is cordial and probably the greatest advantage is that such cordial relationship will make the police function of maintaining peace and order much easier and pleasant to carry out.

The purpose of the chapter is to examine the chief characteristics of police relationship with the public in Kenya. Given the fact that in Colonial Kenya the police institution was basically an instrument of oppression and therefore was viewed with contempt especially by the Africans, I shall examine here whether this attitude has changed with the coming of independence. If it has not changed, I shall endeavour to indicate reasons for this attitude and most of these reasons will be the results of my research (interviews and answers to my questionnaire).

Most of those who answered my questionnaire<sup>1</sup> (Q.12) were of the opinion that the relationship between the police and the public in Kenya was antagonistic. Over 50% of them answered that they blame the police for this bad relationship. In other words it is the police force which has conducted itself in such a manner as to antagonise their relationship with the other members of the public. Much as I would partly agree with this assertion, I must add that members of the public are not entirely free from blame. Sections of the Public cannot escape from their share of the blame in obstructing the police in the lawful execution of their duties. Quite often, demonstrations (especially by University Students) are accompanied by the throwing

of stones at the police and the use of words calculated to provoke them. Thus members of the public also have their share of blame when it comes to finding out who is to blame for this state of affairs.

In my interview with the Officer in charge of Central Police Station, Nairobi on 12th February, 1981, the Officer, Mr. Obiero, agreed that infact the relationship between the police and the public in Kenya is not as cordial as it ought to be. However, he added that this is only true as far as relationships in the urban areas is concerned. Mr. Obiero emphasized that he was convinced that in the rural areas, the police get much help from members of the public and that public response towards the police in rural areas is generally positive. Mr. Obiero, said he had reached this conclusion after having worked in rural areas for quite sometime before coming to Nairobi to take up his present post. He also agreed that most members of the public viewed the police with suspicion and are normally unwilling to assist the police in carrying out investigations. If the relationship between the police and the public is not as cordial as it should be, it is important that we find out why this is so, so that steps of improving the relationship can be suggested.

#### COMPLAINTS RAISED AGAINST THE POLICE

In trying to justify their claims that it is the police who are to blame for the bad relationship existing between the police and members of the public, most of the people I interviewed accused the police of harassing innocent people by excessive use of their powers. Among those I interviewed were University students and one of them<sup>1(a)</sup> indicated that once in 1979 while he was in police custody he was "subjected to torture, ridicule and envy" because he was a University student. He did not indicate the nature of tourture he was subjected to, but I would think he meant he was manhandled by the police after having been picked up for trespass. Most policemen view University students as trouble makers. This, coupled with the general hatred the police have of the University students, explains why most students have invariably complained of

having been treated even worse than other members of the public whenever they have the misfortune of getting into the hands of the police. Indeed when I went to seek an interview with the officer in-charge of Central Police Station and I introduced myself to the receptionist at the counter, he exclaimed: "Oh, you are the trouble makers." But I must add that I found Mr. Obiero (the officer-in-charge) a very co-operative person.

Thus one major complaint raised by members of the public against the police is the latter's unnecessary use of force. Policemen have been known to beat up people not only in the police cells but even in the streets. Recently, it was reported that one Mr. Etiang Kalungu was beaten to death following a police swoop in which he was among those picked up<sup>2</sup>. Such incidents do not create a good image of the police in the minds of other members of the public. It makes the public hate the police and this does not help much if the relationship between the two is to be cordial. Ekow Daniels has written thus: "The ultimate responsibility for maintaining law and order rests on the government and is exercised on it's behalf by the police. However, the methods which have been adopted by the police to control disturbances have not escaped criticism. They include excessive and wrongful use of force and firearm against unarmed people, lack of human psychology, improper use of tear gas....."<sup>3</sup>

Others have complained that the police are in the habit of harrassing journalists especially when a journalist is taking a picture that the police do not want taken. Recently a journalist was beaten up by the police because he attempted to photograph them while they (the police) were sleeping instead of keeping order at a polling station. Complaining about the incident, Peter Mbae of Meru wrote to the WEEKLY REVIEW as follows "I do not conceal my contempt for the police, harassment of innocent journalist. The police hate those who discover their faults yet they are keen to punish those they discover with a fault"<sup>4</sup>. Numerous other instances of police incivility towards the members of the public can be given but these need not take much of our time. I should point out that complaints against police misuse of their powers is not a common feature of this country alone. In India, police brutalities have been reported to be even worse.

Incidents have been reported in which Indian policemen went as far as removing eyes of the people they had arrested! These malpractices led to much public outcry in India against the police.<sup>5</sup> There is therefore evidence to substantiate the fact that many of our policemen treat members of the public with severe brutality. In such circumstances, one cannot be wrong to blame the police as being responsible for the bad relationship existing between the police and the public.

When I talked to the Officer-in-charge of Central Police Station in Nairobi, I tried to find out from him the reason why most policemen use unnecessary force while dealing with the public and even beat up people without any reason. He said that as far as he knew, such beatings were rare but the reason most frequently mentioned by policemen for the use of force was "disrespect for the police". A general look at our police force today will prove that most of our policemen want to be given too much respect by members of the public. Of course, respect must be given where it is due but most of our policemen forget that respect is two-way. You cannot get respect if you do not give it. Although "disrespect for the police" has never been recognised by the law as a legitimate justification for the use of force or violence, many policemen adopt the attitude that force can be applied to gain deference, to impose punishment and for other reasons - that exceed the bonds of legality. Thus even though I would agree that the policemen needs respect, I have yet to come across any law authorising a policeman to beat me up for lack of respect to him.

Apart from beatings and other forms of police manhandling, the other complaint normally raised against the police and which contributes towards the bad relationship between the police and the public is the exaggeration by the police of evidence in court. From <sup>most answers to</sup> questionnaire, it is evident that the majority of those interviewed were of the view that most policemen make up and concoct evidence in order to secure convictions. I would not say that most of the people we hear or read about as having been found guilty go to prison entirely on the basis of evidence against them being made up by the police. What I am submitting is that infact there are instances where the police not only make up evidence but they also frame up their charges in such a manner that an arrested person ends up being charged for an offence he never

to promote respect for the law. While the discretion allowed policemen may be necessary to provide sufficient flexibility to deal effectively with individual problems and circumstances, the public fear that police

committed. But I must add that in many cases, the magistrates are clever enough to detect such practises and in most cases the accused is set free. For example the Nanyuki Resident Magistrate Mr. Maurice Okaya recently acquitted one John Wachira who had been charged with stealing nine heifers worth 16,000/-<sup>6</sup>. The magistrate acquitted the accused because it was found out that the case had been "framed against" the accused. Obviously, such practises on the part of the police do not give them a good image as far as the general public is concerned. Practises of framing up charges against people only succeed in destroying the relationship between the police and the public.

Apart from beating up innocent people and framing up charges against them, the other aspect of Police conduct which destroys their relationship with members of the public is their tendency of treating other people with suspicion and contempt. A policeman who meets you alone at night will always use such an opportunity to prove that he is the boss. Policemen are known to subject people to vigorous interrogations in the streets just for the sake of annoying people. In January, 1981, a policeman I met on my way to my room after watching a movie in town stopped me and, among other things, he wanted to know what I was studying in the University! I got the impression that this policeman was just out to push me around and show me that he was the boss and could do to me anything at that time. It even occurred to me that the policeman could have taken me in for a vagrant especially considering that I was not carrying my identifications card with me. Weistart John has written the following about the police:

"Not only do policemen reflect more conservative and defensive sentiments than other segments of the population; but they also seem to approach human nature with cynism, suspicion, aggressiveness and pessimism."<sup>7</sup> (emphasis mine)

Weistart then adds that, that is why citizens display a considerable reluctance to grant esteem to the men who are entrusted with enforcing the rules and norms of society. The principal police response to disturbing and distasteful tasks is to adopt a posture of cautious suspicion. According to Weistart, "suspicion probably has become the trademark of the policeman in his relations with other people"<sup>8</sup>.

In many encounters policemen take action primarily to <sup>Preserve</sup> ~~protect~~ and protect their authority rather than to secure compliance with the law or to promote respect for the law. While the discretion allowed policemen may be necessary to provide sufficient flexibility to deal effectively with individual problems and circumstances, the public fear that police

discretion is usually administered in an arbitrary or overly restrictive manner. This situation is worsened by the generally cynical attitude of the police towards the public.

The suspicion and aggressiveness with which some members of the police force treat innocent members of the public can <sup>be</sup> illustrated by the following case. On February, 27th 1981 a Senior Superintendent of the police was fined by a Nairobi Court for wounding one Mr. Raphael Kariuki.<sup>9</sup> What happened was that on the night of February 7th and 8th, 1981, a car driven by the commissioner of police was involved in an accident with a lorry belonging to Mr. Kariuki and as a result, the daughter of the commissioner of the police died. As a result of the accident, many people converged at the scene including Mr. Kariuki. When the superintendent of police arrived at the scene and learnt that Mr. Kariuki was the owner of the lorry, he slapped him (Mr. Kariuki). Mr. Kariuki fell into a ditch and when he attempted to run away, he was shot in the left leg. Proceedings were then instituted against the superintendent of police who was fined 20,000/-.

As the above case clearly shows, many policemen are rude and unsympathetic towards members of the public and such an attitude makes the public hate the policemen. The superintendent of police had no single justification for treating Mr. Kariuki as he did. Infact Mr. Kariuki was not driving the lorry at the time of the accident. He only happened to have been the owner. Even if he had been the driver at the time the accident happened it was wrong for the superintendent of police to treat him as he did before it had been established that the lorry driver (assuming it was Mr. Kariuki) had been responsible for the accident. In my opinion, acts such as these only succeed in estranging the relationship between the police and the public. Surely a person treated in the same fashion as Mr. Kariuki would be very reluctant to co-operate with the police in anything. My survey indicated that most people avoid getting into contact with the police even when they have useful information which the police require. The reason is because most policemen have conducted themselves in such a manner that members of the public both fear and hate them. Sometimes where a member of the police has been charged with an offence he might go as far as threatening those members of the public who are likely to give evidence against him. How is a member of the public likely to regard policemen who commit

crimes and then go around intimidating members of the public who are known to be potential witnesses against them (the police)? In February, 1981<sup>10</sup>, a Homa Bay magistrate withdrew the bonds of four policemen and remanded them in custody following complaints that the policemen who had been charged with theft were threatening those who were giving evidence against them. The threatened witnesses failed to appear in court to give evidence and the magistrate ordered that the policemen be remanded in custody until after the witnesses had testified.

It would appear therefore that the police and not the public are more to blame for the poor relationship existing between them and the public. Some of the accusations that have been levelled against the police in Kenya include:

- (a) the exaggeration by the police of evidence in court
- (b) ineptitude in handling the public
- (c) the use of unnecessary violence
- (d) Incivility to members of the public and
- (e) Unnecessary delay in attending to complaints by members of the public.

Looking at some of the illustrations, I have given in this chapter and in others, one cannot help but agree that the general conduct of our law enforcing officers leaves a lot to be desired. Any police force requires the co-operation of the public if it is to function efficiently. This co-operation cannot be forthcoming if our policemen do not attempt to cultivate an atmosphere of cordial relationship with the public by treating the public with more courtesy and sympathy. When policemen fail to be more decent in their handling of the public the result is that they arouse the hostility of the public, mar their relationship and hence make the performance of their duties a much more difficult and demanding task. A police force which solves many crimes but which treats people with undue severity would be in one sense efficient but it's practices would excite public protest. The efficiency of the police may therefore be less important than their responsiveness to the community they are required to serve. As D.H. Bayle has observed: "A police force may capture many criminals but if it does so by brutal methods, invading privacy and tramping individual rights in the dirt, such acts may invite public hostility".

EXPLANATIONS AS TO WHY THE POLICE ACT AS THEY

DO

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The foregoing paragraphs have indicated that to a large extent, it is the police who are responsible for their not -so - good relationship with the members of the public in Kenya. But it is not enough to stop there. I think it is important to try and find out why some policemen act with such invivility towards members of the public so that we can suggest what steps can be taken to remedy the situation and improve the relationship between the police and the public in Kenya.

In the first place, I think there is still that retention of colonial arrogance among members of our police force in Kenya. It is well known that during the colonial era, the police was an institution of oppression in the hands of the colonial masters. The policemen therefore enjoyed wide powers and discretion which they used in humiliating and frustrating other members of the public whenever the opportunity arose. This is evident from the writings of many authors<sup>12</sup> and from such cases as R V. GIKUNGU and GITHINJI E MWANGI V.R<sup>14</sup>. In the GITHINJI case a man charged with possession of a gun without lawful authority alleged at his trial that he had been beaten up by the police and forced to confess. The court deplored such police activities as being a negation of the rule of law but nevertheless the court upheld the conviction which carried a mandatory death sentence. By so doing the court was infact leaving the policeman free to treat anybody as he would wish. Our present policemen continue to have wide powers (for instance a policeman can arrest on reasonable suspicion that an offence has been committed) and most of them continue to have that colonial arrogance of regarding themselves as masters rather than servants of the masses. The police institution as inherited from the colonial era has not changed much. In my opinion it is this colonial hangover that partly explains why most Kenya policemen are fond of manhandling members of the public.

Another thing that explains why some policemen in Kenya subject members of the public to rude, uncourteous and unsympathetic treatment

is the inadequate training they undergo. Following my interview with the officer commanding Police in Mombasa Division (OCPD) Mr. Peter O. Mugo on 12th March, 1981, I was informed that a person recruited into the police undergoes training lasting a minimum of six months at the police training college at Kiganjo. However, others stay at the College even upto nine months especially those recruited from very remote areas such as the North-Eastern Province. I also found out that during the training at Kiganjo, much of what is taught consists of Law and discipline. A policeman (friend of mine) who did not want his name disclosed informed me that most of the time spent by police recruits during Training is consumed by instructions in practical matters such as routine procedures for patrolling, physical conditioning and the use of firearms. Apparently, very little time, if any, is devoted to courses in human relations or similar subjects that affect police encounters with the public. In my opinion this is not the proper approach in training the police. If the police are not taught social humanities such as ethics then it is easy to understand why most people blame them for their roughness in handling members of the public. It also appears that most policemen are not satisfied with their terms of employment in the Kenya Police Force. My research revealed that the lowest paid rank in the Force earned as little as KSh.515. However, the policeman is expected to do quite a number of jobs depending on where he is posted and what Branch of the Force he is working. Thus a policeman could find himself working long shifts in the odd hours of the night. This could include night - patrols sometimes under harsh weather conditions. The most overworked are normally the lowly ranked policemen and these are the ones that are in constant contact with members of the public. From my conversation with a few of these policemen, it occurred to me that their poor working conditions contributed much towards their care-free attitude both towards their work and towards the public generally. For one to be happy and carry on one's work in accordance with all regulations, one must be pleased and satisfied with the terms of work. An overworked and poorly paid worker can never be expected to be happy in his work or perform the work as he should. My contention is that our policemen have to be motivated if they are expected to abide by the law in carrying out their duties. Every peace-loving member of the public wants a policeman who conducts his duties within the ambit of the law. I would accordingly recommend that serious steps

should be taken to improve the working conditions of our policemen. The Police need more manpower and funds so that each single policeman is happy in his job. In this way I am sure the police will treat members of the public with more courtesy and the relationship between the police and the public will surely improve. The impatience with which most policemen treat members of the public will slowly disappear.

Closely connected with the policemen's working conditions are their standard of Education and methods of recruitment. Currently in Kenya, we find that the average policeman is normally of very low educational standards. This can be attributed to the fact that the terms of employment in the Kenya Police Force are not attractive enough to attract high-level manpower. Consequently we find that our policemen are in most cases <sup>secondary</sup> ~~secondly~~ school leavers or even standard seven drop outs. My submission is that this also helps to explain the rather unwelcome behaviour of some policemen towards members of the public. Some of them have developed a natural hatred of the more educated members of the public for no reason at all. This is verified by, for instance, the manner in which University Students are treated whenever they confront baton-wielding policemen on the campus or even in the streets. Their poor standards of education do not enable them to understand how best to approach members of the public without necessarily antagonising them. I would recommend that the Police Force should be made more attractive (by improving employment conditions) so that high level personnel can join the Force. I am sure that in that way, the police Force will have persons who are more capable and prepared to deal with the various and demanding jobs of the ~~various~~ policemen. At the same time, methods of recruitment should be revised. At present, the trend is that during recruitment of people into the police Force, there is too much emphasis on one's physical fitness. Normally, the officers carrying out the recruitment demand that all recruits run three or four times round the football field. During the race, some of the recruits fall out and thus automatically lose a place in the Police Force because the officers do not want to recruit "weaklings". Even though I would agree that the Police Force needs strong men and women, I do not agree that physical strength should be the criteria

methods used in selecting for and entry. Police powers and discretion must not be arbitrarily exercised. The police must realize that the arrest and containment of someone who is wholly innocent is the worst

of who is a better policeman. The best recruit is not only the physically fit one but also one who has the requisite standard of education that will easily enable him to learn how best to handle the public. The recruiting officers should also ensure that they recruit young men and women of good references from their former school. The practise, as I have personally observed, is that the recruiting officers only ask for one's Examination results certificate. I think it would be important if investigations were made to establish the general conduct of each recruit before he is allowed to join the Police Force. This can be done by asking for a report from each recruit's school concerning the recruit's general behaviour. In this way, I am sure we shall have a Police force composed of policemen and policewomen who are better equipped to maintain law and order in a more respectful fashion.

RECOMMENDATIONS AS TO HOW THIS RELATIONSHIP  
CAN BE MADE BETTER

Having established that the relationship between the police and members of the general public in Kenya is rather poor and having also found out that this poor relationship is largely attributed to police attitudes and behaviour, it is important to suggest ways as to how this relationship can be improved and made better.

In his interview with me, the Officer Commanding Police Division (OCPD) in Mombasa admitted that it is due to this poor relationship that members of the public are usually not willing to co-operate and act as police witnesses. He also pointed out that generally, the nature of police work makes policemen a hated section of any community. However, I do not entirely agree with the officer on this last point. Nobody would surely hate any policeman one comes across simply because he is a policeman. It is the manner in which a policeman does his job that makes the public hate him. For example, during the early 70's in my home district in Western Province, there was a police inspector who was nicknamed 'Hitler' because of his particularly rough and rude way of treating people arrested in his presence. Thus my recommendation would be that in order to attain good relationship between the police and the public, the police should examine critically the present methods used in maintaining law and order. Police powers and discretion must not be arbitrarily exercised. The police must realize that the arrest and punishment of someone who is wholly innocent is the most

plain and unequivocal denial of justice. Since the police are basically there to serve the ends of justice, they should recognize the fact that the acquittal of an innocent accused should be as important as the conviction of the guilty person. Thus practises such as twisting and making up evidence or framing charges against members of the public should be discouraged. The policeman should look upon himself as the servant and guardian of the general public and treat all law-abiding citizens with unfailing patience and courtesy.

I would also recommend a change in Police training methods and subjects. Much emphasis should be placed on subjects which will enable the police recruit to understand and appreciate the members of the public. The police should encourage their members to treat the public with tact and civility and only those recruits who are likely to adhere to these ethics should be selected.

Formal and informal contacts between the police and members of the public should be encouraged. The public should be encouraged to visit police stations and air their complaints whenever necessary. It would also help if police officers would visit schools and other community organizations to give talks on the nature of police work and thus try to cultivate a spirit of co-operation from members of the public. The Officer Commanding Police in Mombasa division Mr. Peter Muga was also of the view that a Police Officer in charge of district should normally accompany the area's District Officer whenever a Baraza was being held. This would mean that the Police Officer would be given a chance to talk to the public in his area and in turn any differences between the police and the public in that area would be looked into. Infact Mr. Muga pointed out to me that when he was stationed in Meru, District, he attended most Barazas with the local District Commissioner. I would agree that this would be a good way of improving police relationship with the public. There should be much more interaction between them in many social aspects. It is worth noting that at the moment we have a Kenya Police Band and Police Football Club. Such organizations increase social contact between the police and the public but much more needs to be done. The police must not be an isolated people. For example I deplore the current arrangement in Kenya whereby Police



F O O T N O T E E S

CHAPTER FOUR

1. See Appendix 'A'
- 1(a) Rehman Malala of the Faculty of Architecture
2. See SUNDAY NATION February 8 1981 page 3
3. W.C. EKOW DANIELS "INDIVIDUAL LIBERTY AND POLICE POWERS"  
Vol. 9 Reveiv of Ghana Law 1977 page 229
4. See letter to the editor by Peter Mbae in WEEKLY REVIEW  
February 6 1981 page 2
5. See THE STANDARD February 3 1981 page 7
6. See DAILY NATION March 6 1981 at page 10 under heading  
"Stock theft case fails"
7. JOHN WEISTART "POLICE PRACTISES" Oceana Publications  
Inc. New York 1974 page 37
8. Ibid at page 43
9. See THE STANDARD February, 28 1981 page 2
10. See DAILY NATION February 27 1981 page 12
11. D.H. BAYLEY "THE POLICE AND POLITICAL DEVELOPMENT IN INDIA"  
Princeton University Press (1974)
12. See For example "THE TRIAL OF DEDAN KIMATHI" Heinemen  
Educational Books (E.A) 1976 by Ngugi wa Thiongo & Micere Mugo
13. (1947) 22 K.L.R 129
14. (1954) 21 E.A.C.A. 410

My submission therefore is that if the police are to function properly in our society, there will have to be a vigorous commitment to change in attitudes on the part of the police. New kinds of training will have to be devised. Methods of recruitment will have to be scrutinized and modified so that the police have manpower of the type and quality and background sufficient for their many and varied tasks.

In the performance of their duties, the police should note that the primary police purpose should be service to the people. Integrity and fairness should be essential in all relations with the citizens and most important of all, the police must have a scrupulous regard for the inalienable rights of every citizen.

CONCLUSIONS

CHAPTER FIVE

In <sup>these</sup> ~~this~~ few chapters, I have tried to examine how police functions in Kenya are carried out in relations to the law. I have also tried to explain how the police in Kenya relate to the general public and to what extent this relationship is affected by the way our policemen conduct themselves in the performance of their duties. In other words the paper, as earlier indicated, has been concerned with looking at how our police force carried on its functions from a legal and social point of view.

As this paper has attempted to illustrate, all is not well with our police force when it comes to adherence to the law. In some cases, failure to adhere to the law can be attributed to the fact that not all policemen can be said to be well versed in the law itself. But in some cases one cannot escape from the conclusions that some policemen simply ignore the law. As I have also indicated such conduct on the part of the police does not help to establish good relationship between the police and the public. Where the relationship is not cordial, one can be sure that the public won't give much co-operation to the police. But co-operation with the public is vital if any police force is to be efficient.

My submission therefore is that if the police are to function properly in our society, there will have to be a vigorous commitment to change in attitudes on the part of the police. New kinds of training will have to be devised. Methods of recruitment will have to be scrutinized and modified so that the police have manpower of the type and quality and background sufficient for their many and varied tasks.

In the performance of their duties, the police should note that the primary police purpose should be service to the people. Integrity and fairness should be essential in all relations with the citizens and most important of all, the police must have a scrupulous regard for the inalienable rights of every citizen.

As for the Parliament, I would suggest that it is not a good idea that a legislation be passed empowering the police to kill people suspected of armed robbery as some members of Parliament have suggested. A specific piece of action which Parliament could take to help deal with crime is appropriating more funds to the police to enable them to do a better job of maintaining law and order. In my view, what the police need are not wide powers to shoot on sight. Instead, the police need more vehicles. They need more fuel. They need more manpower and they need better pay and better training. All these will contribute much towards making it easier for our police force to maintain law and order in a more respectful manner.

APPENDIX 'A'

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DAILIES

1. THE STANDARD )  
 2. THE DAILY NATION ) Two of the leading Daily Newspapers in Kenya.

APPENDIX 'A'

QUESTIONNAIRE

- Q1. Have you ever gone to the Police for help?  
 (a) YES \_\_\_\_\_  
 (b) NO \_\_\_\_\_
- Q2. How were you treated by the Police?  
 (a) Courteously and sympathetically \_\_\_\_\_  
 (b) Rudely and unsympathetically \_\_\_\_\_  
 (c) Indifferently \_\_\_\_\_
- Q3. Were you satisfied with what the police finally did for you or do you think they should have done more?  
 (a) Satisfied \_\_\_\_\_  
 (b) Should have done more \_\_\_\_\_
- Q4. When the Police come around asking questions about an offence or crime do they generally act courteously and fairly or are they generally rude and tricky? .....
- Q5. When the police take people to the Polic Station for questioning even those who are not criminals, do they (police) often threatened or beat them?

- Q12. What in your opinion is the relationship with the public?
- (a) Threaten or beat only criminals \_\_\_\_\_
  - (b) Threaten or beat even non-criminals \_\_\_\_\_
  - (c) Threaten or beat no one \_\_\_\_\_
- Q6. Have you ever seen any policeman strike a person?
- (a) YES, frequently \_\_\_\_\_
  - (b) YES, rarely \_\_\_\_\_
  - (c) NO \_\_\_\_\_
- Q7. If yes, what was the situation/occasion? .....,.....
- Q8. Do the Police show favouritism? If yes explain how .....
- Q14. What should be done to improve the .....
- (a) YES \_\_\_\_\_
  - (b) NO \_\_\_\_\_
  - (c) Sometimes \_\_\_\_\_
- Q9. Have you ever seen a policeman take a bribe? Yes
- (a) YES \_\_\_\_\_
  - (b) NO \_\_\_\_\_
  - (c) Sometimes \_\_\_\_\_
- Q10. Has it even happened that you wanted to complain about something the police had done but you decided not to because you did not think it would do any good .....
- (a) YES \_\_\_\_\_
  - (b) NO \_\_\_\_\_
- Q11. What was it that you wanted to complain about .....
- .....
- .....
- .....

Q12. What in your opinion is the chief characteristic of police relationship with the public? In the courts, do they twist

(a) antagonistic evidence in order to gain \_\_\_\_\_?

(a) They twist evidence \_\_\_\_\_

(b) Cordial \_\_\_\_\_

(b) They make up evidence \_\_\_\_\_

(c) Neutral \_\_\_\_\_

(c) Twist and make up evidence \_\_\_\_\_

(d) Do not twist/make up evidence \_\_\_\_\_

(e) No opinion \_\_\_\_\_

Q13. If your answer to Q12 in (a) who do you blame for this state of affairs?

(a) UPATICE! \_\_\_\_\_ the Public

(b) \_\_\_\_\_ the Police

(c) \_\_\_\_\_ both

Q.14 What should be done to improve the relationship .....

Q15 If you know that the police were coming around to you asking questions and looking for information, would you try to avoid being questioned and having contact with them?

(a) \_\_\_\_\_ Yes

(b) \_\_\_\_\_ NO

Q16 Have you ever been in Police Custody?

(a) YES \_\_\_\_\_

(b) NO \_\_\_\_\_

Q17 How did they handle you? .....

Q18 When the police present cases in the courts, do they twist and/or make up evidence in order to convict people?

- (a) They twist evidence
- (b) They make up evidence
- (c) Twist and make up evidence
- (d) Do not twist/make up evidence
- (e) No opinion

NAME

OCCUPATION