

Complaints Handling Mechanism Modes by State Security Agencies: A Case of the Independent Policing Oversight Authority in Kenya

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ABSTRACT

This paper seeks to delve into interrogation of complaint handling mechanism modes by State Security Agencies in Kenya through the case of Independent Policing Oversight Authority (IPOA). While benefiting from the following objectives; *finding out existing complaints against State Security agencies, examining Independent Police Oversight Authority's (IPOA) Complaints Handling Mechanism (CHM), and establishing the Nature of complaints against Security Agencies*; the study envisages to contribute to the unending debate on accountability of Security Agencies and filing of complaints on abuses thereof as a channel to access to justice. The study is a product of field data in addition to document analysis and information gathered from relevant written sources. The analyzed findings is presented in the study through graphs, tables, and content analysis. Complaints filing against Security Agencies is a universally approved mode of checking excesses by the Security Agencies with civilian oversight establishments such as IPOA being the focal points of complaints handling. This paper therefore, explored IPOA's Complaints Handling Mechanism (CHM) as a gateway to police accountability in Kenya. The study established that complaints against State Security Agencies in Kenya are broad in nature and to address them, IPOA adopted an Open Door Policy for complaints handling. Further as a complaints management strategy, IPOA embraced cooperation with other state agencies as a viable route to actualizing its mandate. In conclusion, the study established that the CHM had positively impacted on complaints reporting. The study recommends that IPOA as an institution controlling security sector behavior should focus on the after-processes to complaints reporting so as to realize its founding mandate.

Keywords: Complaints Handling Mechanisms, Police Accountability, Policing Oversight, Independent Policing, IPOA, Policing Complaints, State Security Agencies, National Police Service, *Nyumba Kumi*,

INTRODUCTION

State Security Agencies such as the police are equipped with the powers to arrest, detain, and deploy use of force in maintaining public order and security; this monopoly to use force by the police is often times subjected to abuse hence putting up a case for accountability in policing. Accountability arises when law enforcement officers and/or their departments are held responsible for efficacy in services delivery to the policed community, while handling them with fairness, with dignity, and within the confines of formal law (Walker and Archbold, 2020). United Nations Code of Code for Law Enforcement Officers, further affirms that position by outlining that every law enforcement agency should be responsive and accountable to the policed community, (UN, 2011). In Kenya, police misconducts has been an enduring feature of policing as the police have been under the control of the ruling regimes. This is likened to the colonial misuse of the police to “protect the interests of the administration – not to serve the interests of the general populace” Kivoi, (2022) with the abuse and misuse of policing power being witnessed not only in apprehension of

suspects but also when police officers are called in to stop demonstrations or resolve disputes. Deployment of brute force by the police during their operations has many a times led to the loss of too many Kenyan lives with many others remaining maimed.

In the 2007/08 Post-Election Violence, the police was largely blamed for their alleged action and/or inaction in the violence which led to the death of 1,133 people and 3,561 being reported to have sustained various bodily injuries. The Commission of Inquiry on Post-Election Violence (CIPEV) in its report following PEV recommended that the grand-coalition government formed after PEV prioritizes police reforms that would ensure Kenya had a professional police service that would be more accountable and that which would enjoy police integrity, thereby paving way for the creation of the Independent Policing Oversight Authority (IPOA) to offer civilian oversight to the National Police Service of Kenya (NPS). This recommendation was actualized by the National Assembly of Kenya through Act No. 35 of 2011. IPOA is thus the institution mandated to “(a) hold the Police accountable to the public in the performance of their functions; (b) give effect to the provision of Article 244 of the Constitution of Kenya (2010); and (c) ensure independent oversight of the handling of complaints by the Service (IPOA Act, 2011).

Filing of complaints against Security Agencies is a universally accepted concept and protected by international human rights conventions as a key tool for keeping checks on human rights violations and enshrining oversight on Security Agencies, (AMAN, 2018). The complaints handling mechanism of IPOA as the NPS’ oversight body thus became the key interest for the study. Mixed methods research design was employed in a sequential manner, where qualitative data was gathered first followed by quantitative data; this design was of great utility as it allowed for collection of both quantitative data with numerical values especially on unique cases in complaint reporting procedures while the qualitative aspect enabled the study to generate rich and detailed information based on individual respondent’s experiences with complaints filing against the police. The respondents for the study were IPOA staff, police officers, victims of police misconducts and actors within the criminal justice system of Kenya.

The process of getting complaints doesn’t seem a major challenge to many institutions. Commission on Administrative Justice (2016) records that while complaints boxes are common in public institutions, most institutions do not have systematic processes of receiving, recording and resolving the complaint. The after-processes therefore is something that calls for necessary interrelated conscious procedures towards success in dealing with complaints. Among the many ways to address such as observed by Button Mark (2014) who points to the imperative of turn around strategies in complaints management, “companies should have documented and formalized standard operating procedures relating to the way security services are provided, including the secure storage of client information and documentation and reporting of all incidents of concern. There should be appropriate mechanisms in place for the receipt and investigation of complaints by any person against civilian private security companies and staff. Complaints should be investigated impartially by appropriate bodies and, where guilt is established, the body should have powers to sanction operatives and providers.” The argument being presented here is the need to have better flow of information whether verbally or through devices, listen to complaints, storage, investigation, and execution of complaints’ client(s).

Additionally, State security agencies can borrow some tips from private or non-state agencies on handling complaints and make suitable applications. Button further points that, complaints against civilian private security officers ought to be independently probed and, when severe enough, tried by an appropriate neutral body. Nation states may well wish to consider establishing a level of objectivity in the handling of complaints, with an independent department or even a separate body to manage their resolution. Complaints bordering on violence, human rights violations and racist deeds should be dispensed with by the nation state’s criminal justice system; low-level complaints such as rudeness can be addressed by the security services provider rather than the regulator. Another important dimension of a complaints handling mechanism is the provision of good publicity about the nature of complaints, which complaints can be

made, how to complain and the possible outcomes. His argument brings to fore impartiality in investigation, independence in operation, segregating actors in relation to complaints levels, and choosing publicity or otherwise.

Tang (2023) is of the view that, proper complaints management is a mark of good governance. Doing so not only depends on well accomplished frontline staff but on the commitment, understanding and attention of the heads of bureau and departments and all levels in between. Good complaints handling does not imply consenting to each and every request, but it does call for keen listening, understanding, explaining and helping wherever possible. We must address all complaints in a fair and professional manner, and communicate the outcomes honestly and expeditiously. Complaints handling is fact finding to establish the truth, being fair to all complainants and staff. The significance of complaints filing is therefore to help institutions notice weak areas for continual improvements and inculcation of performance-oriented culture.

DISCUSSION OF STUDY FINDINGS

This section presents a robust discussion on the field findings thematically sectorized in regards to the study topic. The themes surround the existing complaints against State Security Agencies, a debate on use of force by State Security Agencies, IPOA's Complaints Handling Mechanism and nature of complaints against State Security Agencies. In the realization of which, the study reached out to police officers (serving, interdicted and retired), victims of various police misconducts, IPOA staff and other court actors in Kenya for primary data collection.

(a) Finding it out -the Existing Complaints against State Security Agencies

Merrick Bobb affirms that self-policing necessarily and unavoidably creates biased results that even a reasonable, honest and well-intentioned police officer investigating Police misconducts will definitely succumb to pressures from the bosses to exonerate the suspected police officer. To realize an accountable police therefore, police oversight duties such as complaints handling and investigations should not be undertaken by the police.

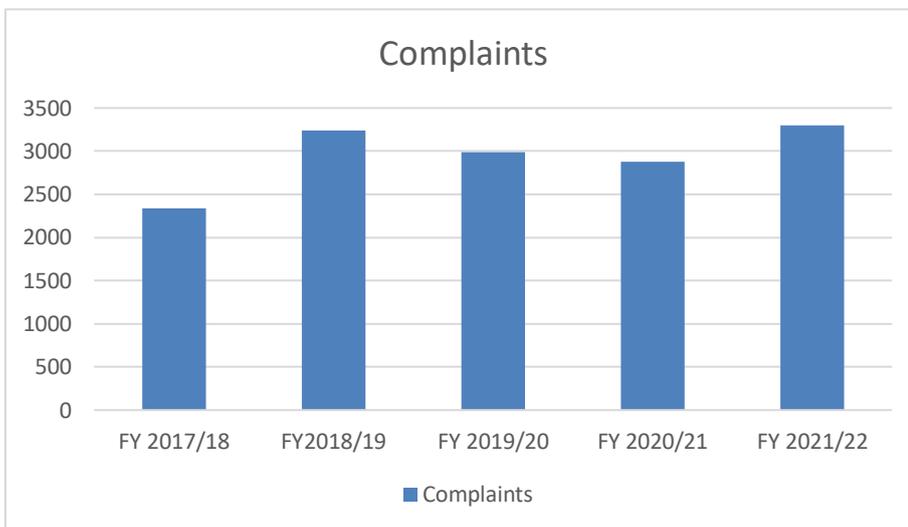
In the United States of America, the concept of civilian police oversight as a mechanism to entrench police accountability was welcomed from way back as early 1940s, this was occasioned by the numerous cases of racial prejudice and unjustified shootings suffered in the hands of the police. To deescalate the ever rising cases of police misconducts, in 2014 H.E Barack Obama formed The President's Task Force on 21st Century Policing with the aim of restoring community trust in policing (US, 2015). The implementation of the findings thereof yielding no fruit. In June 2020, *USA Today* published national statistics of Police misconducts based on records from police agencies, prosecutors' offices, and other state agencies. Approximately 200,000 cases of police misconduct were reported with 22,924 of them being of use of excessive force; 3,145 allegations of rape, child molestation and other acts of sexual misconduct; and 2,307 cases of domestic violence (Kelly and Nicholas, 2020). England and Wales in 1977 established Police Complaints Board (PCB) as the focal point for filing complaints of Police misconducts, an initiative which was met with stiff opposition within the police leadership occasioning the resignation of the Metropolitan Police Commissioner, Sir Robert Mark who equated police oversight mechanisms to eroding the independence of the police, (Loader and Mulchy, 2001; Smith, 2002; Luke Staddon, 2021).

In Africa, Independent Police Investigative Directorate (IPID) of South Africa was the pioneer police oversight body established under her constitution to weed out police misconducts, however despite years of existence, complaints against police have been on an upward trajectory. On average IPID records about 5,500 cases of police misconducts annually, a culture that has been and still remains a dent on her police's public image. In the year 2021/2022, IPID received 5,295 complaints of police misconduct; the nature and representation of the complaints against the police being, assault at 64%, discharge of firearms at 14%,

deaths resultant from police action at 8% and deaths in custody at 4%, (IPID Annual report 2021-2022).

In the Kenyan context, IPOA has had a steadily increasing number of clients since its inception in 2012 registering 594 complaints of Police misconducts which has risen to 3,302 in 2022 and is still on an upwards trajectory, (IPOA Annual report 2012/13 and IPOA performance report July – December 2021 and IPOA Performance report January – June 2022). Cumulatively, IPOA received a total of 14,750 complaints against police officers for financial years 2017/2018 to 2021/2022 as shown in Figure 2.1 That said, Lamboo (2010) asserts that for every socially unacceptable behavior, there is a dark number. That is to say, the above depicted official data just give a glimpse of the prevalence of the socially unacceptable behavior – Police misconducts. National Crime Victimization Survey (2015) reiterates this by demonstrating that even-though crimes occur, not all victims report them for criminal justice processing hence there is a dark number in Police misconducts too.

Figure 2.1 Complaints received by IPOA between 2017 and 2022



Source: (Researchers, 2023)

(b) Use of force by the police

Questions on unlawful use of force has for decades defined discussions on police accountability. Adams (1999) as referenced in the book *Understanding Police Use of Force* by Alpert and Dunham points out that the amount of force used by the police in any given situation should be proportional to the threat faced and restricted to the least amount necessary to achieve the policing goal. He further makes emphasis that any force applied out of this bound is excessive. In addition, the Law Enforcement Use of Force, prescribes that the degree of force used by the police officer is termed excessive when the deployment of that force is unreasonable and unnecessary in gaining compliance from the policed community a legal standpoint affirmed by section 49(4) and Sixth Schedule (a) of NPS Act, 2011. The standards for police operations in Kenya is thus outlined that, a police officer who performs an official duty or exercises police powers shall perform such duty or exercise such power in a manner that is lawful. Further in the Sixth Schedule (a) of the same Act, sets permissible conditions for use of force by the police as;

1. A police officer shall always attempt to use non-violent means first and force may only be employed when non-violent means are ineffective or without any promise of achieving the intended result and
2. The force used shall be proportional to the objective to be achieved, the seriousness of the offence, and the resistance of the person against whom it is used, and only to the extent necessary while adhering to the provisions of the law and the Standing Orders.

The police thus have authority to use force when it is deemed absolutely necessary, in which case the above legal provisions must have been explored and exhausted. Noble and Alpert, (2009) note that in spite of the selfless and honorable policing work undertaken by tens of thousands of police officers in the USA daily, the entire profession suffers irreparable damage due to remote acts of Police misconducts. Cases of Police misconducts have therefore historically dealt police departments' serious image dent thereby fortifying the essence of complaints filing against state security agencies.

(c) Independence Police Oversight Authority's (IPOA) Complaints Handling Mechanism (CHM)

The study established that IPOA has in place a CHM that hinged on:

1. An open door policy on lodging of complaints by members of the public and police officers alike. The mediums of complaints reporting include: walk-in of victims, relatives/ or friends to the victims; telephone call through its toll free number of 1559; email and letter reporting and referrals by state or non-state agencies.
2. Own motion institution of inquiries by IPOA which is well premised in the legal framework establishing IPOA. Section 7(1a) of the IPOA Act, 2011 empowers it to pick-up complaints on Police misconducts for independent inquiries. The act dictates that upon receipt of the complaints they are reduced into writing.
3. The complaints are then subjected to internal sieving process and categorization based on seriousness of the allegations of Police misconducts as reported.
4. Finally, on complaints handling mechanisms, management decision is prescribed for each received complaint of police misconduct. These decisions include, approval of complaints for investigations, preliminary inquiries on complaints by the complaints department where information is insufficient or the nature of complaint does not warrant an investigation despite prima facie evidence showing a police misconduct and also due to the broad nature of complaints of Police misconducts, IPOA refers complaints it considers best suitable to be undertaken by other states agencies such as IAU, NPSC, NPS and EACC. It is worthy to note that some of the complaints are upon review marked as closed because of their nature. The efficacy and legitimacy of the CHM rests on management decision; genuine representation of the victim's concerns and transparency is called for to win the public's trust.

Table 4.1 IPOA's Complaints Handling Mechanism (CHM)

Stages	Complaints handling mechanism(CHM)	Modalities
1	Open Door Policy (ODP)	Walk ins
		Telephone calls through 1559
		Partner agencies referrals
		Letters and emails
	Own Motion Institution of Inquiries (OMII)	Social media
		Electronic media
Print media		
2	Process and categorizations	Categorization based on nature of police misconduct
3	Management decision	Preliminary inquiries
		Approval for investigations
		Approval for inspection and monitoring
		Referrals to partner agencies i.e. EACC, NPS, NPSC,IAU
		Approval for closure

(Source: Researchers, 2023)

The research established that IPOA has from its inception adopted an amiable approach to its customers thereby encouraging lodging of complaints against police officers for Police misconducts. To measure the effectiveness of CHM, the study employed Likert’s scale ranging from 1 to represent strongly disagree, 2 for disagree, 3 for neutral, 4 for agree and 5 for strongly agree. A representative sample of twenty staff was interviewed during the study and the findings posted as below in table 4.2

Table 4.2 – IPOA staff self-evaluation on the efficacy of the complaints management system

IPOA staff self-evaluation on the efficacy of the complaints management system					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly disagree	1	5.0	5.0	5.0
	Disagree	5	25.0	25.0	30.0
	Agree	8	40.0	40.0	70.0
	Strongly agree	6	30.0	30.0	100.0
	Total	20	100.0	100.0	

From the above table, the study established that 30% of IPOA staff strongly agreed that the complaints management system put in place was effective in handling cases of Police misconducts, 40% agreed that the complaints management system effective in handling complaints, 25% of IPOA staff disagreed and 5% strongly disagreed with the effectiveness of the CHM. The victims of police misconduct however, disapproved of the efficiency of IPOA’s CHM (M=2.76, SD=1.208); As presented in table 4.3, 8.8% of the victims of Police misconducts averred that the CHM in place was efficient in addressing cases of Police misconducts, 19.1% agreed that the CHM was efficient, 28.7% were neutral in their responses, 25.7% of the respondents disagreed and 17.6% of the victims strongly disagreed that the CHM was efficient in addressing reported cases of Police misconducts. This measure of efficacy was based on the turnaround time in resolving individual reported cases of Police misconducts. To address this disapproval, IPOA should keep alive the legal maxim – justice delayed is justice denied, quick turnaround time in addressing these complaints is deterrent thereby contributing to improved police accountability; IPOA’s key aspiration.

Table 4.3 – Victims’ approvals on the efficiency of IPOA’s CHM

Victims’ approvals					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly disagree	24	17.6	17.6	17.6
	Disagree	35	25.7	25.7	43.4
	Neutral	39	28.7	28.7	72.1
	Agree	26	19.1	19.1	91.2
	Strongly agree	12	8.8	8.8	100.0
	Total	136	100.0	100.0	

With the broad nature of complaints reporting and preponderance, it is therefore desirable that IPOA’s staff capacity measures up with complaints lodging; this way it will dispense with the complaints in a timely manner and effectively to the satisfaction or expectations of the victims of Police misconducts. Also, staff activities breed institutional cultures. Cultures such as police misconducts usually are born of actions of select police officers within the police organization which then spread to their colleagues within the police organization through the bad apple principle. Enculturation of retrogressive values in institutions handling complaints against Security Agencies like IPOA, thus serves as a recipe for elusive security sector

accountability. Corruption for example limits access of institutional services to those with the means while locking out the vast majority who form the largest share of IPOA’s clientele base.

The study, in measuring the levels of impartiality employed in handling of complaints by IPOA interviewed the third set of respondents who are actors in the criminal justice system. The findings is presented in table 4.4 below which gave an affirmation that IPOA is impartial in handling complaints of Police misconducts (M=3.09, SD=1.483). Such a positive feedback on IPOA’s impartiality in its CHM is indeed a gesture that a decade after inception, IPOA has been consistent to the founding ideals of impartiality. Further this impartiality nod has also enabled IPOA as an institution to remain appealing to the external environment who are the consumers of its services. This impartiality badge has therefore sustained complaints reporting by victims of Police misconducts.

Table 4.4 Criminal justice actors’ responses on impartiality of IPOA

		Court			
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly disagree	5	14.3	14.3	14.3
	Disagree	12	34.3	34.3	48.6
	Neutral	2	5.7	5.7	54.3
	Agree	7	20	20	74.3
	Strongly agree	9	25.7	25.7	100.0
	Total	35	100.0	100.0	

In the contrary, the police officers interviewed for this study registered their dissatisfaction with IPOA’s CHM indicating that IPOA’s CHM does not accord them justice (M=2.79, SD=1.241), as tabulated below in table 4.5. Based on this finding, it is evident that for IPOA to effectively police the Police it has to work on its relations with the Police especially on mandate awareness within the NPS. Nonetheless, a favorable rating from the police was and still is a near impossibility pegged on the inherent fear of the police being held to account for their actions or omissions by over sighting authorities and laxity in adjusting to global best policing practices. Necessary steps should be put in place to help the police understand the accusations levelled against them and accorded audience in relation to the complaint. In this IPOA’s complaints handling system will be well suited to effectively dispense with complaints of Police misconducts to the satisfaction or thereof of both the victims and the accused police officers.

Table 4.5 – Showing police officers’ levels of satisfaction with IPOA’s complaints handling system

		Police			
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly disagree	21	17.2	17.2	17.2
	Disagree	31	25.4	25.4	42.6
	Neutral	38	31.1	31.1	73.8
	Agree	17	13.9	13.9	87.7
	Strongly agree	15	12.3	12.3	100.0
	Total	122	100.0	100.0	

This study further sought to evaluate the confidentiality of information measures put in place within the CHM. A discussion of the findings depict an approval of the confidentiality standards employed by IPOA in handling complaints. It established that IPOA employs sufficient confidentiality levels in handling

information reported to them by victims of Police misconducts (M=3.88, SD=1.232). It is critical to note that by the very nature of complaints handled by IPOA and the people complained against being state Security Agencies, confidentiality of information is of essence. A gap in confidentiality measures put in place leads to premature exposure of the victim(s), witnesses and likely pieces of evidence IPOA may rely on in proving the offence. Concealing of victims' identification particulars is therefore necessary in IPOA's CHM.

Table 4.7 Victims' evaluation of IPOA's confidentiality in handling complaints

Victims' evaluation of IPOA's confidentiality measures					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly disagree	7	5.1	5.1	5.1
	Disagree	19	14.0	14.0	19.1
	Neutral	13	9.6	9.6	28.7
	Agree	42	30.9	30.9	59.6
	Strongly agree	55	40.4	40.4	100.0
	Total	136	100.0	100.0	

A question of staff integrity is thus posted, like Caesar's wife, IPOA staff assigned such delicate assignments should be persons of unflinching integrity and true to the call of duty as the needle is to the pole.

(d) Nature of complaints against Security Agencies

IPOA on receipt of complaints from both the general public and police officers triggers its internal processes into action so as to assign each complaint best mode of dispensation. These decisions are based on the nature of complaint reported, gravity of the reported complaint amongst other administrative factors. Based on IPOA's annual reports and bi-annual reports for the period under study, 2017 to 2022: complaints of police fatal shooting were at 4.09%; death in police custody were at 1.34%; enforced disappearances were at 0.77%; shooting causing injuries were at 2.82%; sexual offences were at 1.29%; physical assault were at 12.43%; abuse of power were at 11.92%; unlawful detention were at 4.06% while 61.28% categorized as others. The data depicts that IPOA registers less complaints in its key mandate areas in regards to policing oversight. Table 5.1 shows the nature of complaints received by IPOA for the period 1st July 2017 to 30th June 2022.

Table 5.1 Nature of complaints reported against Security Agencies in Kenya

Nature of Police misconducts	Cases intake in %				
	FY 2017/18	FY 2018/19	FY 2019/20	FY 2020/21	FY 2021/22
Fatal shootings	3.33%	3.68%	5.38%	4.34%	3.73%
Death in police custody	1.15%	1.45%	1.07%	1.25%	1.76%
Enforced disappearance	0.39%	0.46%	0.87%	0.94%	1.18%
Shooting causing injuries	6.33%	2.93%	1.91%	1.42%	1.51%
Sexual offences	2.09%	0.90%	1.00%	1.42%	1.06%
Physical assault	12.18%	9.21%	16.45%	12.88%	11.42%
Abuse of police powers	2.18%	8.84%	18.12%	14.93%	15.54%
Unlawful detention	5.77%	3.74%	3.84%	3.12%	3.82%
Others	66.57%	68.79%	51.35%	59.70%	59.99%

Source: (Researchers, 2023)

Arising from the nature of complaints reported, best mode of dispensation is assigned each complaint in the complaints management system. This includes: undertaking preliminary inquiries by the complains team, approval for investigations by IPOA, approval for monitoring by IPOA’s Inspections Research and Monitoring department, referral to IAU for action, referral to the Sub County Police Commander (SCPC) or Officer Commanding Station (OCS) as deemed appropriate, referral to other partner agencies or even closure.

For the period under review, the decisions reached on complaints management are as tabulated in table 5.2 below.

Table 5.2 Complaints management

Complaints management	FY 2017/18	FY 2018/19	FY 2019/20	FY 2020/21	FY 2021/22	TOTAL
Complaints reported	2339	3237	2991	2881	3302	14750
Approved for investigation	482	489	763	625	781	3140
Referred IAU	119	57	10	30	24	240
Referred to Inspections	171	289	326	358	370	1514
NPSC	90	73	68	50	35	316
NPS	415	415	271	303	109	1513
KNCHR	10	0	0	0	0	10
DCI	12	151	108	82	35	388
Preliminary inquiry	546	795	933	840	1450	4564
Complaints closed	381	876	432	560	468	2717
Other agencies	113	92	80	33	30	348

(Source: Researchers, 2023)

CONCLUSION

The study established that IPOA as an institution influencing security sector behavior to compliance with acceptable policing standards has in place necessary mechanisms to handle arising cases of misconducts. The ODP and the elaborate CHM had had a positive contribution in complaints reporting to IPOA against the police. Conversely, IPOA’s turnaround time in handling complaints is that which needs to be worked on for efficacy in realizing desired levels of security sector accountability in Kenya. That said, confidentiality of information standards exercised by IPOA was given a clean bill of health by the respondents for the study.

RECOMMENDATION

Complaints reporting to public institutions is agreeably not a challenging one; nearly all public institutions in Kenya have complaints boxes at their entrances. The gist of complaints reporting becomes complaints handling mechanism which is thus hinged on the after-process to complaints reporting. IPOA should thus assure its clients of fair-mindedness and efficiency in the CHM with intent to eliminate any notion of the biased institution leanings. Further, IPOA should improve on its turnaround time in complaints handling; that way it will improve the general relationship between the State Security Agencies and the police community and inspire public confidence in policing.

LIMITATIONS FOR THE STUDY

The study benefited much from document analysis on IPOA. Though to date, specific literature on

complaints handling against State Security Agencies in Kenya is fast developing which is a result of constitutional inception of IPOA as a civilian complaints handling institution. This paper among many others will thus fill expert literature gap requiring more similar studies.

ACKNOWLEDGEMENT

This article is dedicated to all victims of violations by State-Security Agencies – tire not in the pursuit for justice and IPOA staff – Kenya counts on you as selfless guardians in policing and a ray of hope to the downtrodden. Special gratitude goes to Vivian Odhiambo, Pildas Odidi and Joseph Mboha for being the research’s support system.

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