

THE INTERNATIONAL JOURNAL OF HUMANITIES & SOCIAL STUDIES

Disciplinary Procedures and Justice for Accused Officers: A Case of the Administration Police Service in Nairobi City County, Kenya

David Njoroge Muniu

Sub-County Police Commander, Kenya Police Service, National Police Service, Kenya

Dr. Kibaba Makokha

Lecturer, Department of Philosophy, Kenyatta University, Kenya

Abstract:

It had been observed that a number of Administration Police officers that had been subjected to disciplinary proceedings had appealed in court the outcomes of the disciplinary process citing procedural unfairness that resulted to unjust outcomes. The purpose of this study was to explore the nexus between disciplinary procedures and justice in the Administration Police Service. The study was conducted in Nairobi City County, Kenya and was anchored on theory of justice by John Rawls. A mixed research design of cross-sectional survey design and exploratory research design were employed on a target population of 679. The sample size was calculated using Yamane sampling formula generating a sample size of 251 officers that were requested to fill the questionnaires. This was followed by multi-stage sampling that included stratified random sampling at the sub county level to get the actual participants in the study for each stratum. Purposive sampling was used to get 8 key informants two groups of 6-8 police officers totaling to 14 police officers that had been subjected to disciplinary proceedings to participate in focus group discussion. The study established that majority of presiding officers were not independent in making ruling and are not experience in application of their discretionary power in orderly room proceedings. The study determined that there was need for change on disciplinary procedures in APS and recommended that presiding officers be trained and retrained on disciplinary process.

Keywords: *Arbiter, disciplinary procedures, justice, discretionary power, orderly room proceedings*

1. Introduction

This chapter begins with an overview of the context and background that introduces the study. This is followed by statement of the problem, purpose and accompanying research objectives and questions. It also covers justification and significance of the study before describing the scope and limitation and concludes with a section on the assumptions of the study.

1.1. Background to the Study

Discipline is a measure taken by management against an employee or a member who contravenes organization's guidelines or code of ethics, Grogan (2009). Discipline is a critical element in every organization. It guides how one communicate, relate with fellow employees and handles emerging issues. Organizations are individuals who pull together as workers with the aim of attaining companies' objectives. However, workers come to companies with different expectations, skills, beliefs and interests, and these differences may cause conflict in a company. The principal aim of discipline is therefore to restore a worker back, where possible, to an optimum level of production and conduct rather than to punish an employee, Mintah (2011) as cited by Tumo (2017).

According to Nova (2012), disciplinary procedures set out the stages through which any disciplinary action should proceed. The procedure provides an acceptable mechanism within which management may exercise control over employees when their performance or behaviour does not reach the required standards Dzimbiri (2009). Disciplinary procedures should be applied consistently and management needs to stick to the written rules when disciplining workers.

This helps in eliminating discrepancies in rulings and unnecessary appeal as a result of varying outcomes for the same disciplinary offences or harsh penalties. Armstrong (2010) posited that absence of a written or implied disciplinary code was a recipe for disruption to the effective functioning of the organization.

Justice is therefore key in any disciplinary procedure. Justice is perceived fairness that comes from a thorough and correct disciplinary process where similar offences attract similar punishments and vice-versa. Where justice is preeminent as a critical value of a company's leadership philosophy and practised through a code of well expounded regulations by the organization's leadership, it may create a system-wide dedication which is important, special and appealing to the sight of workers and clients Cropanzano, Bowen and Gilliland (2007). Organizational justice denotes the workers conviction on workplace processes, interaction and outcomes to be impartial and correct, Baldwin (2006).

Generally, the more a worker perceives accepted and appreciated by the company, the better their attitude and acceptance of organization culture, processes and rules.

In United States of America, Stephens (2011) in his study on 'police discipline, a case for change' found that in most disciplinary proceedings, the focus is predominantly punishment. Majority of senior officers construed punishment as a magic bullet which when applied was likely to discourage other officers from engaging in misconduct. This led to failure to explore other corrective actions that could be used to transform an officer that had been found guilty. The use of punishment as a catalyst to enhance change of behavior in an indiscipline officer may be positive or productive. A negative outcome can also result especially where the officer is dissatisfied. Looking at how discipline cases are handled or prosecuted may shed light as to whether the resentment is as result of the process or otherwise.

In South Africa, Der bank, Engelbrecht, & Strümpher (2010) in a study on perceived fairness of disciplinary process in the civil service found that workers had no faith in the disciplinary process which they termed as an emotional torture. Expert participants confirmed that discipline regulations were reasonable. This appeared to suggest that it was not enough to have impartial disciplinary procedures. In the Administration Police Service, it is the senior officers who interpret and apply procedures in the disciplinary proceeding, but whether there is prejudice of justice was the basis of this study.

Resolving issues of impartiality when instituting internal police discipline is founded on Rawls' (1971) theory of Justice which is anchored on two basic principles of fairness that ensure that a society operates or exist within accepted moral standards. One of the principles provides for the right of every individual to enjoy basic freedoms that are in tandem with the rights and freedoms of other people. Principle two of this theory asserts that position occupied by people socially and economically should benefit all and the opportunity to occupy them should not be limited to a particular group of people. Principle one of this theory stresses that all individuals should have fundamental rights and freedoms and in particular highlights that all human beings are equal under the law which should be applied fairly to all persons Rawls (1985). Rawls emphasized that justice as fairness is what one deserves, be it procedurally or in terms of outcomes. By their nature, the disciplinary proceedings of the Police officers are designed to respect the legitimate interests of the alleged offender (Baran, 2017).

In the National Police Service in Kenya, the disciplinary procedures are documented in manuals and they clearly indicate the types of offences (unaccepted behaviors) and general range of punishments. The presumption in the Administration Police Service, is that a senior police officer as an arbiter in a disciplinary proceeding has the capacity and competence to use the discretionary power conferred by SSO, 2017 CAP 30(7) to determine the appropriate punishment in line with the offence committed. This study sought to interrogate whether use of discretionary power by the presiding officer availed justice

Senior officers from the rank of Police Inspector and above preside over disciplinary proceedings in Administration Police Service. In all instances, the NPSA 2011, National Police Service Commission (discipline) regulations, 2015 and Service Standing Orders (SSO, 2017) stipulate the process which is clear to the accused, however there continues to be appeals in law court against the process and decisions of the disciplinary proceedings. In a number of these cases, the appeals have succeeded citing technicality in the disciplinary procedure, (Kenya Law web page n.d).

Independent Police Oversight Authority (IPOA) board end term report (2014-2018) indicated that 748 complaints from police officers and the public were referred to Internal Affairs Unit for review. Some of these cases by police officers were complaints on unfair disciplinary procedures. Kenya Constitution 2010 Article 47(1) states that 'Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair'. This study was seeking find out whether use of; the discretionary power of presiding officer in disciplinary procedures rendered justice to accused Administration Police officers.

Although there were studies that had been conducted in Kenya on disciplinary procedures (Apalia, 2017; Tumo, 2017), the focus had been on relation of disciplinary procedures to performance. There was scarcity of empirical information on how disciplinary procedure affected procurement of justice by police officers. This study was seeking to bridge this gap through interrogating the relationship between Police disciplinary procedures and justice to Administration Police officers in Nairobi City County, Kenya.

1.2. Statement of the Problem

Disciplinary procedure in the Administration Police Service is well captured in three policy documents namely SSO 2017, National Police Commission Discipline Regulations 2015 and NPSA 2011. The provisions of the procedure are made clear to an accused police officer during disciplinary proceedings; however, police officers continue to successfully appeal in the court of law and obtain nullification of the decisions of disciplinary proceedings citing unfairness and injustice of the process. IPOA board report 2014-2018 indicated 748 complaints by police officers and the public were referred to Internal Affairs unit. Several of these complaints by police officers were on unfair procedure in the processing of their disciplinary cases. Although erring Police officers in Administration Police Service continue to be subjected to disciplinary proceedings, little is known on how this process affects dispensing of justice. What is generally acknowledged is that fairly treated officers, may embrace correction process as a management tool and avoid resentment, which is critical for an organization practicing justice.

However, there is scarcity of empirical information on how exercise of discretionary power of the arbiter in determining the culpability or innocence of an accused police officer in the disciplinary procedures affects justice to police officers. This study therefore intended to explore the relationship between Police disciplinary procedures and justice to Administration Police officers in Nairobi City County, Kenya.

1.3. Purpose of the Study

The purpose of the study was to interrogate the relationship between disciplinary procedures and justice to Administration police officers in Nairobi City County, Kenya.

1.4. Objective of the Study

To examine the influence of discretionary power of an arbiter in disciplinary procedures on justice to a police officer;

2. Literature Review

Groeneveld (2005) in a study on discretionary power of police officers defined discretion as the authority to decide a matter but the outcome cannot be objectively proved to be right or wrong. Application of discretion is critical for police officers to maintain law and order. Use of discretionary power has at times resulted to outcry from the public especially where an incorrect decision has been made. Incidentally, professional police officers have described the ability to use common sense to attend different situations as a perfect demonstration of discretionary power at work in policing. Although many studies showed police officers required discretionary power in policing work, there was a gap on how its application in disciplinary procedure influenced justice to the accused police officer.

Police work requires a lot of discretion because a law enforcer makes choices and judgements that are dependent on his own analysis of a crime. Grey (1979) states that discretion is also defined as the ability to make decision without any existing guidelines. The criteria used to judge statutory discretion is defined in previous precedent cases and there is common understanding that discretion was exercised if the decision was rationally made unswayed by immaterial deliberations and not subjectively or unlawfully.

Academics of policing have asserted that security duty is discretionary in that it encompasses choosing or judging. Finnane, (1990) noted 'every level of police work, especially at micro level, involves choice on the part of police officer'. Galligan, (1994) in the same vein stated that law enforcers have extensive power in determining whether to arrest a person for an offence committed, to arraign in court or warn and release, to advise of settlement of a matter out of court or negotiate over pleas or even to which court to present a matter for adjudication. According to Stenning (2009) discretion is visible throughout the criminal justice system right from apprehension to judgement and can be differentiated from 'principle of legality' which ostensibly tries to minimize use of discretionary power in civil justice system. Although, use of discretionary power by police officers in the course of policing work was moderated by the justice system, there was a gap in study on use of discretionary power in disciplinary proceeding and how justice is dispensed to an accused police officer especially where appeal was not pursued because an officer was charged in absentia.

The fact that use of discretionary power has no set boundaries, there may be an element of injustice because of inconsistencies that may be witnessed from how different officers can variedly handle a similar situation. Every police officer has authority to interpret and apply the statute as he deems right. This could result to different interpretation leading to unpredictable outcomes and confusion. This is likely to happen where officers are less experienced or the rules are not clear (Young, 2011).

Lipsky, as cited by Heilman (2006) in proposition of origin of policies through organization practices asserted that a street level bureaucrat uses discretionary power when in the course of their work, make decisions based on their own independent judgement. Lipsky's definition of street level bureaucrat perfectly matches what is involved in policing. Although, police officer sometimes works without supervision, he must be fair, objective and apply laws and regulations to effectively address a given situation. Police officers handle occurrences and situations that call for discretionary decisions such as use of force, dispersion of crowd, searching of passengers or crackdown on illicit brews and drugs.

McCluskey, Varano, Huebner, and Bynum (2004), have posited that the style of management of police leadership contributes to police officer's conduct. Management style is not simply the rules or regulations, but 'a general underlying principle that can be inculcated to the members of the organization'. Management style provides direction or 'tones' or 'organizational ethos' that form foundation of officers' discretionary decisions Mastrofski, Ritti, and Hoffmaster (1987). Studies have shown that police officers use discretionary power in their duties like whether to arrest offenders or to prosecute right from a micro level, in all aforementioned scenarios, an element of urgency was observed. However, there was a gap on how the same power was used where urgency was not a factor like in disciplinary proceedings and how justice was rendered to the accused police officer.

3. Methodology

3.1. Research Design

A mixed research design of both cross-sectional survey and exploratory research design was used. The cross-sectional survey design enabled capturing of responses (quantitative and qualitative data) from both officers that had and those that had not undergone through disciplinary proceeding, while exploratory research design was purposively used in focus group discussion with a few officers that had undergone disciplinary proceedings and interviews with key informants. The study covered the entire Nairobi City County. The adoption of a mixed research design assisted in getting a balanced or wide range of responses from respondents.

3.2. Site of the Study

The study was conducted in Nairobi City County which is also the capital city of Kenya. The County has had the highest number of Police officers appealing the outcome of the disciplinary proceedings (Kenya Law web page n.d). The county is bordered by Kiambu to the North and West, Kajiado to the South and Machakos to the East. The study involved Administration Police officers.

3.3. Target Population

The targeted population comprised officers of Administration Police Service working in Nairobi City County, who are 679 officers. This is the total population of officers serving Nairobi City County after the reorganization of the National Police Service (Administration Police personnel records- Nairobi Region, 2019). These officers are distributed within twelve Sub-Counties namely regional headquarters, Starehe, Westland, Njiru, Lang'ata, Dagoreti, Embakasi, Mathare, Kibra, Kasarani, Makadara and Kamkunji. Although there are more than 5000 Administration Police Officers whose units are headquartered in Nairobi such as Embakasi Campus 'A', Government Buildings Security, (RDU) and Critical Installation Protection Unit (CIPU), the study purposively excluded them because their officers are deployed all over the Republic and their inclusion in the study would require more time and cost.

Using a purposive sampling technique-maximum variation sampling also known as heterogeneous sampling, Nairobi was used as the area of study. Using this technique, one is able to capture a wide range of perspectives to the thing that one is interested in studying Bernard (2002). In this case, the study was interested in an area with a total representation of APS disciplinary cases appealed against. Nairobi had majority of disciplinary cases appealed in court and nullified (Kenya Law Web n.d).

3.4. Sampling Technique and Sample Size

The study adopted multi-stage sampling that included stratified random sampling technique because the population of Administration Police in Nairobi City County is small and heterogeneous and exist in strata viz; gazette officers (Commissioner, Senior superintendent, Superintendent and Assistant Superintendent), members of inspectorate (Chief Inspector and Inspector) and junior officers (Senior Sergeant, Sergeant, Corporal and Constable). The sample size was calculated using Yamane (1967) sampling formula as cited by Kimotho (2018) generating a sample of 251 officers that were requested to fill the questionnaires.

The 251 officers were divided into strata of rank depending on the proportion to the total sample size using formulae that were coined from the Yamane formula to arrive at each stratum and Sub County contribution to the sample size. This was followed by stratified random sampling at the sub county level to get the actual participants in the study. In addition, document or data review was done at Administration Police headquarters to identify both categories of officers that had conducted disciplinary proceeding and those that had been subjected to it. These categories of officers were purposively selected (8 key informants to be interviewed for in-depth information and two groups of 6-8 police officers totaling 14 police officers for focus group discussion) as part of the 251 respondents making the sample size

S/NO	REGION/ SUBCOUNTY	CP	SSP	SP	ASP	CI	IP	S/SGT	SGT	CPL	PC	POPULATION
1	Regional Headquarters	1	2	1	0	2	5	5	3	14	67	100
2	Starehe				1	1	2	1	3	3	36	47
3	Westland				1	1	2	2	5	7	53	71
4	Njiru					1		2	4	5	54	66
5	Langata					1	2	3	3	4	29	42
6	Dagoreti					1	2	2	2	5	32	44
7	Embakasi					1	3	2	3	5	36	50
8	Mathare				1	1	1	2	2	2	17	26
9	Kibra					1	3	1	3	4	24	36
10	Kasarani					1	3	3	6	2	45	60
11	Makadara					1	3	3	4	8	49	68
12	Kamkunji				1		1	4	6	3	54	69
	Total	1	2	1	4	12	18	30	44	62	496	679

Table 1: Population of Administration Police Officers in Nairobi Command

Source: Administration Police Region Headquarters, 2020

Formula I: Sample Size Calculation

$$n = \frac{N}{1 + N(e)^2} = \frac{679}{1 + 679(0.05)^2}$$

=251 Officers

n-sample size

N-Population size

e-Sampling error or Confidence interval or level of precision

Formula II: Contribution of Stratum (Each Rank) to Sample Size

$$S_s = \frac{Sp * n}{N}$$

Where: S_s = Contribution of stratum (Each rank) to Sample size

Sp = Population size for stratum (Rank)

N = total population size

n = total sample size

Formula III: Contribution of Each Sub County to the Stratum of the sample size

$$S_b = \frac{R_{sb} * S_s}{Pr}$$

Pr

Where:

S_b = Contribution of Each Sub County to the Stratum of the sample size

R_{sb} = Rank in sub county

Pr= Population of a Rank in All Sub-Counties

S_s = Contribution of stratum (each rank) to Sample size

S/NO	REGION/ SUBCOUNTY	CP	SSP	SP	ASP	CI	IP	S/SGT	SGT	CPL	PC	POPULATION
1	Regional Headquarters	0	0	0	0	1	2	2	1	5	26	37
2	Starehe				0	0	2	0	1	1	14	18
3	Westland				1	1	1	1	2	3	20	29
4	Njiru					1	0	1	2	2	11	17
5	Langata					0	0	1	1	2	11	15
6	Dagoreti					0	0	1	1	2	13	17
7	Embakasi					0	1	1	1	2	15	20
8	Mathare				0	0	1	0	0	0	7	8
9	Kibra					0	1	0	1	2	10	14
10	Kasarani					0	1	1	2	0	18	22
11	Makadara					1	1	1	2	3	20	28
12	Kamkunji				0	0	0	2	2	1	21	26
	Sample Size	0	0	0	1	4	10	11	16	23	186	251

Table 2: Size of Stratum per Station

Source (Self, 2020)

3.5. Research Instrument

The researcher collected primary data using questionnaires that had both open and closed ended questions (quantitative and qualitative data). These questionnaires were administered through a survey. Document data review checklist was used to identify both categories of officers that had conducted disciplinary proceedings and those that had been subjected to it. In addition, interview schedules were used to guide interviews with seven key Informants (senior administration police officers who had conducted disciplinary proceedings) and group discussion with Administration Police officers that had been subjected to disciplinary proceedings.

3.6. Data Analysis and Presentation

This involved interpreting information gathered from respondents once questionnaires and tape-recorded interviews and discussions were received. Questionnaires were examined for comprehensiveness to ensure that only instruments that were completely filled were used. The researcher used the appropriate analysis techniques to analyze the data gathered. Descriptive statistics comprising of frequency tables, graphs and percentages were used to analyze quantitative data. Data was analyzed with the help of statistical package for social science (SPSS) in order to generate frequency tables and percentages. It has been observed that percentages are easy to calculate and understand (Babie, 2011) and are the most widely used and understood standard of proportion. Qualitative data analysis involved coding the

data into themes and capturing some discussions and interviews in verbatim, then generalizing from the themes and verbatim about the phenomena in question and interpreting in light of the available literature.

3.7. Data Management and Ethical Consideration

In the research project, as a prerequisite to gather data, approval was sought from the relevant institutions namely, Kenyatta University, National Commission for Science Technology and Innovation and Administration Police headquarters to conduct the study. Consent was also sought from individual participants before being interviewed. In order to encourage free expression and preserve the right to privacy, participants were not required to indicate their names in the questionnaires while pseudo names were used in the key informants' interviews and FGD.

Confidentiality was also ensured by not disclosing data obtained from third parties without approval of the initial source. In addition, information gathered was not revealed in a manner that made it possible connect it to a particular person. The information collected was only used for academic purpose.

4. Theoretical Framework

Rawls theory of justice was used in this study. Rawls (1971) posited that justice is founded on two major principles that ensure a society operates or exists within accepted moral standards. One of the principles provides for the right of every individual to enjoy basic rights and freedoms that are in tandem with the freedoms of other people. Principle two of this theory asserts that positions occupied by people socially and economically should benefit all and that the opportunity to occupy those positions should not be limited to a particular group of people. Principle one of this theory further stresses that all individuals should have fundamental rights and freedoms and in particular highlights that all persons are equal under the law and that the law should be applied fairly to all persons Rawls (1985).

The reason why these principles are accepted as principles of justice is because they guarantee equality and equity in a society. No human being is favoured by the law and therefore each person values the presence of the other person in the society. We all have equal opportunity to pursue our desires and aspirations but are also required to ensure that we don't infringe other peoples' rights and freedoms. Rawls emphasized the idea of justice as fairness. According to Rawls every rational man should desire a fair society because in fairness everyone gets what he/she deserves.

In relation to this study, every police officer has a right to be treated fairly according to the rule of law (disciplinary procedures) and their application ought to be just. Employees will accept the verdict of a disciplinary process if the procedure followed adhered to the principles of organizational justice (Cropanzano & Greenberg, 1997). A judgment can be said to be fair when the verdict is balanced and correct. Balance in this case means that similar punishment or actions would be rendered to cases having similar nature while correctness denotes excellence (i.e., accurateness, uniformity, neutrality, precision, procedural meticulousness, compatible with moral principles) of decision-making process (Thompson & Heron, 2005).

4.1. Conceptual Framework

A conceptual framework is a basic requirement in any research. A concept is a representation of independent and dependent variables or a symbol. The study presented discretionary power of the presiding officer, as independent variable while justice as the dependent variable which was intervened by other factors namely, organization policies and legal policies. The study sought to find out whether the discretionary power given to presiding officer in disciplinary procedures resulted to a just and fair outcome according to a theory of justice by Rawls (1971).

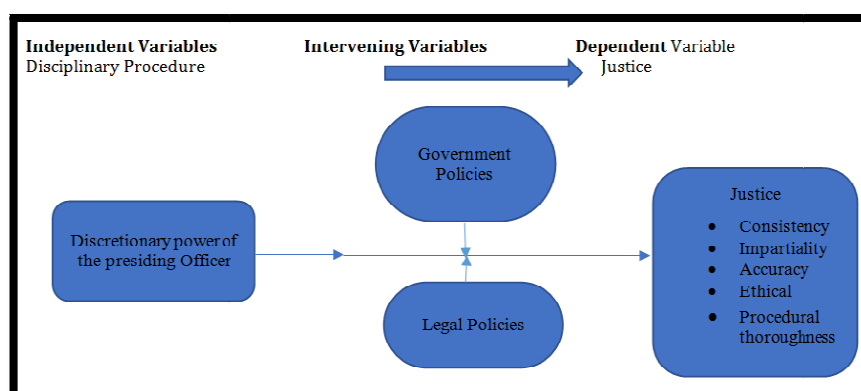


Figure 1: Conceptual Framework
Source: (Self, 2019)

5. Presentation of Findings and Discussions

5.1. Introduction

The chapter presents the analysis of the study findings based on the data and information obtained from the research questionnaires, focus group discussion and interview with key informants. The analysis is done using descriptive statistics and presented in tables. The interpretation is done using frequencies, mean and standard deviations and for

qualitative data using the available literature. The analysis starts with the response rate, the demographic information and the findings based on the study objectives.

5.1.1. Response Rate

The study sampled 251 respondents to fill in the questionnaires form in which 208 were able to fill and return the questionnaires making a response rate of 82.9% as presented in Table 3. The response rate is regarded excellent. According to Mugenda and Mugenda (2003), a response rate of 50% is adequate for analysis and reporting; a rate of 60% is good and a response rate of 70% and over is excellent. Based on the assertion, the response rate in this study was excellent.

	Frequency	Percentage
Complete	208	82.9
Incomplete	43	17.1
Total	251	100

Table 3: Response Rate for Questionnaires
Source: Field Data, 2020

The study also sampled from the 251 respondents, 14 participants who had been subjected to ORP and requested them to participate in the FGD. 11 out of 14 respondents participated making a response rate of 78.6% which was excellent for this study as represented in Table 4.

	Frequency	Percentage
Participated	11	78.6
Did not participate	3	21.4
Total	14	100

Table 4: Response Rate in FGD
Source: Field Data, 2020

The study further sampled from the 251 respondents, 8 participants who had presided over ORP and requested them to participate in the Key informants' interview. 6 out of 8 respondents participated making a response rate of 75% which was excellent for this study as represented in Table 5

	Frequency	Percentage
Responded	6	75
Did not respond	2	25
Total	8	100

Table 5: Response Rate for Key Informants
Source: Field Data, 2020

5.2. Demographic Information

The demographic characteristics included respondents' gender, rank distribution, years in AP Service, number of years served in current station and the level of education.

5.2.1. Distribution of Respondents' Gender

The study sought to establish the respondents' gender. The study findings are presented in Figure 2

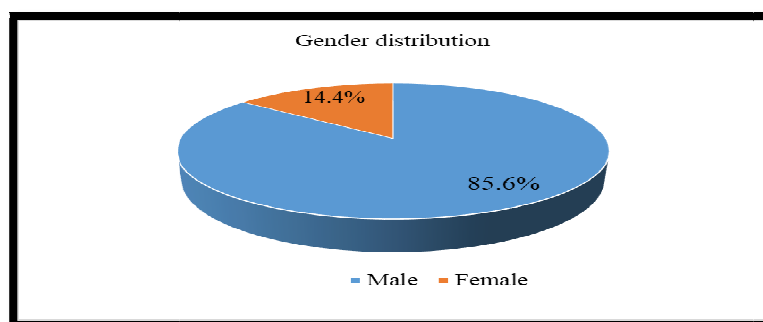


Figure 2: Distribution of Respondents' Gender
Source: Field Data, 2020

The study sought the respondents' gender. As from the findings provided in Figure 2, majority of the respondents were male (85.6%) while (14.4%) were female. This shows that there were more male police officers serving Nairobi City County as compared to the female officers. The wide difference in gender distribution might have been as a result of lack of

recruitment of female in APS before the year 2003. The first national recruitment of female officers was in the year 2003. Since then, the ratio of female to male recruitment has been 1:2.

5.2.2. Distribution of Respondents by Rank

The respondents were requested to indicate their position/Rank in the service. The findings are presented in Figure 3

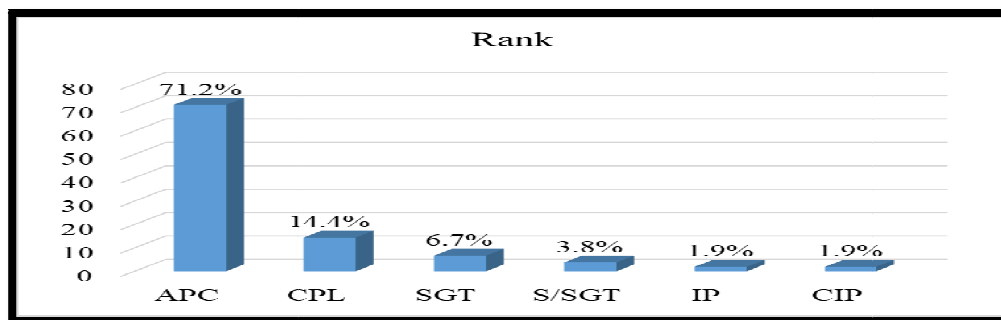


Figure 3: Distribution of Respondents by Rank
Source: Field Data, 2020

The findings showed that majority of the respondents were APC at (71.2%), followed by CPL at (14.4%), SGT at (6.7%), S/SGT at (3.8%) and IP and CIP both at (1.9%) each. The respondents from the rank of CPL down to CIP were fewer because they are supervisory ranks. However, the findings showed that different respondents from the service ranks participated in the study thus giving a broader representation for the issue under research.

5.3. Years of Service in APS

The study sought to establish the respondents' years of service in APS. The results are presented in Figure 4.

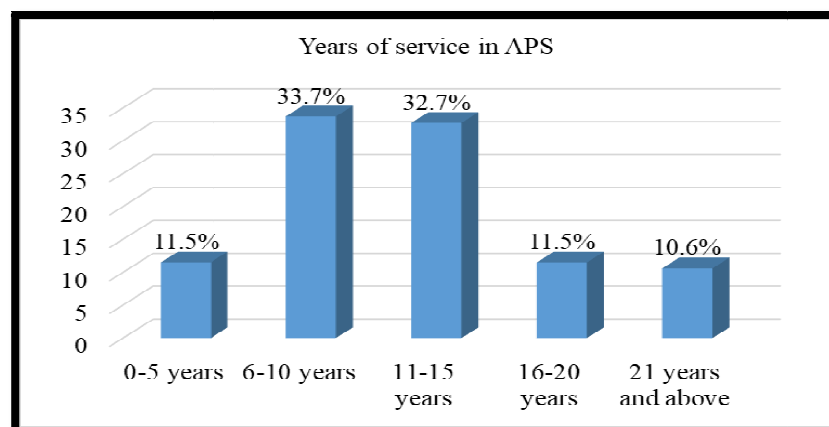


Figure 4: Years of Service in APS
Source: Field Data, 2020

The findings in Figure 4.5 show that majority of respondents at (33.7%) had served in the APS for 6-10 years, followed by those that had served for 11-15 years at (32.7%). Respondents that had served between 0-5 years and 16-20 years were (11.5%) each. Officers that had served in the APS above 21 years were (10.6%) of the respondents. Results reflected a cohort of a relatively average experience in service. Respondents who had served between 6 years and above 21 years totaled to 88.5% which could be an indicator that they were aware of disciplinary procedures.

5.3.1. Years of Service in Current Duty Station

The respondents were also requested to indicate the number of years they had served in the current duty station. Table 4 presents the findings.

	Frequency	Percent
0-5 years	184	88.5
6-10 years	20	9.6
11-15 years	4	1.9
Total	208	100.0

Table 6: Years of Service in Current Duty Station
Source: Field Data, 2020

The study results show that majority of the participants (88.5%) had been in the current duty station for 0-5 years, (9.6%) of the respondents indicated a period of 6-10 years while (1.9%) of the respondents showed they had been in the current duty station for 11-15 years. This showed that majority of the respondents (88.5%) had served a period of 0-5 years in their current duty station and were likely to be conversant with station dynamics and disciplinary requirements and processes.

5.3.2. Level of Education

The study sought to determine the respondents' level of education. Table 5 presents the findings on the level of education.

	Frequency	Percent
Primary	4	1.9
Secondary	146	70.2
Tertiary College	10	4.8
University	48	23.1
Total	208	100.0

Table 7: Level of Education

Source: Field Data, 2020

In this study the education level of the respondents was assessed because it is believed that education enhances the ability of a person to reason and look at issues more critically and make informed decisions when responding to the questionnaire. The findings show that majority of the respondents (70.2%) attained secondary level of academic education, (23.1%) had attained university level, (4.8%) had attained tertiary college level, while (1.9%) had attained primary level of academic qualification. The study showed that a total of (98.1%) of the respondents were of secondary education level and above. This could be as a result of the APS recruitment policy of minimum entry level of education being KCSE D+ and above. The (1.9%) primary level of education may be representing officers recruited before the new recruitment policy came to effect and are still in service. The high percentage (98.1%) of officers with secondary education could be an indicator that the majority of the respondent had the capacity to effectively respond to questions on issue under research.

5.3.3. Subjection to an Orderly Room Proceeding (ORP)

The study also sought to find out whether the respondents had been subjected to an orderly room proceeding (ORP) of the Administration Police Disciplinary process.

	Frequency	Percent
Yes	72	34.6
No	136	65.4
Total	208	100.0

Table 8: Subjection to an orderly room proceeding (ORP)

Source: Field Data, 2020

The findings presented in Table 4.9 reveal that (34.6%) of the respondents had been subjected to an orderly room proceeding (ORP) while 65.4%) had not. The findings indicated a ratio of 1:2, implying that for every three respondents one had been subjected to ORP (disciplinary process in the National Police Service) while approximately two had not. This in essence meant that a third of the total respondents had a personal experience of the matter under research. It was therefore possible to get respondents for FGD and interviews that enriched the study. This provided an opportunity for the interviewer to seek to clarification on any issues raised by the respondent or ask probing or follow-up questions.

5.4. Discretionary Power of an Arbiter in Disciplinary Procedures

The following is the presentation of findings and discussions in relation to objective number one of the studies. The respondents were requested to indicate the extent to which they agreed with statements on the effect of discretionary power of an arbiter in disciplinary procedures on justice to an accused police officer. The findings are presented in Table 7

	N	Min	Max	Mean	Std. Deviation
Presiding officers are balanced or objective in adjudicating disciplinary cases	208	1	5	4.15	1.04
Presiding officers are good listeners	208	1	5	3.62	1.09
Presiding officers are experienced in dealing with disciplinary procedures or proceedings	208	1	5	4.11	0.89
Presiding officers DO NOT allow the accused officer to argue their case without harassment	208	1	5	3.26	1.09
Presiding officers have control over orderly room	208	1	5	3.93	1.15
proceeding giving all parties equal chance	208	1	5	2.04	0.76
Presiding officers are NOT independent in making a ruling	208	1	5	2.04	0.76
Valid N (listwise)	208				

Table 9: Discretionary Power of an Arbiter in Disciplinary Procedures and Justice

From the study findings, majority of the respondents disagreed that presiding officers were balanced or objective in adjudicating disciplinary cases as demonstrated by a mean of 4.15 and a standard deviation of 1.04. They further disagreed that presiding officers were experienced in dealing with disciplinary procedures or proceedings as demonstrated by a mean of 4.11 with a standard deviation of 0.89 and that presiding officers have control over orderly room proceeding giving all parties equal chance as illustrated by a mean of 3.93 and a standard deviation of 1.15. They also disagreed that presiding officers were good listeners as shown by a mean of 3.62 and a standard deviation of 1.09.

The findings are consistent with Groeneveld, (2005) who asserted that discretion is the authority to decide a matter and where the outcome cannot be objectively proved to be right or wrong. The challenge of using discretionary power is that it can produce negative consequences when an incorrect decision is made. Common sense is a phrase used to explain the need of discretionary ability in policing. The problem with this is that it can produce inconsistent outcomes for the same offence.

Majority of the respondents agreed that presiding officers were not independent in making a ruling as demonstrated by a mean of 2.04 and a standard deviation of 0.76. However, majority of the respondents were neutral on the statement that the presiding officers do not allow the accused officers to argue their case without harassment as shown by a mean of 3.26 and a standard deviation of 1.09.

The findings are inconsistent with Rawls' theory of justice. Rawls' (1971) theory of Justice which is anchored on two basic principles of fairness that ensure that a society operates or exist within accepted moral standards. One of the principles provides for the right of every individual to enjoy basic freedoms that are in tandem with the rights and freedoms of other people. Principle two of this theory asserts that position occupied by people socially and economically should benefit all and the opportunity to occupy them should not be limited to a particular group of people. Principle one of this theory stresses that all individuals should have fundamental rights and freedoms and in particular highlights that all human beings are equal under the law which should be applied fairly to all persons Rawls (1985). The responsibility of procedure and growth relies on each and every individual. By doing so we create a level playing field. Rawls principle of justice postulates that a process is just if the outcomes are fair, consistent and correct.

The study further conducted focus group discussion (FGD) with two groups of six (6) and eight (8) respondents that were selected through purposive sampling after document review at AP headquarters. The respondents were requested to state their opinion on the power given to a presiding officer to determine the punishment to be rendered to an accused police officer in disciplinary proceedings. One respondent stated that;

'though the presiding officer conducts the ORP in presence of the assistant presiding officer and the observer, they have little input in the final punishment rendered'.

This was consistent with National Police Standing orders (SSO) CAP 30 Appendix 30(a) on treatment of disciplinary process. Column (1) of the table of the referred appendix indicate the rank of a police officer empowered to enquire into offence and or award punishment. The assumption is that an officer of a given rank authorized to inquire into an offence or preside over a disciplinary proceeding is competent or has the ability to render a just and fair punishment to

a defaulter or an accused police officer. It is also reinforced by observation from Finnane, (1990) who noted that police work by nature is discretionary 'every level of police work, especially at micro level, involves choice on the part of police officer'.

Another respondent in the FGD observed that;

'the verdict appears to be determined by the presiding officer alone yet the defaulter is presented to a disciplinary committee'. (Source Field data 2020)

The finding seems to suggest that the verdict by the presiding officer was subjective or procedurally unfair. The Kenya Constitution 2010 Article 47(1) emphasizes that 'Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair'.

One more respondent in (FGD) noted that;

"the discretionary power given to presiding officer to determine the punishment to be rendered to the accused is unguided and hence leading to different presiding officers rendering different punishment to a similar disciplinary offence. I was late to attend duty and was given the same punishment as my colleague who was absent for one day" (Source: Field data 2020)

This finding was inconsistent with Heilman (2006) in proposition of the origin of policies through organization practices asserted that a street level bureaucrat uses discretionary power when in the course of their work, make decisions based on their own independent judgement. However, the finding in this case seems to undermine a cardinal principle of justice that similar cases are given similar treatment and dissimilar cases, dissimilar treatment in proportion to the difference.

The study further held interviews with 8 key informants. One key informant stated that;

'discretionary power of the presiding officer enhances justice in disciplinary procedures because I act without undue influence and I am also assisted by the deputy presiding officer and an observer of the proceedings'. (Source: Field data 2020)

The finding indicates that the decision is by a committee and is not solely an individual verdict. The observation is consistent with (Varano, Huebner, & Bynum, 2004), who posited that the style of management of police leadership contributes to police officer's conduct including the application of discretionary power.

Another key informant stated that;

'I have conducted several ORPs and the fact that I rose from a constable to the level of an Inspector, I cannot be unjust to my juniors but I am always guided by the SSO'. (Source Field data 2020)

The finding suggests that experience is critical in the use of discretionary power. This is inconsistent with Young (2011) observation that the fact that use of discretionary power has no set boundaries, there may be an element of injustice because of inconsistencies that may be witnessed from how different officers can variedly handle a similar situation. Every police officer has authority to interpret and apply the statute as he deems right. This could result to different interpretation leading to unpredictable outcomes and confusion. This is likely to happen where officers are less experienced or the rules are not clear

The overall findings in this study indicate that use of discretionary power depends on the individual person which may have effect on justice. The use of a disciplinary committee in Administration Police Service disciplinary procedures may help in the interpretation of the rules and improving on accurateness, uniformity, neutrality, clearness, procedural meticulousness, compatibility with ethical standards, thus meeting the first principle of Rawls' (1971) theory of justice that upholds that all people need to have the familiar basic civil freedoms and more so right to be treated in harmony with the statute and right to fair treatment.

On the flip side use of discretionary power in disciplinary procedures may result to either too broad or too narrow outcomes that may cripple justice due to arbitrariness that may be exemplified by the disciplinary subordinate committee or the presiding officer as a result of varying experience in the disciplinary process.

5.5. Changes Required in Disciplinary Procedures to Enhance Justice in Administration Police Service

The following is the presentation of findings and discussions in relation to the need for change to the discretionary power of the presiding officer. The respondents were requested to indicate whether there are changes required in the disciplinary procedures in order for justice to be enhanced to an accused police officer before ORP. The findings are presented in Table 10

	Frequency	Percent
Yes	146	70.2
No	62	29.8
Total	208	100

Table 10: Are There Changes Required in Disciplinary Procedures
Source: Field Data 2020

The study results show that the majority of the participants (70.2%) opined that the current disciplinary procedures required changes, while (29.8%) of the respondents indicated that the disciplinary procedures did not require any change. The findings could be a pointer that although the disciplinary procedures in the NPS are well expounded in the SSO 2017, NPSA 2011 and NPSC regulations 2015, they may need to be reviewed.

The study further conducted FGD and sought to find out which changes were required in disciplinary procedures to enhance justice to Administration Police Service Officers. The respondents gave several suggestions. One respondent stated that;

'the accused or defaulter should be given fair chance to argue their case without being intimidated by the officers handling ORP as the officer authorized to inquire into an offence and or award punishment is normally senior in rank than the accused. The cases should be handled by an impartial organ like NPSC'. (Source Field data 2020).

In the current disciplinary procedures, the presiding officer is assisted by the deputy presiding officer, while the defaulter has an observer to ensure that the process adhered to, is in accordance to service standing orders. The submission of the observer on the fairness of the process should be able to contribute to just determination of a disciplinary case.

Another respondent in the FGD suggested that;

'the standing orders should be amended on the disciplinary actions for fair judgment and that the presiding officers and those in the disciplinary panel should be well trained to serve their purpose correctly'. (Source Field data 2020).

Training and retraining are key to capacity building and since the role of presiding over a disciplinary matter may not be a daily occurrence, it is a valid suggestion that when need arises to conduct an ORP, the presiding officer has the requisite expertise to deliver procedural justice.

Another responded proposed in the questionnaire that;

'the presiding officers should be more than one and each to write his own ruling to avoid possible biasness in the proceedings and judgment which may emanate from personal individual conflicts'. (Source Field data 2020).

The proposal to have more than one presiding officer separately giving their verdict would be a necessary burden for the sake of justice. Apparently, appeal for any decision is provided for by NPSC and Court of law which gives an avenue for addressing any dissatisfaction. This arrangement serves the same purpose that having more than one presiding officer could be trying to address.

Another key informant in the interviews observed that;

'disciplinary procedures are applicable to any member of Administration Police including those who serve as presiding officers, deputy presiding officers, prosecutors and observers in disciplinary committee'. (Source: Field data 2020)

Another respondent indicated in the questionnaire that;

'experience and training of members selected in a disciplinary committee and guidelines provided by the SSO 2017 guarantee a just and fair outcome of the disciplinary proceeding or process'. (Source: Field data 2020)

The findings of the study indicated that there was divided opinion on whether or not the disciplinary procedures in the Administration police service required change in order to enhance justice to an accused police officer in ORP. Whereas majority of key informant preferred the disciplinary procedures to remain in their current state, majority of other respondents in FGD and response from questionnaires proposed change in disciplinary procedures.

6. Summary, Conclusion and Recommendations

6.1. Introduction

This chapter presents a recap of the study and its findings, the conclusions, recommendations and suggestions for further studies. The presentation is based on the study objectives.

6.2 Summary

The purpose of the study was to interrogate how disciplinary procedures of APS impact justice of accused Administration police officers in Nairobi City County, Kenya. The objectives were to examine how discretionary power of an arbiter in disciplinary procedures affects justice to a police officer and to establish the changes that may be required in disciplinary procedures to enhance justice of accused officers in Administration Police Service. A mixed research design of both cross-sectional survey and exploratory research design were used. The targeted population comprised officers of Administration Police Service working in Nairobi City County. The sample size was calculated using Yamane sampling formula generating an initial sample of 251 officers that were requested to fill the questionnaires. The study also had 14 officers for FGD and 8 key informants selected from the 251 respondents of the sample size. Appropriate analysis techniques were used to analyse the data. The following is the summary of the findings;

6.2.1. Discretionary Power of an Arbiter in Disciplinary Procedures

The study established that majority of presiding officers are not independent in making a ruling neither are they balanced or objective in adjudicating disciplinary cases. This category of presiding officers is not experienced in dealing with disciplinary proceedings and have no control over orderly room proceedings thus treating parties to a disciplinary proceeding unequally. The majority of presiding officers are not good listeners and, in some cases, they do not allow the accused officers to argue their case without harassments.

The study also established that majority of presiding officer lack experience and skills in disciplinary process and adjudication hence resulting in arbitrary ruling that amounted to injustice to defaulters.

6.2.2. Changes Required in Disciplinary Procedures

The study determined that there was need for a few changes in the disciplinary procedures as follows; the accused should be given fair chance to argue their case without being intimidated by the officers handling their cases as in most

cases the presiding officers are their seniors. This could be done by having the cases being handled a devolved NPSC. The presiding officers and those in the disciplinary panel should be well trained to serve their purpose correctly and should make their ruling separately with the majority or unanimous decision carrying the day. Finally, the punishment for each misconduct or offence needs to be specified in the SSO and justified.

6.3. Conclusions

The study concludes that majority of the presiding officers are inexperienced in dealing with disciplinary procedures or proceedings. Discretionary power given to presiding officers lead similar offences getting different punishment.

6.4. Recommendations

Based on the study findings, the following recommendations are made;

The discretionary powers of the presiding officer powers should be shared amongst the members of the disciplinary committee who should be appointed from another station.

NPSC which at the moment is an appellate body and handles appeals from accused police officers who have exhausted all the appellate levels in the National police Service should be devolved to the sub-county level and its human capacity enhanced for it to handle disciplinary cases at first-level hearing

To ensure that judgement by the presiding officer is just, the SSO should be amended to clearly match the punishment to be rendered against the offence or misconduct done.

6.5. Suggestions for Further Studies

From the foregoing discussion, the study has established various research gaps that may be pursued by future researchers to create more knowledge and fill the existing gaps left by the present study. A similar study should be carried out in other disciplined services within the Ministry of Interior and compare the experiences so as to gauge if the current recommendations can be replicated for adoption at the National Police Service. There is need for a study to be carried out on the efficacy of the disciplinary procedures that are employed by The Kenya Defence Forces. This is because there are very few appeals that are made to the High Court in relation to the outcomes of their disciplinary proceedings.

7. References

- i. Administration Police Personnel 2018.
- ii. Apalia, E.A. (2017) Effects of discipline management on Employee performance in an organization: The case of county education office human Resource department, Turkana County-Kenya: International Academic Journal of Human Resource and Business Administration (IAJHRBA) |ISSN 2518-2374.
- iii. Armstrong, M. (2010) *A Handbook of Human Resource Management Practice*, 2nd Edition, New York; Kogan Page Limited (US).
- iv. Babbie, E.R. (2011). *Introduction to Social Science*. Wadsworth Centage Learning
- v. Baldwin, J. (2006). *Organizational Justice*, Institute for Employment Studies; University of Sussex
- vi. Baran, B. (2017). *Procedural justice standards in disciplinary proceedings of the police officers*. Jagiellonian University
- vii. Bernard, H. (2002). *Research Methods in Anthropology: Qualitative and quantitative methods*. Walnut Creek, California: AltaMira Press.
- viii. Cropanzano, R. Bowen, D.E. & Gilliland, S.W. (2007). The management of organizational justice. *Academy of Management Perspectives*. November, 34-48.
- ix. Cropanzano, R., & Greenberg, J. (1997). Progress in organizational justice: Tunneling through the maze. In C. L. Cooper & I. T. Robertson (Eds.), *International review of industrial and organizational psychology* (pp. 317-372). New York, NY: Wiley.
- x. Der bank, L. V, Engelbrecht, A & Strümpher, J. (2010). Perceived fairness of disciplinary procedures in the public service sector.
- xi. Dzimbiri, L. (2009) *Trade Unionism under the one-party and Multiparty Political Systems in Malawi*,
- xii. *Malawi Journal of Social Science*.
- xiii. Finnane, M. (1990) 'Police and Politics in Australia-the case of Historical Revision' *Australian and New Zealand Journal of Criminology* 218 at 218
- xiv. Galligan, D. (1994). 'Regulating Pre-Trial Decision' in Lacey (ed), *A Reader in Criminal Justice OUP*, p 151
- xv. GOK. 2010: The Kenya Constitution 2010
- xvi. Grey, J.H. (1979). Discretion in Administrative Law. York University, Osgoode Hall Law Journal Volume 17, Number 1
- xvii. Grogan, J. (2009). *Workplace Law*, tenth edition: Oxford University Press, Grahamstown
- xviii. Groeneveld, R.F. (2005). Arrest Discretion of Police Officers: The Impact of Varying Organizational Structures (El Paso, TX: LFB Scholarly Publishing, 2005), 4.
- xix. Heilman, M.R. (2006). Principals' Perspectives on Discretion and Decision-Making
- xxi. Independent Police Oversight Authority (Board end of term report 2014-2018).
- xxii. Kenya Law web page retrieved from <http://kenyalaw.org/caselaw/cases/view/155927/>
- xxiii. Kimotho, T. N. (2018). Influence of mergers and acquisitions on financial performance of firms listed in

- xxiv. Nairobi securities exchange (Thesis). Strathmore University. Retrieved from <http://su-plus.strathmore.edu/handle/11071/6178>
- xxv. Mastrofski, S.D., Ritti, R.R.&Hoffmaster, D. (1987). Organizational determinants of Policediscretion: The case of drunk-driving. *Journal of Criminal Justice*, 15: 387-402
- xxvi. McCluskey, J.D., Varano, S.P., Huebner, B.L. & Bynum. T.S. (2004). Who do yourefer? The effects of apolicy change on juvenile referrals. *Criminal Justice Police Review*, 15: 437-461
- xxvii. Mintah, K. (2011) *Industrial Harmony at the Workplace*, 1st Edition, Ghana: Publishing Company. PP12 – 18.
- xxviii. Mugenda O.A &Mugenda, A.G 2003). *Research Methods, Quantitative and Qualitative Approaches*. Nairobi. Act Press.
- xxix. National Police Service Act 2011: Chapter 84 Laws of Kenya.
- xxx. National Police Service Standing Orders (2017). Government of Kenya.
- xxxi. Nova S. (2012). The Relationship between Employment Arbitration and Workplace
- xxxii. DisputeResolution: *Ohio State Journal on Dispute Resolution* 16(3): 643-668.23.
- xxxiii. Owele, M.A. (2007). Employees' perception of disciplinary Procedures in the Kenya civilservice: A Studyof selected ministries
- xxxiv. Public Service Commission; Discipline manual for the Public Service Guide (2016)
- xxxv. Rawls, J. (1971). 'A Theory of Justice: Distributive Justice' Belknap, US.
- xxxvi. Rawls, J. (1985). 'Justice as Fairness: Political not Metaphysical'
- xxxvii. Silverman, D. (Ed). (2016). *Qualitative Research*. SageStenning, P. (2009). 'Discretion' in Wakefield and Fleming J (eds), *The Sage Dictionary of Policing* (Sage Publication Ltd) p. 85
- xxxviii. Stenning, P. (2009). 'Discretion' in Wakefield and Fleming J (eds), *The Sage Dictionary of Policing* (SagePublication Ltd) p. 85
- xxxix. Stephens, D.W. (2011). New perspective in Policing, Police Discipline: A case for change.
- xl. The Advisory Conciliation and Arbitration Service Code of Disciplinary Practice and Procedures (2004)
- xli. The National Police Service Commission (discipline) regulations, 2015. Legal Notice No. 90.
- xl. Thompson, M. & Heron, P. (2005). The difference a manager can make: organizationaljustice and knowledge worker commitment. *International Journal of Human Resource Management*, 16(3), 383-404.
- xl. Tumo, M.J. (2017). Effect of disciplinary action on employees' performance. A case ofBaringo County.
- xl. Yamane, T. (1967). *Statistics: An Introductory Analysis* (2nd ed.). New York, NY:Harper and Row.
- xl. Young, B.B. (2011). *Police discretion in contemporary America*. Georgetown UniversityWashington, D.C