

## **Approaches to Crime Control and Order Maintenance in Transitional Societies: The Role of Village Headmen, Chiefs, Sub-Chiefs and Administration Police in Rural Kenya**

**Jospeter M. Mbuba, Ph.D.**

Department of Public Policy

Indiana University-Purdue University Fort Wayne

**Florence N. Mugambi, MLIS**

Walter E. Helmke Library

Indiana University-Purdue University Fort Wayne

### **Abstract**

*The need to illuminate and contextualize approaches to crime control and order maintenance in transitional societies has become increasingly necessary, thanks to the pervasiveness of social disorder and the elusive nature of crime in general. This study focuses on the functions of the Provincial Administration and the Administration Police in Kenya in order to reveal the little known but overarching powers of Chiefs and Sub-Chiefs as the official agents of crime control and order maintenance in the rural parts of the country. The study, which is a culmination of an in-depth review of Kenya's legal framework and other germane literature, uses the country to cast a thoughtful appraisal of the African experience and, as a result, to provide a strong and reliable data point that could be used in cross-cultural and comparative crime control studies.*

**Key terms:** Crime prevention; crime control; order maintenance; transitional societies.

### **Introduction**

Although there has been a concerted Anglo-American effort to train and offer other forms of assistance to police forces abroad with the aim of supporting democracy and protecting against international crime (Bayley, 2001), little is known about the indigenous mechanisms of controlling crime and disorder at the village level in transitional societies especially in Africa. In this study, the term “transitional” refers to the somewhat inevitable developmental stage of society that intervenes between fully functional social relations characterized by the rule of law, on one hand, and the informal traditional arrangements in which the official application of law is both erratic and eclectic, on the other. Although police patrols are the principal method of containing crime, different communities use many other corollary approaches to abate crime and disorder. This study involves an in-depth review of the Kenyan legislation and other relevant literature in order to discern and document how the country handles the problem of crime in the rural areas where police patrols are not available and where the authority of the Chief and the Assistant-Chief is more dynamic.

### **Geographic and Historical Background**

Kenya is a sovereign country located in East Africa and has a total area of 224,962 square miles (Encyclopedia of the Nations, 2010). The country borders the Indian Ocean to the east, Somalia

to the northeast, Ethiopia to the north, Sudan to the northwest, Uganda to the west, and Tanzania to the south (ibid.). The legislative branch of the Kenyan government has, since independence, consisted of a unicameral National Assembly, whose representatives are elected by popular vote to serve 5-year terms and the legal system is a complex hybrid of English common law, customary law, and Islamic law that recognizes Khadis' courts, which enforce certain rights of inheritance, family relations, and succession for Muslims (ibid.). The 2010 constitutional referendum and subsequent promulgation of a new constitution, however, ushered in a two-chamber parliament with a National Assembly and a Senate (Constitution of Kenya 2010, Chapter 8).

For several decades, Kenya was under the British colonial rule until the declaration of independence in 1963. The enactment of the Village Headman Ordinance of 1902 when the country was under the colonial governance introduced the concept of *village headman*. The initial purpose of the ordinance was to bring Kenyan natives into the money economy, enforce tax payment, control livestock movement, regulate agriculture and movement of people and various other social and economic regulations (Administration Police, 2009; Clayton & Savage, 1974). At that time, the village headman relied on village bullies to enforce the often unpopular policies of the colonial government and to put in place arbitration and other enforceable mechanisms (Provincial Administration Strategic Plan, 2005/06-2009/10.) The position of the village headman has since evolved to the modern day Chief, but the term still remains in informal use in rural Kenya, where it refers to the Chief, Assistant Chief, or the contemporary "headperson" who is appointed by the Chief to help with village governance. The appointment and duties of the headperson and the associated duties are discussed further in the subsequent sections of this article.

### **Nature of Law Enforcement in Transitional Societies**

Much has been documented regarding policing practices in transitional societies, in which policing has been referred to as public good (Marks, 2003; Zedner, 2006; Aitchison, 2007; Palmer & Whelan, 2007), but the local-level approaches to crime prevention still remain elusive. Countries with a colonial heritage have not been able to shed off the colonial process of law enforcement that took shape after what Shearing and Marks (2004:198) call "periods of private governance under the auspices of global companies like Dutch and British East India Companies and the Hudson Bay Company that operated as 'private governments'". In these societies, policing is not a function of the formal sector per se but rather, it incorporates traditional and indigenous ways of responding to the various security needs, some of which by their very nature transcend the ability of formal police response. According to Shearing and Marks (2004), governance in such societies is represented by private and supra-state structures. While typical policing should reflect the formal law enforcement, policing in transitional societies is provided by a multiplicity of formal and informal organizations (Shearing and Wood, 2007:99). This format of policing is hard to manage if the society experiences civil strife as is the case in many developing societies (Baker, 2007a; Baker, 2007b). For example, Uganda and Sierra Leone both experienced prolonged civil wars that left legacies that were central to the post-conflict reconstruction of policing (Baker, 2007a). As a result of war, "chiefs with their court and policing systems are driven out or flee; state police are targeted as defenders of the regime under attack; and the social control of family, neighbors and clan dissolves in the anarchy of displacement and bereavement" (Baker, 2007a:367).

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Another recent finding shows that when there is tranquility, policing in transitional societies assumes a law enforcement monopoly whereby the police administration is routinely reluctant to embrace any mechanisms for sharing with the rest of the community members the responsibility for ensuring safety for all (Marks, Shearing, & Wood, 2009). It is also clear that over the years, police agencies in many developing societies have been shielded under the notion of “‘operational independence’ that has for decades bedeviled attempts to hold the police democratically accountable” (Shearing, 2000:390). However, in the more developed societies where the rule of law reigns, the notion of operational independence has steadily been replaced by “operational responsibility”, which, in addition to acknowledging that the police should be allowed a leeway to manage their own affairs with no interference from the political elite, also maintains that oversight of the police should not extend to operational matters (Shearing, 2000:390). A positive connection has also been shown between policing and the state through coercion and the delivery of civic governance (Loader & Walker, 2001). This form of coercion has been diminishing over time, at least in the more developed world, but the same cannot be said of transitional societies. This background demonstrates the compelling need to establish and document the patterns and culture of policing in relation to the political authorities in transitional societies. Kenya was chosen as the locale of this study because all three Kenyan neighbors, the Sudan in the North, Somalia to the East, and the Great Lakes region to the West, are living testimonies to violent conflicts (Global Policy Forum, 2004), whose social and economic ramifications regionally and globally call for a more focused understanding of policing mechanisms. Although this study may not be generalizable to the entire transitional world, it will represent a reliable and valid reference point in the African region and provide an empirical basis for cross-cultural studies of crime prevention techniques.

### **Indigenous Social Control Institutions**

Prior to the colonial-inspired systems of social control, the African societies had their own home-grown way of handling deviance and other anti-social behavior. In Kenya, many communities confronted waywardness through the authority of councils of elders that had powers to levy fines, demand community service, administer corporal punishment, or ostracize altogether. The Meru tribe, for example, has a deeply rooted council of elders known as *Njuri Ncheke*, whose functions are “to make and execute tribal laws, to listen to and settle disputes, and to pass on tribal knowledge and rites across the generations in their role as the custodians of traditional culture” (Finke, 2007). Another tribe, the Giriama, developed a non-centralized leadership of a council of elders known as *Kambi*, whose oath and select membership were used to maintain order and determine guilt in difficult situations (Brantley, 1978). Similarly, the Luo community had the now-defunct Luo Union that “sought to forge and govern a broad-based cultural identity among a diverse *Dholuo*-speaking population” (Orvis, 2006:53). Many other large tribes such as the Kikuyu, the Kalenjin, the Maasai and the Kamba had varied community-based mechanisms of social control in ways that were consistent with their traditional belief systems.

### **Contextualizing Crime Control and Order Maintenance in Rural Kenya**

For administrative purposes, Kenya is divided into eight provinces headed by Provincial Commissioners. Provinces are further divided into Districts, which are governed by District Commissioners. Within each District are Divisions, whose administrators are the District

Officers and each Division is further subdivided into Locations headed by Chiefs. The Locations are finally divided into the smallest administrative units known as Sub-Locations, which are headed by Assistant Chiefs who are commonly referred to as Sub-Chiefs. The entire administrative hierarchy from Provincial Commissioners to Sub-Chiefs makes up the provincial administration. However, the current constitution, which was passed and promulgated in August 2010, created forty seven counties and decreed that the colonial-inspired provincial administrative units be “restructured to accord with and respect the system of devolved government established under this Constitution” [Constitution of Kenya 2010, Sixth Schedule, 4 (17)].

The centrality of Chiefs and Sub-Chiefs in crime prevention and maintenance of law and order is so crucial that a separate law was established by an Act of Parliament to specify and elaborate the extent of the powers of the two officers in the enactment of an Act of Parliament referred to as the Chief's Authority Act, Chapter 128 of the Laws of Kenya. The Act makes it explicit that it is the duty of every Chief or Sub-Chief to maintain order in their respective areas of authority. To facilitate their discharge of duty, Chiefs and Sub-Chiefs have the power to hire and use public funds to remunerate a few residents of good character and to confer them with authority to perform the duties specified by the Chief through the Sub-Chief. An individual so hired is formally referred to as a *village headperson* but informally as a *sub-area*, denoting the geographic size of their areas of jurisdictions. Because crime prevention and order maintenance are largely dependent upon solid familiarity with the community and its members, the residents to be hired as village headpersons are required to have resided in the area of service for at least ten years immediately preceding the appointment; a good knowledge of the people and area of service; a high degree of integrity; and at least a primary school level of education, among other requirements.

With the help of the village headpersons, Chiefs and Sub-Chiefs have the primary duty to prevent crime in their respective jurisdictions. The two officers wield the power to arrest or cause the arrest of anyone deemed to be planning to commit a crime where the crime commission cannot be stopped in any other way. They are also mandated to carry out arrests where arrest warrants have been issued by the appropriate judicial officers. Because Chiefs and Sub-Chiefs are not police officers and are not aptly equipped to arrest crime suspects, they enlist the help of the Administration Police officers.

### **Are Kenya's Administration Police True Police Officers?**

Both the Administration Police and the Kenya Police are government-created agencies established under Acts of Parliament and enacted as Chapters 85 and 84, respectively, of the Laws of Kenya. The differences between the two agencies are both historical and contextual. Historically, the Administration Police can be traced back to 1902 when the Village Headman Ordinance was enacted, but the regular Kenya Police owes its roots to the British colonial rule. Throughout the colonial era, the British, under the aegis of the then British Imperial East Africa Company used a defense operation made up of armed guards, an operation that was to later become the first organized law enforcement machinery in the country upon the departure of the colonial rulers (World Police Encyclopedia, 2005; Kenya Police Service Strategic Plan, 2003-2007). By 1896, Kenya had put in place a police force, and by 1901 it included a variety of resources and specialized personnel, including a European superintendent, several European,

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Indian, and Somali inspectors and 150 lower ranked individuals (World Police Encyclopedia, 2005). Smaller police stations were established in a few parts of the country, and all these affiliations were merged in 1902 to form the British East Africa Police, which, in 1920, had the name officially changed to the Kenya Police. General duty officers, a General Services Unit, and the Railways and Harbors Police were included among the organizational structure of Kenya's police operations, as was the specialized units that included the Criminal Investigative Department, the Intelligence Directorate, the Police Air Wing, Anti-Stock Theft Unit, and the Dog Unit (Kenya Police Service Strategic Plan, 2003-2007; World Police Encyclopedia, 2005).

For administrative purposes, the Kenya Police force today is divided into formations and provinces (Kenya Police Service Strategic Plan, 2003-2007), whereby formations are specialized units, such as the Anti-Terrorism Unit and the Anti-Stock Theft Unit, which are not limited to spatial locations, while provinces have definite geographic boundaries. Each police province is headed by a Provincial Police Officer. Provinces are sub-divided into Divisions, each of which is headed by an Officer Commanding Police Division, and each division contains several police stations headed by Officers Commanding Police Stations. The smallest police administrative unit is a police post at the village level.

The Administration Police officers constitute a parallel state law enforcement agency established in 1929 with the original name of Tribal Police. The officers work under the authority of the Provincial Administration, which includes, in a descending seniority order, the Provincial Commissioners, District Commissioners, District Officers, Chiefs and Sub-Chiefs. The ultimate control of Administration Police officers rests with the Provincial Commissioners who delegate the services of Administration Police officers to District Commissioners and the delegation continues all the way to the Sub-Chiefs (Bwonwong'a, 1994, p. 71). The law grants the District Commissioners the authority to govern the Administration Police officers, subject to the directions of the Provincial Commissioners. Prior to their appointment, the officers undergo a rigorous training that includes, among other courses, community safety, drill and physical agility, weapons handling, field combat tactics, and information technology, all of which equip the officers with the skills necessary to combat crime and, in some cases, to augment the military in case of war or other emergency if the President finds it necessary [Laws of Kenya, Chapter 85, 5 (2)]. Upon the successful completion of the training, Administration Police officers are appointed and issued with a certificate as evidence of appointment by the District Commissioners of the Districts where they are to serve. In effect, Administration Police officers are true law enforcement officers with most of the privileges of the regular police, except in the more specialized police undertakings, such as investigation of serious criminal acts.

There is a wide interface between the duties of the regular Kenya Police force and the Administration Police. Although the two agencies are established by different acts of Parliament, there is clearly an overlap of mandate as attested to by their mission statements, in which they both claim to "maintain law and order, preserve peace, protect life and property, prevent and detect crime, apprehend offenders, and enforce the law". However, the Administration Police agency has additional mandates to act as messengers in matters of public service and to defend Kenya in the event of war or emergency, but this too is closely related to the duties of the General Service Unit of the regular police, whose officers can be "deployed in troubled areas in

emergency situations” (Kenya Police Service Strategic Plan, 2003-2007, p. 3). Two clear additional roles of the Administration Police officers, however, are border patrols and security of government buildings (Provincial Administration Strategic Plan, 2005/06-2009/10, p. 21).

Both the regular police and the Administration Police are supposed to be impartial in political matters and are bound by nearly the same ethical guidelines. The main difference is that the regular police officers are answerable to the Police Commissioner through a clearly laid down chain of command while the Administration Police officers are answerable to the Minister in charge of internal security through the provincial administration’s chain of command. In the rural areas, Chiefs and Sub-Chiefs are assigned a number of Administration Police officers to assist in circumstances that require police services including search, arrest, and transportation of arrested persons to either the police station or the law courts. Although the 2010 constitutional order retained both the regular and Administration Police, the two police forces will, in the new order, each report to a Deputy Inspector General and both will be headed by a joint Inspector General of the National Police Service (Constitution of Kenya 2010, Chapter 14).

### **Chiefs and Sub-Chiefs as Agents of Crime Control**

Most people in rural Kenya keep livestock either as the sole means of livelihood or to supplement their main economic activities. The pastoral communities keep livestock – mostly herds of cattle, sheep, and goats – as their main investment and source of family livelihood while the more sedentary agricultural communities keep a few farm animals and poultry as a source of additional income. Donkeys are also common as beasts of burden in areas where motorized transportation is not available. Thus to most people, the most valuable movable belongings are their livestock. The law recognizes that theft of livestock deals a big blow to the owner. As a result, a lot of resources are devoted toward anti-livestock theft and prevention of cattle rustling in the pastoral communities, while urban communities focus primarily on combating street crime (Saferworld, 2008). According to the country’s Annual Crime Report, serious crime that includes robbery, murder, carjacking, theft, corruption, drug offenses and other crimes declined across the country in 2008 with only one transnational crime and no hijackings nor terror attacks reported, but theft of stock, stealing and breaking increased (Kenya Police Crime Statistics, 2008, p. 2). The report also shows that while personal offenses declined by 12 percent between 2007 and 2008, stock theft increased by 37 percent during the same period (*ibid.*, p. 3). This justifies the need to safeguard against crimes of stock theft and in this regard, Chiefs and Sub-Chiefs are specifically mandated by law to be extra vigilant on livestock theft, among other crimes.

According to the laws of Kenyan, “every chief or assistant chief receiving information that any cattle or other livestock or other property of any description which has been stolen outside the local limits of his jurisdiction has been brought and is within such local limits shall cause such cattle or other livestock or other property to be seized and detained pending the orders of an administrative officer, and shall forthwith report such seizure and detention to an administrative officer” [Chapter 128, 8 (4)]. Given the value of livestock and the fact that most rural families keep some livestock, grazing of animals on public space is common. Violent confrontations between individuals, families, clans, and tribes may therefore arise in the ensuing competition for grazing space especially during dry seasons when pastures begin to shrink. To ease the criminal consequences of competition and confrontations, the law grants Chiefs the authority to regulate movement of livestock by issuing orders requiring any person to report to the Chief the arrival in

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or the passage through his location of cattle from other locations. The Chief may also issue orders “restricting or prohibiting the use of grazing by any form of stock in any area which has been set apart for the purpose of reconditioning or which has been planted with any fodder-producing plants or grass” [Laws of Kenya, Chapter 128, 11 (j)].

Activities such as vagrancy and public drunkenness, which correlate highly with crime, are most often the cause of community disorder. Perhaps due to the difficulty involved in patrolling such forms of behavior, the law grants Chiefs and Sub-Chiefs the power to control a wide range of activities that easily lead to crime or a general breach of the peace. Any Chief may, for example, issue orders to the residents of his jurisdiction prohibiting or restricting the consumption or possession of intoxicating liquor by, and the supply of such liquor to, young persons [Laws of Kenya, Chapter 128(10)]. In addition, Chiefs may issue orders prohibiting any act or conduct which, in their opinion, might cause a riot, a disturbance, or a breach of the peace. In order to control violent criminal acts in their jurisdictions, Chiefs also have the power to prohibit or restrict the carrying of arms including firearms as well as other cultural weapons such as spears, machetes, axes, clubs, bows, and arrows. In all cases, failure to comply with the Chief’s or Sub-Chief’s order without lawful excuse amounts to an offense, which is punishable by a fine or extra mural penal employment.

Chiefs have the backing of the law to guide environmental management in matters that affect the welfare of the community as a whole. For example, because many rural communities get their water for domestic consumption and for their livestock from common sources such as streams and communal wells, it is in the interest of all that the water sources be managed to ensure cleanliness and access by everyone. Without such management, conflicts are likely to occur and violent criminal behavior may result. For that reason, Chiefs can issue orders preventing the pollution of water in any stream, watercourse or waterhole, and the obstruction of any stream or watercourse [Laws of Kenya, Chapter 128 (10)]. The law also recognizes that environmental degradation may contribute to disorder or the breach of the peace in the long run if communally-owned resources are misappropriated or damaged by the activities of a few individuals. To prevent such misappropriation or destruction, Chiefs can issue orders prohibiting the wasteful destruction of trees, preventing the spread of human or animal diseases, and prohibiting any act that may cause damage to any public road or to any work constructed or maintained for the benefit of the community (ibid).

Chief and Sub-Chief enjoy wide latitudes of discretion with respect to what they can allow and what they may prohibit. To check excesses in their law enforcement and keep them from unwarranted orders that may demote the communal wellbeing, Chiefs and Sub-Chiefs are not allowed to engage in the activities of any political party or to act as agents of any such party. They are also forbidden by law from subjecting anyone to torture or to any other cruel, inhuman or degrading treatment. Moreover, it is illegal for them to operate a cell or any form of a confinement facility and when they have to search a private premise, which is a routine law enforcement practice, they have to obtain warrants duly issued by a magistrate. The law also forbids Chiefs and Sub-Chiefs from demanding or soliciting any donations or collections in a manner that would suggest that such solicitations are a pre-condition for any service that should be rendered for free [Laws of Kenya, Chapter 128, 20 (1)].

### **Mob Justice and Other Collective Behavior**

The absence of regular police patrols may not necessarily lead to lawlessness and increased crime rates but if crime occurs repeatedly as a result of lack of police intervention, residents get frustrated (Sahiel, Gilchrist, & Harvie, 1992). Such frustration may result in citizens taking the law into their own hands and arming themselves, often in the form of vigilante groups (Schuler, 1999). This leads to a mob declaration of guilt on the suspect and an on-the-spot dispensation of severe penalties including lynching. In many African societies, mob justice is common where cultural practices such as witchcraft, which transcend formal police intervention, are practiced (Hund, 2004; Leebaw, 2003). Mob justice is also common when citizen's patience with slow police response runs out or where police response is completely unavailable (Kole, 1999).

Rural Kenya is full of traditional and cultural practices that have the potential to pit individuals against society, families against families, clans against clans, and even tribes against other tribes (Karp, 1978). Such practices include the mode of dressing, the practice of witchcraft, marriage patterns, land ownership disputes, religious beliefs, and, to a lesser degree, individual tenacity of cultural observances. These cultural practices are difficult to monitor and may, as a result, give way to activities that are criminal in nature or associated with crime. To contain such vices requires the leadership of persons who belong to the community and identify with the people, hence the use of local law enforcement agents. Headpersons are particularly central in areas such as arbitration of disputes among villagers and coordination of Chief's activities including collection of fines in the form of material goods from members who fail to turn up for Chief's authorized events.

### **Administration Police in Crime Control**

The Administration Police officers are required to respond promptly when called upon by Chiefs or Sub-Chiefs to help in the exercise of lawful duties. They also have to swiftly execute orders and warrants that are lawfully issued to them. In discharging their duties, the Administration Police officers are required to act as messengers in matters that pertain to the government administration or the public service [Laws of Kenya, Chapter 85 (8)]. In doing so, every officer has to "preserve the public peace, prevent the commission of offenses and apprehend all persons in respect of whom he holds a valid warrant of arrest [and] undergo such training as may be ordered by the District Commissioner" (ibid). If an Administration Police officer fails to support the Chief or Sub-Chief in lawful duty or to obey any other orders from the provincial administration officers to whom he is a messenger, he could be sanctioned in a variety of ways including but not limited to reprimanding, imposition of fines, confinement into barracks with punishment drills, stoppage of salary, demotion in rank, or dismissal altogether.

Like regular police officers, the Administration Police officers can conduct a search and make an arrest. Although they need a duly issued warrant to execute these activities, they, like regular officers, may gain access into any premise by force if it is believed that the delay caused by obtaining a warrant may jeopardize the success of an investigation. They may also stop, search, and detain any vehicle suspected of being used for criminal activities and any person who fails to obey a reasonable signal given by an officer in uniform requiring him to stop any vehicle or vessel can be arrested by the Administration Police without a warrant [Laws of Kenya, Chapter 85 (10)]. For the furtherance of crime control and order maintenance, the Administration Police



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may, in addition to taking orders from the provincial administration, stop and detain anyone whom they find in the process of committing a crime or in circumstances that create probable cause that a crime is being planned.

### **Discussion, Conclusion and Way Forward**

The goal of this study was to provide a reliable data point that could be referenced in cross-cultural and comparative studies of crime control. This was achieved by highlighting the various crime prevention approaches used in transitional societies. Using Kenya as the study locale, the relevant laws of the country and other literature were reviewed and the different legal and quasi-legal arms of crime control accentuated. The study established that in the rural areas, where police patrols are either uncommon or unknown, ascribing social control responsibilities to village-level leaders can be a dependable alternative to crime control and order maintenance. The significance of relying on the local machinery in crime prevention can be viewed from multiple perspectives. First, no permanent criminal records are kept for the offenders as each case is handled on its own merits. This diminishes stigmatization and increases offender rehabilitation. Secondly, the formal sanctions levied by local-level leadership normally do not include incarceration and when this has to be resorted to, it typically takes short durations. Thus, offenders are able to avoid the injurious conditions of prison life and to continue with their daily routines such as taking care of dependants. Thirdly, sanctions at the local level are swift and almost certain, which makes them much more deterrent than the punishment that ensues from the long and winding routes of the formal justice systems. Lastly, local-level administration of justice is inexpensive as it involves no elaborate court systems and almost-costless correctional methods.

However, before making generalizations, caution is urged in the interpretation of the significance of the local-level crime control mechanisms. Such arrangements tend to flourish under conditions of inter-generationally shared cultural values and societies that have strong urban characteristics such as anonymity, normlessness, and high resident turnover may not benefit much from those arrangements. Moreover, even in transitional societies, not all crimes are left to the discretion of the village-level agents; serious law violations such as homicide, armed robbery, aggravated assault, burglary, and other complex criminal acts are investigated by specialized agencies of the central government.

### **Recommendations for Further Study**

Although this study has revealed the village-level mechanisms of dealing with crime and disorder, it did not address the inter-tribe crime rate variations and the factors that account for those variations in the light of the uniformity of indigenous techniques of crime prevention. As a result, a survey of the differential crime rates across tribes and regions is recommended. It is also recommended that a study be conducted of the Kenyan urban policing patrol methods as well as the rural-urban crime comparisons since those aspects were outside the scope of this study. Finally, this study used Kenya as the locale but owing to the vast diversity of African societies, similar studies of crime control systems in the region are recommended.

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