The legal rights of police to form or join a union in Kenya

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Up until 2010, Kenyan police officers were barred by statute from joining or forming a trade union under the Trade Disputes Act CAP 234, section 3, since repealed. The reasoning behind this exclusion was the nature of the police forces’ job.

Ordinarily, police officers stand in a delicate employment status compared to other workers. This is because their service is termed as an ‘essential service’, which means that its interruption would endanger the life, health or personal safety of the whole or part of the population, according to the Labour Relations Act, 2007, sections 76 to 81.

Furthermore, the main role of the police is to maintain peace and order. It has been said that it is immoral for police to go on strike or form a trade union. The spokesperson of the police echoed this sentiment by saying that police officers are ‘like priests’, signifying the heralded calling of the police work (Mueni, 2018).

It is trite that the police officer’s role cannot be overemphasized. In essence, it includes preservation of peace, maintenance of law and order, and protection of life and property, among others, as listed in section 14A-17 of the National Police Service Act, Cap. 84. Everybody turns to the police in case of danger, when in need of directions, information and all sorts of dilemmas. They are the society’s heroes. The entire peace and security of a nation rests on the police forces.

What’s interesting is that, many times, the police have suppressed unrest, including the strikes of other workers. It is in the nexus of this oxymoron that the right of the police to unionize disintegrates into a taboo for many governments. The million-dollar question that calls is, to whom does the ‘protector’ and ‘defender of peace’ (the police) turn to, to better their working conditions?

Despite their noble role, the police lack a platform to air out their grievances in terms of working conditions. They are workers too and they are entitled to all the rights of the workers. At the moment they only have the Kenya Police Savings and Credit Cooperative (SACCO) which was registered in 1972 (Mueni, 2018).

The world struggle to unionize police

The idea of police unionisation causes an apprehension of mayhem in any society. This fear is not unfounded and the pleas for police officers to form and join a union is not a recent phenomenon. It started way back after the First World War, which led to banning of police unions in the USA (Larson, 1978). Subsequently, another wave of police unionization followed after World War Two. This was provoked by the poor working conditions, buttressed by poor pay and long working hours and the lack of a platform to air out these grievances. The only existing organizations for the police were benevolent associations, which were not recognized legally.

Eventually, after several illegal strikes and other militant stances throughout the 1960s, the police were given the right to collective bargaining. By the 1970s the benevolent groups had transformed into unions and they had won the right for the police to legally unionize (Larson, 1978).

Many countries approach the subject of the unionization of the police with caution and therefore Kenya is not unique. The unionization of the police has been perceived for a long time as being tantamount to a threat to the internal security of a state. This iron law has been changing gradually and remarkably over the years. Flash forward to today, when many countries in the world have allowed their police officers to join and form trade unions. These include Australia, Austria, Belgium, Côte d’Ivoire, Denmark, Finland, France, Germany, Iceland, Ireland, Luxembourg, Malawi, Netherlands, New Zealand, Niger, Norway, Portugal, Senegal, Spain, Sweden, Tunisia, UK, and the USA (Rubin, 2005).

In South Africa, the South African Policing Union (SAPU), formed in 1993, has demonstrated that a police trade union is viable (Jan et al. 2008). It has also allayed the notion that the internal
The Kenyan struggle to unionise police

The Kenyan constitution of 2010, which is the highest law of the land according to its Article 2, entitles every worker to fair labour practices, including the police, according to its Article 43. Moreover, section 46 of the National Police Service Act (NPSA) entitles police officers to all the rights of the constitution. However, there is a limitation to this enjoyment in its section 47(g), in that officers of the service are prohibited from joining and participating in the activities of a trade union and going on strike. Principally, the constitutionality of this clause has been challenged in the courts of law. There was an attempt to register a police trade union in 2002, but the same was rejected in 2006 as the law in place at the time (Cap. 234, now repealed) did not allow police officers to join a union. The status quo remained even after a subsequent appeal in June 2013. Nevertheless in Civil Appeal 251 of 2014, the iron law was shattered. The court of appeal found that the prohibition of police trade unions was unconstitutional. The judgement allowed for the formation of a trade union for the police subject to the amendment of the relevant law. However, the only condition was that the police couldn’t go on strike, according to Section 47 (3g) of the NPSA No. 11 of 2011.

Two years down the line, despite the delivery of this landmark ruling and internal pressure from the Central Organization of Trade unions (COTU) in Kenya, the administration of the police remains sceptical about the feasibility or desirability of allowing police officers to form or join a trade union.

Arguments in favour of a police trade union

Kenya is a democratic country and therefore there is space for social dialogue between the state, who is the employer, and the police officers.

The morality argument couldn’t be further from reality. The police officers are workers in all senses and should enjoy the rights enshrined in the constitution. They have a right to better working conditions and the avenue for social dialogue. Research confirms that many strikes happen in the deadlock situation. For instance, after World War Two, the banning of the trade union didn’t help or inhibit the formation of the benevolent groups which later became trade unions. The deplorable deteriorating working conditions, with no platform for outlet, compounded the situation. In today’s world, many wars have been fought and won through social dialogue and without resorting to violence.

There have been various reforms recently in the Kenyan police force to increase police effectiveness. It should be noted that the operation of the police force in Kenya is modelled after the colonial governance, which serves the interests of those in power. Therefore, any form of reform proposed by the police trade union which challenges this allegiance is attacked. This is why the unionization of the police in Kenya needs tactful and subtle delivery. The legalistic approach imposed by the courts might not yield the intended results. This is because the letter of the law excludes existing policy and other important factors, such as the geopolitical sphere, which may prevent the law being a relevant tool for the police workers. The subtle threats made by the police administration will frustrate the unionization of the police union and nip its blossoming in the bud.

The formation of the trade union should be embraced by the administration of the police as a win for the entire police force. The Police SACCO has been inadequate in improving the working conditions of the police and the police trade union is needed.

The task at hand is therefore to allow this dialogue with the respective policy makers to thrive and fertilize their minds about the viability of the trade union for the police. The transition period is always difficult and creating awareness is eminent and paramount. The unionization of the police will improve working conditions and enhance police force effectiveness as job satisfaction is the surest way of achieving high labour productivity.

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References


