



## **“Unchecked Injustice”**

**Kenya’s Suppression of the 2023 Anti-Government Protests**

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Printed in the United States of America

ISBN: 979-8-88708-182-3

Cover design by Ivana Vasic

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NOVEMBER 2024



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## **Kenya’s Suppression of the 2023 Anti-Government Protests**

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## Summary

On March 30, 2023, Joyce Kemunto, a 39-year-old resident of Kibera in Kenya's capital, Nairobi, was at home with her children, including her 4-month-old baby, when police chased protesters in her neighborhood as authorities clamped down on anti-government protests across the country. Little did Kemunto know that her family would soon become victims of the violent police response.

When the tear gas was thrown, some of the canisters landed on the roof, and the smoke came inside where my 4-month-old baby, Precious, was. She started crying. I took a cloth and water and began wiping her face and that of my other children.... There was nowhere to go outside because tear gas was everywhere. So, we stayed inside, and the baby cried until she stopped breastfeeding.

Precious's condition worsened, and she started bleeding from her nose. She died on the way to hospital later that same day.

Kemunto's tragic loss, symbolizes that of hundreds of Kenyans including protesters, bystanders, schoolchildren, and others just going about their day during opposition-led protests between March and July 2023. They suffered violations of their human rights, including extrajudicial killings, life-changing injuries and impairments, torture and other ill-treatment, and arbitrary arrests and detentions, at the hands of Kenyan police during the protests. More than a year later, Kemunto along with many others, still await official acknowledgment and justice for the harm they suffered and its continued devastating impact on their lives.

This *Maandamano* report (Kiswahili for "Protests" and how this wave of protests was referred to) finds that the police killed at least 31 people and injured hundreds more during the May to July 2023 protests. The report calls for accountability for the police use of unnecessary or excessive use of force during protests that occurred during that period, as the country once again faces the consequences of an unaccountable and unreformed police force in 2024.



Riot police disperse protesters in Kibera Slum using tear gas during protests over the high cost of living, in Nairobi, Kenya, July 21, 2023. © 2023 Donwilson Odhiambo/Getty Images

In August 2022, Kenya held a general election that was contested by multiple political parties, with the Kenya Kwanza Coalition led by the then-deputy president, William Samoei Ruto, and Azimio la Umoja (One Kenya) Coalition, led by Raila Amolo Odinga, as the main contenders. On August 15, 2022, the Independent Electoral and Boundaries Commission (IEBC), the body that supervises elections in Kenya, declared Ruto the president-elect.<sup>1</sup>

In the aftermath of the elections, the Azimio la Umoja coalition disputed the results, and Odinga, along with 16 others, petitioned the Supreme Court on August 22, 2022, to overturn the outcome of the vote, citing electoral malpractice and manipulation.<sup>2</sup> On September 5, 2022, the Supreme Court unanimously dismissed the petition and upheld Ruto's win.<sup>3</sup>

<sup>1</sup> The Independent Electoral and Boundaries Commission Act, Gazette notice No. 9773, The Kenya Gazette, Vol. CXXIV. No. 163, Kenya Gazette, August 16, 2022, <https://gazettes.africa/akn/ke/officialGazette/government-gazette/2022-08-16/163/eng@2022-08-16> (accessed November 14, 2024).

<sup>2</sup> *Odinga and 16 Others v Ruto and 10 Others*, Presidential Election Petition E005, E001, E002, E003, E004, E007 & E008 Of 2022, Supreme Court, Consolidated Judgement, September 5, 2022, <https://kenyalaw.org/caselaw/cases/view/240578/>.

<sup>3</sup> Ibid.

In March 2023, Odinga called for nationwide protests citing the increasing cost of living under President Ruto's administration. He said the administration's policies left thousands of Kenyans struggling to access goods and services essential to their rights, including food, health care, housing, and education. During the first protest on March 20, protesters demanded that the government resolve the high cost of living and the alleged electoral malpractice in the August 2022 general election.

Many countries saw prices rise in the wake of the Covid-19 pandemic and Russia's full-scale invasion of Ukraine in February 2022. The Kenyan government compounded this by also removing fuel subsidies and increasing a fuel tax without adequate compensatory measures in the context of a US\$2.3 billion International Monetary Fund (IMF)-supported program approved in April 2021.<sup>4</sup> A rise in interest rates and other factors also forced the government to direct upwards of half its revenues to service its debt, constraining its ability to protect people from price increases.

The government initially responded to the largely peaceful protests with hostile rhetoric and threats, terming the protests as illegal and protesters as "terrorists."<sup>5</sup> These statements and heavy-handed approach appeared to heighten tensions between protesters and police, with protesters at times using violence against police and taking part in looting. The police forcibly dispersed protesters and resorted to unnecessary and excessive force.<sup>6</sup>

The second round of protests started on May 2, 2023, after talks announced between the government and Azimio la Umoja temporarily stopped. Protests resumed in July following the enactment of the Finance Act (2023), which according to the opposition, exacerbated

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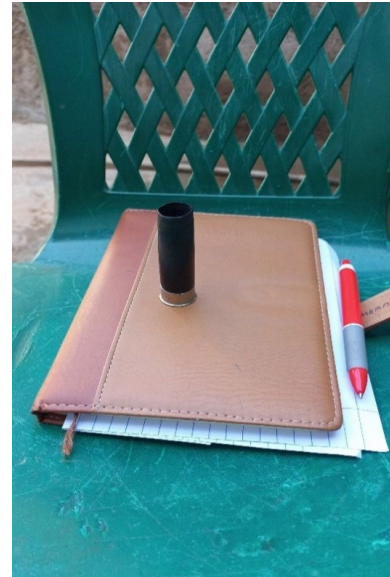
<sup>4</sup> "Kenya/IMF: Align Economic Reform with Rights." Human Rights Watch news release, July 16, 2024, <https://www.hrw.org/news/2024/07/16/kenya/imf-align-economic-reform-rights>; "How IMF-Driven Policies Make Some Kenyans Poorer," Human Rights Watch Statement, October 12, 2023, <https://www.hrw.org/news/2023/10/12/how-imf-driven-policies-make-some-kenyans-poorer>; "IMF Executive Board Approves US\$2.34 Billion ECF and EFF Arrangements for Kenya," International Monetary Fund press release No. 21/98, April 2, 2021, <https://www.imf.org/en/News/Articles/2021/04/02/pr2198-kenya-imf-executive-board-approves-us-billion-ecf-and-eff-arrangements>; "Kenya's new president scraps petrol subsidy," *Aljazeera*, September 15, 2022, <https://www.aljazeera.com/news/2022/9/15/kenyas-new-president-scraps-petrol-subsidy>; "KRA takes Sh62 in tax for every litre of petrol sold," *Business Daily*, June 19, 2022, <https://www.businessdailyafrica.com/bd/economy/kra-gets-billions-from-drivers-pain-at-the-pump-3849816> (accessed November 11, 2024).

<sup>5</sup> "Officials Threaten Protesters with Violence," Human Rights Watch news release, July 18, 2023, <https://www.hrw.org/news/2023/07/18/kenya-officials-threaten-protesters-violence>.

<sup>6</sup> Amnesty International & Human Rights Watch Interviews, March-August 2023.

the already difficult economic situation for many Kenyans. These three rounds of protests were largely peaceful but there were reports of a few protesters looting and pelting stones at police and their vehicles. The police again responded to these protests, which they declared illegal, with a similarly heavy-handed approach, including the use of force during which protesters and bystanders were injured and killed.

This report is based on 226 interviews conducted across 10 of Kenya's 47 counties, namely Nairobi, Nakuru, Homabay, Migori, Kisii, Nyamira, Machakos, Makeni, Siaya, and Kisumu. It provides an in-depth account of the harrowing human rights violations that took place during the protests from March to July 2023.



Bullet cartridge used by police on July 20, 2023, in Nyalenda, Kenya. © 2023 Private

Based on witness interviews, credible media reports, medical records, and photos, the report finds that between March and July 2023, at least 31 people were killed due to police use of unnecessary or excessive force, involving both lethal ammunition and so-called less-lethal ammunition such as rubber bullets. They include 26 people who were shot (24 men and 2 women); 2 children who died following police use of tear gas in residential areas; and 3 men beaten to death by police. Hundreds sustained serious injuries from shootings, beatings, and cuts from machetes and knives.

One hundred and twenty-two cases of assault by police were reported and treated at the Jaramogi Oginga Odinga Teaching and Referral Hospital (JOTRH) in Kisumu during the month of July alone.<sup>7</sup> The hospital said at least 47 of the patients treated at the hospital were treated for bullet wounds.<sup>8</sup> Thirty of these people had been shot from behind,

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<sup>7</sup> Amnesty International, Law Society of Kenya, Kenya Medical Association, "Preliminary Communication on Human Rights Situation in Kisumu and Kisii Counties," August 4, 2023, <https://www.amnestykenya.org/preliminary-communication-on-human-rights-situation-in-kisumu-and-kisii/>.

<sup>8</sup> Amnesty International, Law Society of Kenya, Kenya Medical Association, "Preliminary Communication on Human Rights Situation in Kisumu and Kisii Counties," August 4, 2023, <https://www.amnestykenya.org/preliminary-communication-on-human-rights-situation-in-kisumu-and-kisii/>.



suggesting that they may have been running away from police, and another nine were shot from the side.

Separately, the Independent Policing Oversight Authority (IPOA), which provides civilian oversight over police conduct, said on October 29, in response to a letter from Amnesty International Kenya and Human Rights Watch seeking comment that they had investigated 67 cases of people killed during the protests between March and July 2023.<sup>9</sup>

Police also used unnecessary physical force, conducted illegal home searches, and unlawfully used tear gas against protesters, bystanders, children, and individuals in their homes, businesses and on the streets. The police used tear gas indiscriminately and recklessly in densely populated areas, including in Kibera and Mathare areas of Nairobi, Nyalenda areas in Kisumu, and near primary schools in Nairobi. This use of tear gas led to the death of two infants, aged 4 months and 7 months.

Hundreds of children were teargassed at Kihumbuini, Bethany Joy, and Free Methodist primary schools in Nairobi as police clashed with protesters near and around the schools. A teacher at Bethany Joy Academy told researchers that on March 27, 2023: “Community members pleaded with the police to stop throwing tear gas as children were present, but their pleas were ignored until they [police] came by and saw the school's flag.”

Police conducted home searches of suspected protesters in Nyalenda and Nyamasaria neighborhoods in Kisumu County where they conducted nighttime raids in residential areas long after the protests had ended. During such raids, the police beat two brothers, Brian and William Amulele, in Nyalenda who later succumbed to their injuries. They also shot John Owiti while he was in the restroom of his home in Nyalenda who later died from these injuries in hospital.

Police also violently attacked protesters using canes and *rungus* (wooden batons), which resulted in serious blunt force injuries and even death in at least three cases. They also hit, kicked, and slapped people including during arrests and in custody.

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<sup>9</sup> See report Annex for this letter.

The authorities deployed plain clothed officers, making it difficult to ascertain the identity of police officers implicated in abuses and undermining the chances of credible accountability. At least four witnesses said that there was heavy infiltration of protests in Nairobi and Nakuru by individuals carrying machetes, wooden batons, and sticks who were presumably working in coordination with police officers. In most cases examined, the police failed to rescue protesters from violence by such third parties. At least 13 witnesses reported seeing plain clothed individuals working with uniformed police officers to manage and disrupt protests.

Kenya has a poor track record of holding the police and other security forces accountable for human rights violations, including excessive or otherwise unlawful use of force, torture and other ill-treatment, and unlawful killings.

Victims and witnesses interviewed for this report called for justice and accountability for the abuses they suffered. George Oduor who was shot by a rubber bullet in his back on July 20 in Mathare, said: “My appeal to the government is to investigate and charge the police officers responsible since, apart from myself, many Kenyans lost lives, and others were maimed. This will bring justice. Without justice, we cannot live in peace.”

Despite media reports, statements from civil society organizations and witness accounts detailing police abuses during the nationwide protests, the Inspector General of Police denied police responsibility and involvement in the killing of protesters and accused the Azimio la Umoja alliance of stage-managing the deaths.<sup>10</sup>

Some survivors and families of victims of abuses reported being turned away from police stations when they attempted to record statements or secure the required Police Occurrence Book (OB) numbers.<sup>11</sup> Other survivors said they were not able to or did not make a report to the police because they feared reprisals or believed their report would not lead to tangible action. In some cases, the Independent Policing and Oversight Authority (IPOA) was proactive and followed-up with victims or their families. IPOA, for instance, had

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<sup>10</sup> “IG Koome Claims Politicians Hired Bodies From Morgues To Tarnish Image Of Police” *Citizen Digital*, August 8, 2023, <https://www.citizen.digital/news/ig-koome-claimspoliticians-hired-bodies-from-morgues-to-tarnish-image-of-police-n325115> (accessed November 11, 2024).

<sup>11</sup> An Occurrence Book (OB) is the book used by the Kenyan police to record incidents and crimes. The numbers are given as evidence of reporting.

representatives present during some postmortem investigations and took statements from victims, witnesses, and families, and collected evidence such as bullets extracted from victims' bodies.

At the time of writing this report, neither IPOA, the Internal Affairs Unit of the police, nor the Office of the Director of Public Prosecutions (ODPP) have publicly issued updates on the progress of investigations they had launched into police abuses during the protests. Families of victims also said the authorities have provided them with little to no information regarding the status of investigations.

In August 2023, Parliament set up a National Dialogue Committee (NADCO) comprising leaders from Kenya Kwanza and Azimio la Umoja to hear and receive public memoranda on issues of national concern.<sup>12</sup> The dialogue committee did not make any recommendations relating to accountability measures for the unlawful use of force by the police.<sup>13</sup>

To date, not a single police officer has been prosecuted for the killings and other serious violations documented in this report.

Article 37 of the Kenyan Constitution provides for the right to peacefully assemble, demonstrate, picket, and petition the authorities. This article reinforces Kenya's obligations as a party to the International Covenant on Civil and Political Rights (ICCPR), the African Charter on Human and Peoples' Rights (ACHPR), and the Convention on the Rights of the Child (CRC).<sup>14</sup>

Amnesty International Kenya and Human Rights Watch found that the Kenyan authorities violated the rights under Kenya's constitution and regional and international human rights law to life, freedom from torture and other ill-treatment, human dignity, peaceful assembly, and free expression.

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<sup>12</sup> "The Senate approves the National Dialogue Committee during a special sitting," *Parliament of Kenya*, undated, <http://www.parliament.go.ke/node/20708> (accessed November 12, 2024).

<sup>13</sup> "Report of the National Dialogue Committee," National Dialogue Committee, November 25, 2023, <https://rb.gy/89t57m> (accessed November 11, 2024).

<sup>14</sup> African [Banjul] Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force October 21, 1986, ratified by Kenya on January 23, 1992; International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by Kenya May 1, 1972; UN Convention on the Rights of the Child (CRC), adopted November 20, 1989, entered into force 1990, ratified by Kenya on January 26, 1990.



Police use tear gas and water jet spray on an opposition convoy on the outskirts of Nairobi, Kenya, March 30, 2023. © 2023 AP Photo/Patrick Ngugi

The organizations also found that the rights to freedom of conscience and opinion, freedom of expression, and the rights to health, livelihood, and property, protected under the Kenyan Constitution and international human rights law, were also violated by the Kenyan police.

The Kenyan government should ensure accountability for the violations documented in this report to affirm its commitment to the rule of law and rebuild public trust in its ability to protect rights, appropriately punish abusers, and create a fair and just society.<sup>15</sup> It should conduct thorough and impartial investigations into violations reported during the March-July 2023 nationwide protests and hold to account those found to have violated human rights. Given its centrality in addressing police violations of human rights, IPOA should make appropriate recommendations to the Office of the Director of Public Prosecutions (ODPP) for fair trials of those implicated in abuses.

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<sup>15</sup> Navanethem Pillay, “Establishing Effective Accountability Mechanisms for Human Rights Violations,” *UN Chronicle*, No. 4 Vol. XLIX, December 31, 2012, <https://www.un.org/en/chronicle/article/establishing-effective-accountability-mechanisms-human-rights-violations> (accessed November 11, 2024).

The IPOA should also ensure transparency in its operations, including publicly sharing investigation outcomes and providing regular updates on ongoing investigations to families and the public. Police and prosecution authorities should also cooperate with IPOA to execute their mandate, including by facilitating investigations and prosecutions.

While not the focus of this report, our organizations have continued to document the disruption of peaceful protests and the use of unnecessary and excessive force by the Kenyan police throughout 2024.

On January 25, 2024, police forcibly dispersed a peaceful gathering of at least 200 people at the privately owned Cheche Book store in the Lavington neighborhood of Nairobi. The gathering was calling for an end to the bombardment of Gaza by the Israeli government and support for Palestine.<sup>16</sup> On February 29, 2024, police officers shot and injured Davji Bhimji, secretary general of the Kenya Medical Practitioners and Dentists Union with a tear gas canister at close range while he was leading a peaceful protest in Nairobi.<sup>17</sup>

In May 2024, police officers violently dispersed people protesting the forcible demolition of their homes following government orders to relocate to higher ground during the mass flooding that claimed hundreds of lives and displaced hundreds of thousands of people across Kenya.<sup>18</sup> In October 2024, the High Court ruled the Government must compensate several communities for violating their rights to adequate notice and failing to provide adequate housing and shelter prior to destroying their homes.<sup>19</sup>

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<sup>16</sup> “Kenya: pro-Palestine protesters targeted by police,” *Africa News*, August 13, 2024, <https://www.africanews.com/2024/01/25/kenya-pro-palestine-protesters-targeted-by-police/>; Amnesty International, “Kenyan Police disruption of march calling for ceasefire in Gaza is unlawful,” January 24, 2024, <https://www.amnestykenya.org/kenyan-police-disruption-of-march-calling-for-ceasefire-in-gaza-is-unlawful/> (accessed November 11, 2024).

<sup>17</sup> “PSI Condemns Violent Attack on Kenyan Healthcare Union Leader,” Public Services International news release, February 29, 2024, <https://publicservices.international/resources/news/psi-condemns-shooting-of-kenyan-health-union-leader?id=14761&lang=en> (accessed November 11, 2024).

<sup>18</sup> “Forced Evictions and Demolitions in Kenya’s Informal Settlements,” Pamoja Trust, November 11, 2024, <https://pamojatrust.org/2024/06/17/forced-evictions-and-demolitions-in-kenyas-informal-settlements/> (accessed November 11, 2024); “Solidarity Statement on the Recent Evictions in Nairobi Informal Settlements,” Amnesty International press statement, May 15, 2024, <https://www.amnestykenya.org/solidarity-statement-on-the-recent-evictions-in-nairobi-informal-settlements/>; “Kenya Floods Threaten Marginalized People,” Human Rights Watch news release, May 2, 2024, <https://www.hrw.org/news/2024/05/02/kenya-floods-threaten-marginalized-people>.

<sup>19</sup> “Ruto Left with Egg on His Face as Court Rules on Nairobi Evictions,” *Kenya Times*, November 5, 2024, <https://thekenyatimes.com/law-order/courts/ruto-left-with-egg-on-his-face-as-court-rules-on-nairobi-evictions/> (accessed November 11, 2024).

On June 18, protests organized by young Kenyans (commonly referred to as the “Gen Z protests”) began online and in cities and towns across Kenya after the government introduced the Finance Bill 2024. They expressed outrage over provisions of the bill that would raise taxes on essential goods and services such as cooking oil and sanitary towels, and on mobile money transfers, which were proposed at least in part to meet International Monetary Fund (IMF) revenue targets. The protests evolved to express broader outrage at the high cost of living, corruption, poor governance, wasteful government spending, and the abysmal state of public services.

The authorities again resorted to a heavy-handed approach with police shooting at protesters, using tear gas indiscriminately, and targeting and attacking media and journalists and civil society activists.<sup>20</sup> Police and suspected state agents also allegedly engaged in a spate of arbitrary arrests and detentions, abductions, and enforced disappearances. At the time of writing this report, the Kenya National Commission on Human Rights has documented that at least 73 people have been abducted, 61 were killed and 1,765 had been arbitrarily arrested between June and November.<sup>21</sup>

Civil society groups have released several public statements calling on President Ruto to acknowledge, apologize, and ensure justice and accountability for police abuses since 2023.

Revisiting the 2023 human rights violence one year on, it is clear that the lack of accountability for 2023 and other past abuses may have emboldened police and other state agents to violate rights in 2024.

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<sup>20</sup> KNCHR(@HakiKNCHR), post to X (formerly known as Twitter), June 26, 2024, <https://x.com/HakiKNCHR/status/1805986565363261469>; KNCHR(@HakiKNCHR), post to X (formerly known as Twitter), June 18, 2024, <https://x.com/HakiKNCHR/status/1803116037182722310>; “Media council says 24 journalists attacked by police during recent demos,” *KBC*, August 11, 2024, <https://www.kbc.co.ke/media-council-says-24-journalists-attacked-by-police-during-recent-demos/> (accessed November 11, 2024).

<sup>21</sup> “Kenya: Security Forces Abducted, Killed Protesters,” Human Rights Watch news release, November 5, 2024, <https://www.hrw.org/news/2024/11/06/kenya-security-forces-abducted-killed-protesters>; “Statement on Abductions of Citizens Suspected of Involvement in #RejectFinanceBill2024 Protests,” Amnesty International press statement, June 25, 2024, <https://www.amnestykenya.org/statement-on-abductions-of-citizens-suspected-of-involvement-in-rejectfinancebill2024-protests/>; State of The Nation | Why police should be sanctioned over killings and abductions, *KenyaMoja.com*, November 7, 2024, <https://www.kenyamoja.com/video/state-nation-why-police-should-be-sanctioned-over-killings-and-abductions-citizen-tv-1003297> (accessed November 11, 2024).

Amnesty International Kenya and Human Rights Watch call on the Kenyan government to ensure accountability for past and ongoing abuses committed in the context of protests. The authorities should also take effective measures to prevent further deaths and injuries. Moreover, the Kenyan government should address the root causes of the protests, including the government's economic policies that deprive people of their economic, social, and cultural rights. Such tangible actions, including an acknowledgment of and compensation for the lives lost and the people injured, could help restore public faith in authorities and assure Kenyans that all human beings have equal rights under the law and equally deserve dignity and protection.<sup>22</sup>

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<sup>22</sup> Universal Declaration of Human Rights (UDHR), adopted December 10, 1948, G.A. Res. 217A(III), U.N. Doc. A/810 at 71 (1948), art. 1.

# Recommendations

## To the President

- Establish a judicial Commission of Inquiry to investigate the various violations reported during the protests and the drivers of the violations that occurred during the 2023 protests with a view to informing long-term strategies aimed at preventing the recurrence of election-related violence, including:
  - Instructions given to police officers across the affected counties.
  - Illegal arrest and prolonged detention of protesters; including of children under age 18 detained with adults.
  - Unlawful killings during protests.
  - Failure to report the discharge of weapons and the lethal use of force to IPOA.
  - Use of non-uniformed and non-commissioned officers to police protests, including the deployment of undercover police officers.
  - Police use of unmarked vehicles, ambulances, and vehicles with distorted number plates during demonstrations.
- Kenyan authorities should also address the continuing impacts of Kenyan authorities' abuses against protestors and bystanders on economic, social, and cultural rights by:
  - Enacting or otherwise expanding social security measures to ensure the income security of those injured by authorities and unable to work, as well as the surviving dependents of those killed.
  - Ensuring the right to health and freedom of movement of those injured by authorities by paying for medical costs associated with their treatment and recovery and prohibiting the practice of medical detention at all public and private health facilities.
  - Ensuring that surviving dependents of those killed do not face any cost-based barriers to acquiring the remains of loved ones and should ensure that such remains are handled in a culturally acceptable manner.
  - Ensuring that those who acquired disabilities as a result of the protests have access to community support services to facilitate their participation and inclusion in all aspects of community life, including work and education.



## To the National Police Service

- Conduct thorough and impartial investigations into allegations of police violations including cases of excessive use of force, torture, unlawful arrests and detentions, and other violations included in this report and ensure that those responsible for abuses are brought to justice or disciplined accordingly.
- Enhance cooperation, including evidence sharing, with IPOA on their investigations.
- Step up training and police management to incorporate human rights courses in training and continuous career development to educate the police on the need to comply with human rights, especially when manning protests.
- Pay particular attention to ensuring the availability and use of weapons less likely to cause death or serious injury than firearms. However, such weapons should not be abused—they can also cause death or serious injury. Special training concerning the use of such weapons should be provided.
- Improve welfare and working conditions of police officers to contribute towards a more rights respecting and effective policing culture.
- Provide competency-based testing of officers carrying firearms at regular intervals, but at least once a year, in accordance with the law.

## To Political Leaders and Parliament

- Address the root causes of protester anger by ensuring that the government's economic policies align with its obligation to fulfill all people's economic, social, and cultural rights. This includes ensuring meaningful public participation in the design and implementation of economic reforms and the publication of human rights impact assessments of proposed policies.
- Publicly commit to comprehensive police reforms and ensure that the process of reform is expedited to improve both the effective protection of human rights and processes for internal accountability and external oversight in the face of alleged violations.
- Refrain from interfering in operational policing decisions and from otherwise exerting political pressure on the policing of demonstrations.
- Repeal Section 5 of the Public Order Act and align it to the Constitution, African Commission Guidelines on the Right to Protest and International Human Rights

Standards by guaranteeing exercising the right to protest. Section 5 of the Public Order Act requires that protesters issue a notice of at least three days to the police. However, this requirement has restricted protests, including the 2023 nationwide protests. Parliament should work towards complying with the United Nations Human Rights Committee’s concluding observations on Kenya’s Fourth periodic report to bring all laws and practices governing peaceful assembly into full compliance with the International Covenant on Civil and Political Rights.<sup>23</sup>

## The Independent Policing Oversight Authority

- Urgently conclude investigations into the reported cases of the unlawful use of force by the police across the country, especially in Kisumu, Kisii, Machakos, Migori, Nairobi, Homa Bay, and Nyamira counties where we documented unlawful killings by police.
- Make public the findings of these investigations, including on the number of deaths and police units and formations responsible.

## To Kenya’s International Partners

- Urge the Kenyan authorities to investigate and prosecute those responsible for human rights violations committed during the nationwide protests and closely monitor any investigations and prosecutions of those culpable so they can be held accountable.
- Seize every opportunity to press the government of Kenya to implement police reforms and, where relevant, provide support that would enhance IPOA’s investigative capacity to ensure fair investigations.
- Make any bilateral assistance to the police contingent on effective reforms, accountability for abuses and reparations to victims.
- Call on the government and IPOA to make public their findings into police excesses and urge the Office of the Director of Public Prosecutions to launch prosecutions on implicated officers.

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<sup>23</sup> United Nations Human Rights Committee, “Concluding observations on the 4th periodic report of Kenya,” CCPR/C/KEN/CO/4, May 11, 2021, <https://digitallibrary.un.org/record/3925702?ln=en&v=pdfaccessible> (accessed November 11, 2024).

- Support Kenyan civil society groups working to promote police reforms and accountability for political violence financially and politically.

## **To the African Commission on Human and Peoples' Rights, UN Human Rights Commission Special Mandate Holders**

- Request an invitation from Kenya to carry out a fact-finding mission on police management of protests.
- Consistently and publicly condemn police-related human rights violations and publicly and privately raise concerns with government officials at all levels. Press officials to ensure accountability for abuses by state security forces.
- Call on Kenya to repeal section 5 of the Public Order Act and align it with the constitution.

## Methodology

The report details the findings of a joint investigation by Amnesty International Kenya and Human Rights Watch into the policing of anti-government protests in Kenya between March and July 2023. The investigation focused on the use of force by Kenyan law enforcement officers and other human rights violations during these protests.

It builds on over a decade of desk and field work by Amnesty International Kenya and Human Rights Watch, collecting evidence of human rights violations perpetrated by Kenya's police in policing protests, documenting election-related violence,<sup>24</sup> campaigning on police reforms, ending extra-judicial executions, and protecting the right to peaceful protest in Kenya. Among these is the May 2023 statement by Amnesty International Kenya and Human Rights Watch and the August 2023 report by the Law Society of Kenya, Kenya Medical Association, and Amnesty International Kenya.<sup>25</sup>

Human Rights Watch and Amnesty International Kenya trained 25 data monitors and 15 research assistants on research methods and evidence-collection standards on July 19-20, 2023. These monitors and assistants, supervised and accompanied by Amnesty and Human Rights Watch staff in Kisumu and Nairobi, conducted 226 interviews between March and August 2023 in Nairobi, Kisumu, Machakos, Migori, Nakuru, Kisii, Nyamira, Homa Bay, Siaya, and Makueni counties with victims of abuses, witnesses, and family members of those affected by police violence during the protests. The interviewees included 155 men, 61 women and 10 children under the age of 18. Some children were interviewed in the presence of an adult.

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<sup>24</sup> Human Rights Watch, *High Stakes: Political Violence and the 2013 Elections in Kenya*, February 7, 2013, <https://www.hrw.org/report/2013/02/07/high-stakes/political-violence-and-2013-elections-kenya>; Amnesty International USA, "Annual Report: Kenya," AFR 32/002/2012, May 20, 2013, May 2013 <https://www.amnestyusa.org/reports/annual-report-kenya-2013/>.

<sup>25</sup> Amnesty International, Law Society of Kenya, Kenya Medical Association, "Preliminary Communication On Human Rights Situation In Kisumu And Kisii Counties," August 4, 2023, <https://www.amnestykenya.org/preliminary-communication-on-human-rights-situation-in-kisumu-and-kisii/>; Amnesty International and Human Rights Watch, *'Kill those Criminals': Security Forces Violations in Kenya's August 2017 Elections*, October 2017, <https://www.hrw.org/report/2017/10/16/kill-those-criminals/security-forces-violations-kenyas-august-2017-elections>; "Joint statement on current crisis facing Kenya," Amnesty International statement, July 1, 2024, <https://www.amnestykenya.org/joint-statement-on-current-crisis-facing-kenya/>; Human Rights Watch and Amnesty International "Kenya: End Abusive Policing of Protests," May 31, 2023, <https://www.hrw.org/news/2023/05/31/kenya-end-abusive-policing-protests>.

Researchers identified and corroborated 116 cases of human rights violations committed by the police. Nearly half of the 61 women interviewed said they were subjected to police abuses during the protests. A third were exposed to tear gas in their homes or outdoors. At least two women sustained gunshot injuries, and five others were beaten by the police. Witnesses said two women were shot and killed.

A total of 82 men were subjected to violations by the police, 27 of whom were killed, including 24 allegedly shot and three beaten to death by police. An additional 35 men sustained bullet wound injuries, 19 were beaten, two sustained deep knife and machete cuts, one was injured after falling off a motorcycle while being chased by the police, one other sustained injuries after being run over by a police Landcruiser vehicle and two others were injured by tear gas thrown at them by police.

It also highlights the impact of police violence on children during protests. Ten children were interviewed, with three suffering injuries and medical complications due to tear gas exposure, four sustaining gunshot wounds, two beaten by police, and two unlawfully arrested. Additionally, witness accounts suggest two children died as a result of tear gas exposure.

Researchers gathered evidence from various sources to substantiate their findings. This included analyzing photographs, videos, and medical records and Police Occurrence Book reference numbers (records incidents, crimes, complaints made at police stations) in select cases.<sup>26</sup> They also cross-referenced this information with media reports, government documents, and reports from Kenyan human rights groups. Additionally, they consulted public information sources like news articles and official statements.

This report builds on the May 2023 statement by Amnesty International Kenya and Human Rights Watch the July–August 2023 report by the Law Society of Kenya, Kenya Medical Association and Amnesty International Kenya, as well as past reports by Amnesty International and Human Rights Watch on abuses by the Kenya police service.<sup>27</sup>

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<sup>26</sup> A reference number is usually issued to the complainant, which they can use as reference throughout the police investigation.

<sup>27</sup> “Joint statement on current crisis facing Kenya,” Amnesty International statement, July 1, 2024, <https://www.amnestykenya.org/joint-statement-on-current-crisis-facing-kenya/>; Human Rights Watch and Amnesty International “Kenya: End Abusive Policing of Protests,” May 31, 2023, <https://www.hrw.org/news/2023/05/31/kenya-end-abusive-policing-protests>.

All interviews were conducted in Kiswahili or English and, where necessary, questions were translated into local languages to enhance understanding. In cases where the responses were given in local languages, they were translated into English. Most of the interviews were conducted in private; in some cases, family members or friends were present. No compensation or any form of remuneration was offered or provided to any of the interviewees. The names of most of the victims and witnesses have been withheld to protect identities and for fear of reprisals. Real names of the deceased have been used with consent from relatives.

On October 7, 2024, our organizations shared a summary of the research findings and requesting response to specific questions to the government including to the Ministry of Interior and National Administration, Independent Policing Oversight Authority (IPOA), Inspector General of the Police Service, and the Office of the Director of Public Prosecutions (ODPP). The IPOA and ODPP sent replies on October 29, 2024 and November 5, 2024, respectively, and their responses have been considered in finalizing this report and included in annexes.

## Background

The announcement of the August 2022 general election results by the Independent Electoral and Boundaries Commission (IEBC), the third election held since the promulgation of the 2010 Constitution, led to nationwide protests during which Kenyan and international human rights organizations alleged that police used excessive and unnecessary force against protesters. The human rights groups also accused police of violating the right to protest, right to life, freedom of expression, and protection from torture, among other human rights.<sup>28</sup>

Raila Odinga, the leader of Azimio la Umoja, One Kenya Coalition (Azimio la Umoja) and William Ruto, the then deputy president and leader of the United Democratic Alliance (UDA) and the Kenya Kwanza coalition—formed in the lead-up to the elections—were the top contenders in the presidential race. On August 15, 2022, the IEBC declared that Ruto was elected as Kenya’s president.<sup>29</sup>

Azimio la Umoja disputed the results, relying on an anonymous whistle-blower report which alleged that a special team had been formed to manipulate election results by altering election forms.<sup>30</sup> Four IEBC commissioners—then vice chairperson Juliana Cherera, Justus Nyang’aya, Irene Masit, and Francis Wanderi—disowned the election results as declared by the chairperson, Wafula Chebukati.<sup>31</sup>

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<sup>28</sup> Amnesty International, “Uphold the Right to Protest in Kenya,” March 27, 2023, <https://www.amnestykenya.org/uphold-the-right-to-protest-in-kenya/>; Human Rights Watch and Amnesty International “Kenya: End Abusive Policing of Protests,” May 31, 2023, <https://www.hrw.org/news/2023/05/31/kenya-end-abusive-policing-protests>.

<sup>29</sup> “Chaos as Ruto declared 5th Kenyan President,” *Daily Monitor*, August 15, 2022, <https://www.monitor.co.ug/uganda/news/chaos-as-ruto-declared-5th-kenyan-president-3914962> (accessed November 11, 2023).

<sup>30</sup> “‘Sham Poll’: IEBC ‘Whistleblower’ make rigging revelations,” *NTV Kenya*, January 18, 2023, <https://ntvkenya.co.ke/news/sham-polls-iebc-whistle-blower-makes-rigging-revelations/> (accessed November 11, 2024); Also see: “John Githongo Affidavit - Kenya Presidential Election Petition 2022,” *Africa Uncensored*, undated, <https://www.scribd.com/document/588510741/John-Githongo-Affidavit-Kenya-Presidential-Election-Petition-2022>; Also see: “Kenya 2022: Whistleblower’s confession questions IEBC credibility,” *The Africa Report*, August 23, 2022, <https://www.theafricareport.com/234773/kenya-2022-whistleblowers-confession-questions-iebc-credibility/> (accessed November 11, 2024).

<sup>31</sup> While terming the Bomas of Kenya venue counting and verification process as ‘opaque’, the four distanced themselves from the results and claimed that they were not involved in the tally process as required by law. “Four IEBC Commissioners distance themselves from final stage of Presidential Poll Tallying” *The Standard*, August 12, 2023, <https://www.standardmedia.co.ke/counties/article/2001453314/four-iebc-commissioners-distance-themselves-from-final-stage-of-presidential-poll-tallying> (accessed on November 11, 2024); *Odinga and 16 Others v Ruto* and 10

Odinga and 16 others filed a petition at the Supreme Court of Kenya alleging permeability of the Kenya Integrated Electoral Transmission System, which was used to register voters as well as to identify and transmit tallies from polling stations to the National Tallying Centre.<sup>32</sup> The Supreme Court dismissed the petition and determined that the evidence presented was not sufficient to warrant setting aside the results as declared by the IEBC.<sup>33</sup> In a unanimous decision, the court validated the election of William Ruto on September 4, 2022.<sup>34</sup>

In December 2022, President Ruto suspended IEBC commissioners Cherera, Nyang'aya, Masit, and Wanderi who disagreed with the election results as announced. And with the approval of Parliament, the president formed a tribunal to investigate the four for “subverting the constitution and the will of the people.”<sup>35</sup> Three of the commissioners subsequently resigned, which together with the January 2023 departure of the IEBC chair and two others whose term had ended, paralyzed the work of the IEBC including its management of by-elections.<sup>36</sup> In February 2023, the tribunal, chaired by appeal court judge Aggrey Muchelule, found the fourth commissioner, Irene Masit, guilty of misconduct and recommended her dismissal. She was terminated in March, but Masit has appealed the decision.<sup>37</sup>

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Others, Presidential Election Petition Eoo5, Eoo1, Eoo2, Eoo3, Eoo4, Eoo7 & Eoo8 Of 2022, Supreme Court, Consolidated Judgement, September 5, 2022, <https://kenyalaw.org/caselaw/cases/view/240578/>.

<sup>32</sup> The petition posited that there was interference in the system and that the whole process fell below the constitutional and statutory standards. The petitioners also contested the formula the IEBC or its chairperson used to declare that William Ruto had obtained the threshold of 50 percent + 1 of the votes in the presidential election. Petitioners also contended that the rounding off (number is made simpler by keeping its value intact but closer to the next number) votes cast in a presidential election to assess the threshold under Article 138(4) of the Constitution was illegal and unconstitutional.

<sup>33</sup> *Odinga and 16 Others v Ruto and 10 Others*, Presidential Election Petition Eoo5, Eoo1, Eoo2, Eoo3, Eoo4, Eoo7 & Eoo8 Of 2022, Supreme Court, Consolidated Judgement, September 5, 2022, <https://kenyalaw.org/caselaw/cases/view/240578/>.

<sup>34</sup> Petition No. Eoo5 of 2022 was dismissed as consolidated with Presidential Election Petition Nos Eoo1, Eoo2, Eoo3, Eoo4, Eoo7 & Eoo8 of 2022.

<sup>35</sup> See: The Constitution of Kenya in The Matter of a Tribunal Appointed Pursuant to Article 251 of The Constitution Kenya, Kenya Gazette Notice No. 14890, Vol. CXXIV–No. 258, December 2, 2022, <https://archive.gazettes.africa/archive/ke/2022/ke-government-gazette-dated-2022-12-02-no-258.pdf>; Bruhan Makhong, “Muchelule Tribunal to hear from Molu, Guliye and Serena staff on Thursday,” *Capital FM*, December 21, 2022, <https://www.capitalfm.co.ke/news/2022/12/muchelule-tribunal-to-hear-from-molu-guliye-and-serena-staff-on-thursday/> (accessed November 11, 2024).

<sup>36</sup> “Third polls official out ahead of hearings but opposition insists on reforms”, *the East African*, December 11, 2022, <https://www.theeastafrican.co.ke/tea/news/east-africa/third-iebc-official-out-ahead-of-tribunal-hearings-4050620>; “End of an era as Chebukati and two poll chiefs exit IEBC,” *the Nation*, January 8, 2023, <https://nation.africa/kenya/news/politics/end-of-an-era-as-chebukati-and-two-poll-chiefs-exit-iebc-4079316> (accessed November 11, 2024).

<sup>37</sup> “Tribunal recommends sacking of IEBC commissioner Irene Masit,” *Business Daily*, February 27, 2023, <https://www.businessdailyafrica.com/bd/economy/tribunal-recommends-sacking-of-iebc-commissioner-irene-masit-4139512>; Jemimah Mueni, “President Ruto terminates IEBC commissioner Masit’s appointment after probe on conduct,”



Kenyans at this time had been grappling with price increases that impeded access to essential goods and services.<sup>38</sup> Many countries were experiencing similar price increases due to a number of factors, including supply chain disruptions during the Covid-19 pandemic, as well as Russia's full-scale invasion of Ukraine, which led in particular to an increase in global fuel and food prices. A rise in interest rates had also led Kenya to spend upwards of half its revenues on servicing debt.<sup>39</sup> Against this backdrop, the IMF approved a \$2.3 billion deal with the Kenyan government that imposed steep fiscal consolidation and introduced several economic reforms that further drove up these costs.

In September 2022, the new government removed fuel and maize subsidies, leading to price increases on these goods, triggering public outcry on cost of living.<sup>40</sup> Phasing out fossil fuel subsidies is a critical step in the transition to renewable energy sources and reducing inequality as, in absolute terms, they disproportionately benefit the wealthy, who consume more goods and services. But price increases associated with subsidy removal were felt most acutely by people with low incomes, undermining their ability to realize their economic, social, and cultural rights. The Kenyan government, instead of using the savings from subsidy removal to protect people's rights, continued downward spending on health and education even during subsidy removal.<sup>41</sup>

In a public rally in Nairobi on March 9, 2023, Odinga threatened to call nationwide protests if the Ruto-led government did not address the high cost of living and alleged fraud in the

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*Capital News*, March 1, 2023, <https://www.capitalfm.co.ke/news/2023/03/president-ruto-terminates-iebc-commissioner-masits-appointment-after-probe-on-conduct/> (accessed November 11, 2024).

<sup>38</sup> Kenya Institute of Public Policy Research and Analysis and Kenya National Bureau of Statistics reports on inflation and consumer price indices up till March 2023 when protests started show high inflation and increase in cost of food and electricity. See: "Kenya Economic Report 2023 on Cost of Living and the Role of Markets," *The Kenya Institute for Public Policy Research and Analysis (KIPPRA)*, 2023, <https://repository.kippira.or.ke/handle/123456789/4480>; "CPI and Inflation Rates," 2023, *Kenya National Bureau of Statistics*, <https://new.knbs.or.ke/cpi-and-inflation-rates/page/2/> (accessed November 11, 2024).

<sup>39</sup> "Annual Public Debt Management Report for Financial Year 2021/2022," *National Treasury and Planning Kenya*, 2021, <https://www.treasury.go.ke/wp-content/uploads/2023/06/Annual-Public-Debt-Report-2021-2022.pdf#page=72> (accessed November 11, 2024).

<sup>40</sup> "Kenya scraps petrol subsidy after president warned it was unsustainable," *Reuters*, September 15, 2022, <https://www.reuters.com/world/africa/kenya-scraps-petrol-subsidy-after-president-warned-it-was-unsustainable-2022-09-15/> (accessed November 11, 2024).

<sup>41</sup> OHCHR, "Human Rights-based analysis of Kenya's budget 2022/2023," 2022, <https://www.ohchr.org/sites/default/files/2022-09/Human-Rights-Based-Analysis-of-Kenya-Budget-2022-23.pdf> (accessed November 12, 2024).

2022 elections.<sup>42</sup> Ten days later, on March 19, Nairobi Regional Police Commander Adamson Bungei said that the protest notifications issued by Azimio la Umoja and the Nairobi business community were illegal because they were not published in a timely manner as provided in the Public Order Act.<sup>43</sup>

In taking this position, the police ignored the human rights law principle that a failure to notify the authorities of an upcoming assembly, where required, does not render the act of participation in the assembly unlawful, and must not in itself be used as a basis for dispersing the assembly or arresting the participants or organizers.<sup>44</sup>

The authorities also appeared to ignore Kenya's constitution, which only requires protest organizers to "notify" police to provide security, not seek permission. Instead, the authorities chose to rely on the colonial-era Public Order Act, which the authorities were required under the fifth schedule of the 2010 constitution to repeal and align with the constitution.

The first set of protests took place on March 20, 27, and 30, 2023, with Odinga announcing further biweekly demonstrations. The police violently suppressed the protests, forcing the organizers to call for immediate action from the government to address the violations.

Odinga declared a temporary suspension in the protests in April 2023 to allow for talks between the government and Azimio la Umoja to address their demands.<sup>45</sup> The talks

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<sup>42</sup> "Raila Declares Monday A 'Public Holiday' As He Calls For Protests" Citizen Digital, March 14, 2023, <https://www.citizen.digital/news/raila-declares-monday-a-public-holiday-as-he-calls-for-protests-n316094> (accessed November 12, 2024).

<sup>43</sup> "Police deny permission for protests over the late notification, declare tomorrow's protests illegal" NTV, March 19, 2023, <https://ntvkenya.co.ke/news/police-deny-permission-for-protests-over-late-notification-declare-tomorrows-protests-illegal/> (accessed November 12, 2024).

<sup>44</sup> United Nations Human Rights Committee, General Comment No. 37 on Article 21, Right of peaceful assembly, CCPR/C/GC/37, July 27, 2020, <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-37-article-21-right-peaceful>, para 71.

<sup>45</sup> "Kenyan opposition leader Odinga suspends anti-government protests," *Reuters*, April 2, 2023, <https://www.reuters.com/world/africa/kenyan-opposition-leader-odinga-suspends-anti-government-protests-2023-04-02/> (accessed November 12, 2024); "Raila Calls Off Anti-Government Protests, But With A Caveat" *Citizen Digital*, April 2, 2023, <https://www.citizen.digital/news/raila-calls-off-anti-government-protests-but-with-a-caveat-n317304> (accessed November 12, 2024).

stalled in mid-April, and protests resumed on May 2 after Azimio la Umoja notified the Officer Commanding Nairobi Central Police station on April 26.<sup>46</sup>

On May 4, 2023, the government, as required in every financial year, tabled the Finance Bill 2023/2024 before the National Assembly. The bill proposed new and higher taxes to meet a projected revenue of Ksh 3.6 trillion (US\$27.9 billion) for that financial year, and which according to civil society activists and others, further increased the already high cost of food and other basic commodities and impacted a wide range of rights.<sup>47</sup> In June 2023, President Ruto assented to the Bill, and it became law. Fifty-two petitioners acting in the public interest, including individuals and private corporations, challenged the Finance Act at the High Court.<sup>48</sup> The courts dismissed the petitions, and approved the implementation of the proposed taxes, except for some sections of the Act found to be in violation of constitutional provisions.<sup>49</sup>

Amid mounting public anger against government policies including the new tax hikes, the opposition called for another round of demonstrations. More protests took place on July 7, 2023—*Saba Saba* (Seven Seven) day—as well as July 12, 19, 20, and 21.<sup>50</sup> The police, as in

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<sup>46</sup> “Kenya opposition says it will resume protests on May 2,” *Reuters*, April 24, 2023, <https://www.reuters.com/world/africa/kenya-opposition-says-it-will-resume-protests-may-2-2023-04-24/> (accessed November 12, 2024).

<sup>47</sup> Amnesty International Kenya, “Civil Society Organizations (CSOs) Media Statement On The Finance Bill, 2023 - Amnesty Kenya,” May 22, 2023, <https://www.amnestykenya.org/csos-media-statement-on-the-finance-bill-2023/>; The Finance Bill 2023 had attracted 889 petitions from members of the public to the National Legislative Assembly, 137 of which rejected the bill in its entirety. “Finance Bill 2023: Did public participation matter?” *Citizen Digital*, June 14, 2023, <https://citizen.digital/news/finance-bill-2023-did-public-participation-matter-n321679>; Also see arguments put forward in: *Okoiti & 6 others v. Cabinet Secretary for the National Treasury and Planning & 3 others; Commissioner-General, Kenya Revenue Authority & 3 others (Interested Parties)*, Petition E181 of 2023, High Court at Nairobi (Milimani Law Courts), [2023] KEHC 25872 (KLR), November 28, 2023 judgment by DAS Majanja, CW Meoli, and LN Mugambi, <https://new.kenyalaw.org/akn/ke/judgment/kehc/2023/25872/eng@2023-11-28>. Kenya Human Rights Commission provides useful overview of legal challenges to the Finance Act 2023 as one of the petitioners: “Case on the Finance Act of 2023,” Kenya Human Rights Commission (KHRC), July 4, 2023, <https://khrc.or.ke/case/finance-act-of-2023-case/> (accessed November 12, 2024).

<sup>48</sup> Amnesty Kenya (@AmnestyKenya), post on X (formerly known as Twitter), July 10, 2023, <https://twitter.com/AmnestyKenya/status/1678375778227048449>; *Okoiti & 6 others v. Cabinet Secretary for the National Treasury and Planning & 3 others; Commissioner-General, Kenya Revenue Authority & 3 others (Interested Parties)*, Petition E181 of 2023, High Court at Nairobi (Milimani Law Courts), [2023] KEHC 25656 (KLR), July 10, 2023, ruling by Justice M. Thande.

<sup>49</sup> *Okoiti & 6 others v. Cabinet Secretary for the National Treasury and Planning & 3 others; Commissioner-General, Kenya Revenue Authority & 3 others (Interested Parties)*, Petition E181 of 2023, High Court at Nairobi (Milimani Law Courts), [2023] KEHC 25656 (KLR), July 10, 2023, ruling by Justice M. Thande.

<sup>50</sup> Kiswahili for Seven Seven. SabaSaba Day commemorates July 7, 1990, the day when Kenyans, including opposition leaders, held nationwide protests calling for political reforms, including multiparty democracy and political pluralism, and free and fair elections, eventually contributing to the end of the one-party rule system of President Daniel Arap Moi and the Kenya Africa National Union party. See: “SabaSaba: Kenyans Who Sacrificed to Facilitate Struggle for Multi-Party

March, declared the protests unlawful and deployed heavily to quell them. They used lethal ammunition and less lethal weapons including tear gas, water cannons, and rubber bullets. Between March and July 2023, researchers were able to verify that police killed at least 31 people and injured hundreds more.

In August 2023, Parliament set up a National Dialogue Committee (NADCO) comprising leaders from Kenya Kwanza and Azimio la Umoja to “facilitate dialogue and consensus building, and recommend appropriate constitutional, legal, and policy reforms on issues of concern to the people of Kenya.”<sup>51</sup> Despite memoranda from civil society and evidence submitted by IPOA on police abuses during the protests, the committee did not include accountability measures for the unlawful use of force by the police for discussion in its statement of issues or in its final report.<sup>52</sup> In July 2024, President Ruto signed into law the IEBC Amendment Bill, paving the way for the reconstitution of the IEBC among other electoral management issues.<sup>53</sup> This was a recommendation in the NADCO report as well as a core demand of the 2023 Maandamano and the 2024 Gen Z/Anti-tax protests.<sup>54</sup> At writing, the IEBC had yet to be reconstituted.

On July 31, 2024, the court of appeal declared that the entire Finance Act 2023, which formed the basis of the 2023 (and 2024) protests, was unconstitutional as its enactment process did not comply with the constitutional requirements for public participation.<sup>55</sup> The decision meant that Kenya would revert to the prior taxation framework. The government appealed this decision to the Supreme Court in August. On October 29, 2024, the Supreme Court ruled that the court of appeal erred in declaring the entire Finance Act as

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Democracy,” *TUKO News*, July 7, 2021, <https://www.tuko.co.ke/418017-saba-saba-kenyans-who-sacrificed-facilitate-struggle-multi-party-democracy.html> (accessed August 12, 2024).

<sup>51</sup>“Report of the National Dialogue Committee,” National Dialogue Committee, November 25, 2023, <https://rb.gy/89t57m> (accessed November 11, 2024).

<sup>52</sup> Ibid.

<sup>53</sup> Moses Kinyanjui, “Inside the IEBC Act that paves way for hiring of new electoral commission,” *Citizen Digital*, July 10, 2024, <https://citizen.digital/news/inside-the-iebc-act-that-paves-way-for-hiring-of-new-electoral-commission-n345563>; Edwin Nyarangi, “Ruto assents to Bill, paving the way for radical changes to IEBC,” *the Standard*, 2024, <https://www.standardmedia.co.ke/national/article/2001498670/ruto-assents-to-bill-paving-the-way-for-radical-changes-to-iebc> (accessed November 12, 2024).

<sup>54</sup> Irene Githinji, “Gen Z fuels urgent call for Ruto to sign law, reconstitute IEBC,” *the Standard*, 2024, <https://www.standardmedia.co.ke/national/article/2001498607/gen-z-fuels-urgent-call-for-ruto-to-sign-law-reconstitute-iebc> (accessed November 12, 2024).

<sup>55</sup> *National Assembly & 47 others v. Okiiti & 169 others*, Civil Application E577, E581, E585 & E596 of 2023 (Consolidated), Court of Appeal at Nairobi, [2024] KECA 39 (KLR), January 26, 2024, ruling by Justices L.A. Achode, J.M. Mativo, and P.M. Gachoka.

unconstitutional and stated that the parliament is not required to conduct additional public participation for amendments stemming from previous feedback as this could hinder the passage of important bills.<sup>56</sup>

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<sup>56</sup> Samuel Mwanawa Njuguna, “Treasury Battles Finance Act 2023 Ruling in Supreme Court,” *Kenyans.co.ke*, August 2, 2024, <https://www.kenyans.co.ke/news/103353-treasury-battles-finance-act-2023-ruling-supreme-court> (accessed November 18, 2024); Sam Kiplagat, “Treasury appeals to Supreme Court to reinstate Finance Act 2023,” *Nation*, September 10, 2024, <https://nation.africa/kenya/news/treasury-appeals-to-supreme-court-to-reinstate-finance-act-2023-4756872> (accessed November 12, 2024); *The Cabinet Secretary for the National Treasury and Planning & 4 Others vs. Okiya Omtatah Okiiti & 52 Others (“the Judgment”)*, The Supreme Court of Kenya, SC Petition Nos. Eo31, Eo32 & Eo33 of 2024, Judgement, October 29, 2024, see <https://x.com/KenyaJudiciary/status/1851262577214443633>.

## Violent Suppression of Protests

During protests carried out between March and July 2023, police shot at protesters using both regular ammunition and so-called non-lethal kinetic impact projectiles (also called rubber bullets and commonly made from a hardened rubber-like material). While considered less-than-lethal, these items can result in death when fired at close range and can cause serious harm. The misuse of tear gas and other chemical irritants, for instance in confined spaces, or when fired directly at people or used in excessive quantities, can also be fatal.<sup>57</sup>

Under the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, police must ensure that the force used is proportionate and that it is used to achieve a legitimate cause and match the seriousness of the offense.<sup>58</sup> Importantly, force may be used only when and to the extent it is strictly necessary,<sup>59</sup> and police officers should as far as possible minimize injury to persons.<sup>60</sup> These guidelines appear to have been ignored as police resorted to force against protesters who were not armed.

The 2023 protests started with protesters chanting slogans and moving through planned routes.<sup>61</sup> However, as soon as police officers started to disrupt protests violently, some protesters responded with violence, pelting the police with stones and empty teargas canisters, looting, and destroying public and private property.<sup>62</sup>

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<sup>57</sup> Amnesty International, “Amnesty International releases 30 rules to curb the use of chemical irritants by police,” July 30, 2021, <https://www.amnesty.nl/media/police-human-rights-programme/amnesty-international-releases-30-rules-to-curb-the-use-of-chemical-irritants-by-police>.

<sup>58</sup> UN Office of the High Commissioner for Human Rights, Basic Principles on the Use of Force and Fire Arms by Law Enforcement Officials, September 7, 1990, <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-use-force-and-firearms-law-enforcement>, principle 5.

<sup>59</sup> United Nations Human Rights Office of the High Commission of Human Rights, Code of Conduct for Law Enforcement Officials, December 17, 1979, <https://www.ohchr.org/en/instruments-mechanisms/instruments/code-conduct-law-enforcement-officials>, art. 3.

<sup>60</sup> UN Office of the High Commissioner for Human Rights, Basic Principles on the Use of Force and Fire Arms by Law Enforcement Officials, September 7, 1990, <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-use-force-and-firearms-law-enforcement>.

<sup>61</sup> “Kenya: Officials Threaten Protesters with Violence,” Human Rights Watch press release, July 18, 2023, <https://www.hrw.org/news/2023/07/18/kenya-officials-threaten-protesters-violence>.

<sup>62</sup> “Human Rights Violated and Crisis Ignited Unrests with Tragic Consequences: Urgent Action Needed,” Kenya National Commission on Human Rights press release, July 13, 2023, <https://www.knchr.org/Articles/ArtMID/2432/ArticleID/1164/Press-Release-Human-Rights-Violated-and-Crisis-Ignited-Unrests-With-Tragic-Consequences-Urgent-Action-Needed> (accessed November 12, 2024).

Through interviews with victims' family members and witnesses, this report documents the circumstances under which 31 people were killed by police between March-July 2023 in Nairobi, Kisumu, Nakuru, Machakos, Migori, Kisii, and Nyamira counties. They include 26 people who were shot (2 women and 24 men), 2 children who died following police use of tear gas in residential areas and 3 men beaten to death by police.

Hundreds of other protesters and passersby sustained serious injuries from gunshots, beatings and cuts. Thirty-five men were injured by police gunfire, 19 were beaten, and 2 were seriously wounded with knives or machetes. Additionally, one person was injured in a motorcycle accident while fleeing police, another was run over by a police vehicle, and two were injured by tear gas canisters.

In addition to the findings of researchers, an employee at Jaramogi Oginga Odinga Teaching and Referral Hospital (JOOTRH) said that at least 47 people in Kisumu during July alone were treated for gunshot injuries at the hospital.

Hundreds of children were teargassed in the compounds of three primary schools (Kihumbuini, Bethany Joy, and Free Methodist) in Nairobi, as police clashed with protesters near and around the schools.

Based on the information gathered during interviews, a review of medical records and corroborating photographic evidence, complemented with reliable media reports, and statements from human rights groups and government oversight agencies, this report finds that the police violated human rights guaranteed under the Kenyan constitution and regional and international human rights treaties Kenya has ratified.<sup>63</sup> Such violations include the right to life,<sup>64</sup> freedom from torture and degrading treatment,<sup>65</sup> infringement of

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<sup>63</sup> International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by Kenya May 1, 1972; UN Convention on the Rights of the Child (CRC), adopted November 20, 1989, entered into force 1990, ratified by Kenya on January 26, 1990; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), adopted December 10, 1984, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987.

<sup>64</sup> The Constitution of Kenya 2010, Chapter 4, article 26.

<sup>65</sup> Ibid., article 28.

the right to demonstrate, protest, and present petitions,<sup>66</sup> the right to education<sup>67</sup> for children whose learning was disrupted in various schools and learning institutions, the right to health,<sup>68</sup> and the right to a fair trial.<sup>69</sup>

While acknowledging the wider human rights impact of the authorities' response to the demonstrations, this section specifically documents the unlawful use of lethal and non-lethal force resulting in injuries and deaths, the unlawful and reckless use of tear gas resulting in death and health complications, arbitrary arrests, torture and other ill-treatment of protesters and bystanders during the March-July 2023 protests.

## Unlawful Use of Lethal Force

This section describes numerous incidents in which the Kenyan police resorted to the use of lethal force in contravention of international human rights law, resulting in unlawful killings and injuries to demonstrators and bystanders.

The UN Human Rights Committee in its General Comment No. 37 on Article 21 of the International Covenant on Civil and Political Rights (ICCPR) states that “[f]irearms are not an appropriate tool for the policing of assemblies and must never be used simply to disperse an assembly.... [A]ny use of firearms by law enforcement officials in the context of assemblies must be limited to targeted individuals in circumstances in which it is strictly necessary to confront an imminent threat of death or serious injury.”<sup>70</sup> These provisions

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<sup>66</sup> The Constitution of Kenya 2010; International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by Kenya May 1, 1972, art. 18-22.

<sup>67</sup> The Constitution of Kenya 2010, Chapter 4, article 43(1)(f); UN Convention on the Rights of the Child (CRC), adopted November 20, 1989, entered into force 1990, ratified by Kenya on January 26, 1990, art. 28 and 29; African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49 (1990), entered into force November 29, 1999, art. 11; International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force January 3, 1976, art. 13(1).

<sup>68</sup> The Constitution of Kenya 2010, Chapter 4, article 43; International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force January 3, 1976, art. 12.

<sup>69</sup> The Constitution of Kenya 2010, Chapter 4, art. 49, 50, and 51

<sup>70</sup> United Nations Human Rights Committee, General Comment No. 37 on Article 21, Right of peaceful assembly, CCPR/C/GC/37, July 27, 2020, <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-37-article-21-right-peaceful>, para 88.



are echoed in the African Commission on Human and Peoples' Rights Guidelines on Freedom of Association and Assembly in Africa.<sup>71</sup>

### *Unlawful Killings*

Of the 31 killings documented in this report, police shot and killed 24 men and 2 women with unlawful lethal force. Some of the victims were unarmed protesters who did not pose an imminent threat to the police or other people. Others were bystanders, passersby, or people in their homes and business premises.

A witness said that John Okoth Obonyo, a 32-year-old cobbler in Kaptembwo, Nakuru had gone to work on July 19, 2023, near the bus station and was apparently shot by police on his way home:

He met with many police officers in uniform who were chasing protesters. Some of the police officers were shooting in the air with large sounds of gunshots. Before he could run away, he was shot in the stomach from the left side, the bullet exiting from the right side, going through his right hand at the elbow. He fell, and women who were at the scene started screaming and scolding the police, asking them to take Okoth to the hospital as he was bleeding from the stomach where the bullet exited. But the police left him on the ground, bleeding. Two men carried him up to Ponda Mali, where they got a boda boda (commercial motorbike) who assisted them in getting to Langa Langa Health Centre at Kanu Street. After examination, they advised them to take him to Nakuru County referral hospital (PGH) as they could not handle the situation. They took him to PGH where he was rushed to the [operating] theater and was admitted to the ICU after an operation. He died July 21, and the body taken to PGH mortuary.<sup>72</sup>

Francis Okoth told researchers that police shot 19-year-old, Walter Odoyo Awuonda, on July 20, 2023, in Nyamasaria at around 6.30 p.m.:

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<sup>71</sup> Africa Commission on Human and Peoples' Rights, Guidelines on Freedom of Association and Assembly in Africa, May 22, 2017; further to Resolution 319 (LVII) 2015.

<sup>72</sup> Amnesty International and Human Rights Watch in-Person interview with Jack Omondi, Nakuru, July 20, 2023.

I started hearing gunshots, and people were running, then I saw a police land cruiser with police officers they came out and started shooting at people. The next thing I saw, someone fell, and the police officers fell on him. They started beating him where he was lying. People ran away, I did not know that it was my cousin. I was far away and could not recognize him, later the police got into their Landcruiser and left. At around 7 p.m. things had cooled down, so I decided to go and see the person lying there. When I reached there, I saw that it was my cousin who was lying there. I tried to help him because he was still alive, but he was not talking. I carried and put him on the motorbike and took him home. When we reached home, he was very tired. What he said to my uncle—his father—was that ‘the police have killed me.’ That’s how he died. He was shot in the head.<sup>73</sup>

Zainab Wanjiru witnessed the killing of 28-year-old motorbike operator and social media content creator, Douglas Kalasinga, also known as Sinko in Kawangware, Nairobi, during a protest on July 20, 2023.<sup>74</sup> Wanjiru said that Sinko was killed by a man dressed in civilian clothes, who was in the company of plain clothed police officers. She said that Sinko was shot dead in a crowd even though he apparently did not pose any threat to anyone.

Elvis Heathrow recounted how Benjamin Imbi Miya, a commercial motorbike rider aged 32, was shot on July 17, 2023, by the police in Kaptembwo, Nakuru:

Benjamin was not at work due to the Maandamano [protests]. He was going to a nearby chemist [pharmacy] to buy medicine as he was not feeling well. On his way, around 1 p.m. he met about six uniformed police officers armed with guns and rungu [wooden batons] dispersing demonstrators. One of the police officers, a woman known to locals from Ronda Police Station, shot Benjamin in the forehead above the left eye. The bullet exited at the back of his head and killed him on the spot. The police left Benjamin on the ground, bleeding profusely from the gunshot wound until 6 p.m. when

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<sup>73</sup> Amnesty International and Human Rights Watch in-Person interview with Francis Okoth, Kenya, August 16, 2023.

<sup>74</sup> Amnesty International and Human Rights Watch in-Person interview with interview with Zainab Wanjiru, Dagoretti, August 2, 2023.

police from Kaptembwo Police Station collected and deposited his body at Nakuru County Hospital Mortuary.<sup>75</sup>

A postmortem report seen by researchers established a close-range or near contact shooting. Benjamin's case, including a photograph of his body with bullet wounds, was recorded by IPOA.

In another incident, witnesses said that the police killed 20-year-old Wanjiru in Mlolongo, Machakos County, on July 12, 2023. According to Lilian Kerubi, a relative, Wanjiru was shot dead on her way to school to resume her afternoon classes.<sup>76</sup> According to Kerubi, police were randomly shooting to disperse protesters and, in the process, shot bystanders like Wanjiru. She said after the shooting Wanjiru was taken to Mariakani hospital in Mlolongo:

When I arrived at Mariakani health facility, which is a private hospital, I was told by the doctor that Wanjiru died on arrival. This was around 2 p.m. My family came, and we took her body to the Kitengela Saitoti [Hospital] morgue around 8 p.m. On July 14, 2023, a bullet was removed from her heart during postmortem conducted at the morgue. We buried her on July 24, 2023.<sup>77</sup>

Peter Ngolanye, a 25-year-old water vendor was fatally shot by police officers in Wote town, Makueni County on July 19, 2023.<sup>78</sup> His relative Joe Kimila recounted events that led to Ngolanye's death. He said:

They [police officers] were standing at Green Park [a recreational park in Makueni]. One of them shot at a shop's door that had been closed that day, and it was an Agrovat [a farmers' supply store]. The bullet fell and left a mark on the ground. Then another [police officer] shot Ngolanye in the right rib, with the bullet going into his body. This happened at around 12:30 p.m. on July 19, 2023. A boda boda rider took him to Wote County Referral Hospital. He was pronounced dead on arrival. On July 27, 2023, we, the

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<sup>75</sup> Amnesty International and Human Rights Watch in-Person interview with Elvis Heathrow, Nakuru, July 24, 2023.

<sup>76</sup> Amnesty International and Human Rights Watch in-Person interview with Lilian Kerubi, Mlolongo, August 10, 2023.

<sup>77</sup> Amnesty International and Human Rights Watch in-Person interview with Lilian Kerubi, Mlolongo, August 10, 2023.

<sup>78</sup> Interview with Joe Kimila, Makueni, August 11, 2023.

family buried him in the presence of an IPOA representative in Kyusyani, Mtito Andei, Kibwezi.”<sup>79</sup>

The governor of Makueni, Mutula Kilonzo, in a press release confirmed Ngolanye’s killing and called on IPOA to conduct investigations.<sup>80</sup>

### *Injuries from Unlawful Use of Lethal Force*

This report finds that at least 35 men, 2 women, and 4 children sustained gunshot injuries between March and July 2023.

In addition to the cases documented by Amnesty International Kenya and Human Rights Watch, a representative from the Jaramogi Oginga Odinga Teaching and Referral Hospital (JOOTRH) hospital said that at least 47 men suffered bullet wounds and wounds from kinetic impact projectiles in Kisumu, in July alone.<sup>81</sup>

In some cases, witness accounts, media reports referenced in specific cases, and videos reviewed by researchers showed that victims were either running away, had surrendered or had already been subdued when the police shot them, suggesting that the police used unlawful force given that the individuals posed no imminent threat.

At around 4 p.m. on July 20, 2023, Juma Ouma, a 39-year-old businessman, was in his small shop near his house in Kisumu when police started dispersing protesters along the road where his shop was located.<sup>82</sup> He narrated what happened after to him and four friends who were with him at the time:

We decided to run to get to the house. I heard ‘*Lala chini, lala chini*’ [Lie down], and as I was crossing the road to get into the house, I heard a sound, and my ears started ringing, and my leg was numb. I did not know what had happened to me. The next thing I saw was blood and a wound on

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<sup>79</sup> Ibid.

<sup>80</sup> “Governor condemns shooting of unarmed protesters as victim’s family seeks justice,” *the Standard*, 2023, [https://www.standardmedia.co.ke/eastern/article/2001477659/governor-condemns-shooting-of-unarmed-protesters-as-victims-family-seeks-justice#google\\_vignette](https://www.standardmedia.co.ke/eastern/article/2001477659/governor-condemns-shooting-of-unarmed-protesters-as-victims-family-seeks-justice#google_vignette) (accessed November 12, 2024).

<sup>81</sup> Amnesty International and Human Rights Watch in-Person interview with a representative, Kisumu, July 28, 2023.

<sup>82</sup> Amnesty International and Human Rights Watch in-Person interview with Juma Ouma, Kisumu, July 20, 2023.

my left leg when I removed my trousers. I did not know that I also had an injury wound in my stomach.<sup>83</sup>

Ouma said that he did not report the incident to IPOA or the police for fear of reprisals. He presented photographic evidence of his injuries to researchers.<sup>84</sup>

Glena Kwamboka, a 42-year-old office cleaner in Kisii, was shot in the hand on July 7, 2023, by police while she was at work:

Police started to throw tear gas [canisters] at people. They threw one through the window, and it choked us. We ran up to the third floor, where we thought we would be safe. We were about 30 people, many of them women. We watched as demonstrators made noise, blocked the road, and occasionally chased the police away. Sometimes, the police also chased them back. As time went by, more policemen came. Suddenly, I felt that something had hit me on the left hand. Then more blood was coming from the upper part of my arm and the right hand. It's like the bullet hit me from the left-hand side, hit the breast and lodged in my right arm. That happened quite fast.<sup>85</sup>

David Omondi, 37, said he was visiting a friend in Nyamasaria, Kisumu, on July 20, 2023, when people started running, claiming police officers were after them. He said:

[P]eople started running, and the next thing I knew, two police officers were standing next to me. One just removed his gun and shot me [in the diaphragm and stomach] .... As I sat down, pressing on the wound, another police officer who was with the first one shot me again.... As the police were shooting me, they told me that 'nyinyi ndio mnasumbua watu' [you are the

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<sup>83</sup> Ibid.

<sup>84</sup> On file with Amnesty International and Human Rights Watch.

<sup>85</sup> Amnesty International and Human Rights Watch in-Person interview with Glenna Kwamboka, Hema Hospital, Kisii Town, August 8, 2023.

ones disturbing people].... After that, they got into their Landcruiser and left.<sup>86</sup>

Omondi underwent surgery at Avenue Hospital where four bullets were removed from his body, he suffered injuries to the diaphragm, the large intestines, and the lung cover.<sup>87</sup>

George Simpson, father of 17-year-Old Sospeter, recounted the events after his son was allegedly shot by the police on July 20, 2023, during protests in Kisumu:

I heard people shouting outside and the noise was coming towards our compound where I was staying. People came into the compound telling me that Sospeter had been shot. As I ran outside to go where my son was, I found that the people who were there had taken him to hospital. I took a motorbike and followed them to Russia [clinic]. When I reached the hospital, I found my son in a pool of blood lying down. He had [been] beaten and shot 19 times. Seventeen bullets had been removed, but two remained in his body.<sup>88</sup>

Simpson showed researchers his son's medical report confirming gunshot injuries to his chest and diaphragm and that he was treated and discharged from Avenue Hospital, Kisumu.<sup>89</sup>

## Serious Abuses Against Children

Amnesty International Kenya and Human Rights Watch documented 50 cases of human rights violations against children under the age of 18 by the police in connection with their response to the protests. The violations included arbitrary arrests, torture and other ill-treatment, unnecessary and excessive use of force such as beatings, and the unlawful use of lethal and non-lethal force. While in most cases examined the perpetrators were members of the police force, researchers also found evidence of abuses perpetrated by

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<sup>86</sup> Amnesty International and Human Rights Watch in-Person interview with interview with David Omondi, Oyola Village, July 20, 2023.

<sup>87</sup> Ibid.

<sup>88</sup> Amnesty International and Human Rights Watch in-Person interview with George Simpson, Nyalenda, August 15, 2023.

<sup>89</sup> Ibid.

individuals who were not dressed in uniforms but suspected of working with the police. Although children, like adults, have a right to freedom of peaceful assembly,<sup>90</sup> evidence suggests that many of the affected children were not active participants in the protests. Instead, they were caught in the middle of police pursuing protesters or as they went about their daily activities.

Bobby Kaburu narrated the events leading to the alleged shooting of his 17-year-old grandson Henry Nyabunde by the police on July 7, 2023, in Kisumu:

My grandson Henry was playing football with his friends outside our home on the Maandamano day. I was in the house, only to be called by neighbors that the police had shot my grandson. I ran outside to see what was happening. There, I saw my grandson lying down, bleeding, and community members were trying to help him.... I got my motorbike and carried my grandson to the hospital with the help of one community member who sat holding him until we reached Russia hospital.... He was taken to the theater, and [they found] he had a bullet in his chest. The doctors said that it could not be removed because he could die. He is now living with his mother.<sup>91</sup>

In another incident, 16-year-old Edward Ndede said he was shot by police in his left leg near his groin on July 19, 2023, in Nakuru.<sup>92</sup> Photos and a hospital discharge summary on file with the organizations indicated that he was shot from behind with the bullet exiting through his stomach. At the time of the interview, nearly a month after the incident, he was still in pain, recuperating at home. He described the circumstances of the shooting:

I was going to Soko Mjinga where I am taking my course. On my way, I met people running away from plain clothed police officers who were chasing demonstrators.... I also started running towards home at Asieko, where I live with my parents. While running, I felt my left leg go numb and realized

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<sup>90</sup> UN Convention on the Rights of the Child (CRC), adopted November 20, 1989, entered into force 1990, ratified by Kenya on January 26, 1990, art. 15.

<sup>91</sup> Amnesty International and Human Rights Watch in-Person Interview with Bobbie Kaburu, Nyalenda, August 14, 2023.

<sup>92</sup> Amnesty International and Human Rights Watch in-Person Interview with Edward Ndede, Nakuru, August 17, 2023.

blood was coming from the right side of my stomach. I fell. I heard people at the scene say it was a gunshot wound. By the time I regained consciousness, I found myself at the Provincial General Hospital. It was around 11 a.m. I was taken to the theater and later admitted to Surgical Ward 6. I stayed there for one week and was discharged on July 25, 2023.<sup>93</sup>

Kenneth Oginga, a 15-year-old primary school student in Nyalenda, Kisumu, said that police picked him up from his home on July 21, 2023, and took him to a police station where they beat him up until he lost consciousness and then stripped him to his underwear:

After we left the house, the police put handcuffs on me. There was a police Landcruiser outside on the road. They put me in the car and took me to Joel Omino police station, in the car they were telling me ‘nyinyi ndio wale tunatafuta’ [You are the people we are looking for], when we reached the station, they removed me from the car and started beating me, they beat me until I fainted, then I had something in my ear like shock which woke me up, they removed my clothes and left me with underwear, they walked me up to the gate and left me to go home. I was hurt and could not walk properly; I tried slowly then I met some people who asked me what happened, and they helped me reach home. I still feel pain and cannot walk properly.<sup>94</sup>

## Unlawful Use of Tear Gas and Other Less Lethal Weapons

In addition to standard ammunition, police used so-called less lethal weapons, such as kinetic impact projectiles, recklessly and disproportionately to violently suppress protests, causing horrific injuries and even death. They also repeatedly used tear gas while dispersing protests and pursuing protesters, causing injury and death, without their use being necessary as required by international law. Bystanders and others not taking part in the protests as well as children who were in school were also teargassed. Witness

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<sup>93</sup> Ibid.

<sup>94</sup> Amnesty International and Human Rights Watch in-Person Interview with Kenneth Oginga, Nyalenda, August 16, 2023.



accounts showed that the use of tear gas by police, especially in and around schools, medical facilities, and residential areas, was unlawful.

### *Use of Kinetic Impact Projectiles*

On July 19, 2023, Danford Mandere had left his house in Nyalenda to buy milk and visit his parents when he met police who threw tear gas canisters and shot him with both a live bullet and kinetic impact projectiles. The kinetic impact projectiles hit him on the back of head and neck. He said:

[The doctor] said they looked like rubber bullets. They were small round balls, one on my shoulders next to my neck towards my spinal cord. He had carefully removed the one on my neck but said the bullet in my head was delicate and was careful not to remove it and cause further injuries. After further examination, he said it was three centimeters deep. [He] removed the projectile, stitched my wound, and injected me with a tetanus [vaccine].<sup>95</sup>

Scholavia Odede, 40, was shot by police near Adams in Nairobi on July 19, 2023: “I heard the cocking of a gun, and the police started shooting, as we were running, I fell down. I sustained a rubber bullet injury to the right knee, as you can see, I am on crutches, I am still unable to walk, and I am in pain.”<sup>96</sup>

Clinton Nyawina, 27, said that on July 27, 2023, he went to a pharmacy to buy some medication for his ailing father in Nyalenda, Kisumu. He noted:

When I got to the pharmacy, it was halfway open because of the Maandamano. People started running as I was waiting to be served. I also started running, then someone told me that I was bleeding. I started feeling as if my leg was heavy. The people who were near me checked my leg and saw that I was shot in my left leg. They thought it was a rubber bullet.<sup>97</sup>

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<sup>95</sup> Amnesty International and Human Rights Watch in-Person Interview with Danford Mandere, Kisumu, August 2, 2023.

<sup>96</sup> Amnesty International and Human Rights Watch in-Person Interview with Scholavia Odede, Kibera, August 8, 2023.

<sup>97</sup> Amnesty International and Human Rights Watch in-Person Interview with Clinton Nyawina, Nyamasaria, August 16, 2023

Nyawina said that people helped him return to the pharmacy, but the pharmacist said they were not equipped to treat a gunshot wound. His medical record shows that he was treated at JOOTRH for a gunshot wound and was discharged after five days.<sup>98</sup>

### *Injuries From Teargas Misuse*

During the protests across the country, police repeatedly fired tear gas directly at largely peaceful protesters and bystanders, unlawfully using force when it was not necessary. Amnesty International Kenya and Human Rights Watch documented at least 22 cases of people who were injured or developed respiratory complications because of police misuse of tear gas, including cases of children discussed above.

Kelvin Oirongo, 29, was part of a group of youth protesting on July 19, 2023, in Kibera. Police began directly firing tear gas at the crowd, and one of the canisters struck his hand and injured him. He presented photos that showed bruises to his hand, consistent with his account.<sup>99</sup>

### *Targeting of Schools and Health Facilities with Tear Gas and other Less Lethal Weapons*

At least four schools in Nairobi, one health facility in Kisumu, and a social justice center in Nyalenda were affected by the police use of tear gas.<sup>100</sup>

Police threw teargas canisters into the JOOTRH compound in Kisumu on July 12, 2023. A staff at the hospital said that this caused anxiety and panic among healthcare workers who were already overwhelmed by the numerous cases of serious injuries and bodies of dead protesters being brought into the facility.<sup>101</sup>

Hundreds of students were teargassed in primary schools at Bethany Joy, Free Methodist Academy, and Kihumbuini in Nairobi on March 27, May 26, and July 12 respectively.

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<sup>98</sup> Ibid.

<sup>99</sup> Amnesty International and Human Rights Watch in-Person Interview with Kelvin Oirongo, Kibera, July 19, 2023.

<sup>100</sup> Firing of teargas happened at Kihumbuini Primary School on July 12, 2023; Dr. Obiero Secondary School on March 30, 2023; Free Methodist Academy on March 30, 2023, and Bethany Joy Academy on March 27, 2023—all in Nairobi.

<sup>101</sup> “Joint statement on current crisis facing Kenya,” Amnesty International statement, July 1, 2024, <https://www.amnestykenya.org/joint-statement-on-current-crisis-facing-kenya/>.

Amnesty International, Law Society of Kenya, Kenya Medical Association, Joint Mission Report on the Protests in Kisumu and Kisii Counties, 19-21 July, August 4, 2023

Throwing teargas canisters directly into school compounds was an apparent unlawful use of force, as there was no evident cause or reason to target the schools. Although the schools were located along the protest routes, there were no protesters in the schools and learning was ongoing at the time of the incidents.<sup>102</sup> Students and staff in the school compounds were also affected by the tear gas despite not being involved in the protests.

Steve Orina, a teacher at Bethany Joy Academy, Kibera, into which police lobbed teargas canisters while classes were ongoing on March 27, 2023, said:

The demonstrations began early in the day on March 27, 2023, and escalated quickly. The police threw teargas cannisters inside the school, affecting all the children, and I had to walk around washing their faces. Some pupils have yet to return to school [for two weeks now]. Some community members pleaded with the police to stop throwing tear gas as children were present, but their pleas were ignored until they [police] came by and saw the school's flag.<sup>103</sup>

Annarita Kiiru, a community health volunteer in Kangemi, Nairobi, who responded to distress calls from Kihumbuini Primary School on July 12, 2023, said:

I received a call from a teacher at Kihumbuini Primary School informing me that the police had teargassed the school and that the children were in a critical condition. I immediately rushed to the scene and found that some children had fainted. Ambulances from Eagle Hospital came to take the children for treatment.<sup>104</sup>

Police unlawful use of tear gas on schools injured students and teachers and resulted in the school closing for some period. The neighboring Kangemi primary school, and New Kihumbuini primary school also closed for at least two weeks following the teargas

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<sup>102</sup> Amnesty International, Law Society of Kenya, Kenya Medical Association, "Preliminary Communication on Human Rights Situation in Kisumu and Kisii Counties," August 4, 2023, <https://www.amnestykenya.org/preliminary-communication-on-human-rights-situation-in-kisumu-and-kisii/>.

<sup>103</sup> Amnesty International and Human Rights Watch in-Person Interview with Steve Orina, Kibera, April 11, 2023.

<sup>104</sup> Amnesty International and Human Rights Watch in-Person Interview with Annarita Kiiru, Kangemi, July 19, 2023.

incident at the Kihumbuini school.<sup>105</sup> The government, following backlash from the police use of teargas at Kihumbuini and as a precautionary measure, directed all primary and secondary day schools in Kisumu and Mombasa to close on July 19, 2023, which was a planned protest day, and reopen the next day.<sup>106</sup> Disruptions, even short ones, can harm children's right to education.

Four witnesses said that the Nyando Social Justice Centre in Kisumu County caught fire on July 19, 2023, after police fired tear gas into the building, which exploded on the iron sheet structure while protests were ongoing.<sup>107</sup> Researchers visited the Centre on July 29, 2023, and observed the damage caused by the fire. The Centre housed a shelter for survivors of sexual and gender-based violence, community empowerment projects, and a center for the protection of human rights, which was completely destroyed by the fire.<sup>108</sup> The women and girls housed at the facility were forced to seek temporary shelter within the community.<sup>109</sup>

One staff member believed that the police use of tear gas may not have been accidental, as the police at the nearby police station previously had a dispute with the Centre due to

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<sup>105</sup> "Some schools in Kangemi closed despite reopening directive by the government," *NTV Kenya*, July 20, 2023, <https://ntvkenya.co.ke/news/some-schools-in-kangemi-closed-despite-reopening-directive-by-the-government/>; "Gov't says police did not throw tear gas canister into school compound, as 495 children yet to report back," *Citizen Digital*, July 14, 2023, <https://citizen.digital/news/govt-says-police-did-not-throw-tear-gas-canister-into-school-compound-as-495-children-yet-to-report-back-n323550> (accessed November 12, 2024).

<sup>106</sup> "Govt announces closure of day schools in Nairobi, Mombasa and Kisumu over demos," *Nation*, July 19, 2023, <https://nation.africa/kenya/news/education/govt-closes-day-schools-in-nairobi-mombasa-over-demos-4307886>; "Govt Re-Opens Primary Schools in Kisumu, Mombasa and Nairobi after Assessing Security Status," *Tuko.co.ke*, July 19, 2023, <https://www.tuko.co.ke/education/514603-govt-opens-primary-schools-kisumu-mombasa-nairobi-assessing-security-status/> (accessed November 12, 2024).

<sup>107</sup> "Amnesty International Kenya salutes the courage of Kisumu based human rights defenders during the re-opening of the Nyando Social Justice Centre," Amnesty International statement, April 19, 2024, <https://www.amnestykenya.org/amnesty-international-kenya-salutes-the-courage-of-kisumu-based-human-rights-defenderstice-centre/>; "PBI-Kenya concerned by the burning of the Nyando Social Justice Centre in the western city of Kisumu," Peace Brigades International, July 21, 2023, <https://pbicanada.org/2023/07/21/pbi-kenya-concerned-by-the-burning-of-the-nyando-social-justice-centre-in-the-western-city-of-kisumu/> (accessed November 12, 2024).

<sup>108</sup> "Amnesty International Kenya salutes the courage of Kisumu based human rights defenders during the re-opening of the Nyando Social Justice Centre," Amnesty International statement, April 19, 2024, <https://www.amnestykenya.org/amnesty-international-kenya-salutes-the-courage-of-kisumu-based-human-rights-defenderstice-centre/>; Magati Obebo, "Hope for activists as burnt justice centre re-opens," *the Star*, April 24, 2024, <https://www.the-star.co.ke/counties/2024-04-24-hope-for-activists-as-burnt-justice-centre-re-opens> (accessed November 12, 2024).

<sup>109</sup> Amnesty International and Human Rights Watch in-Person Interview with Caren Omanga, Nyando Social Justice Centre, Kisumu, July 29, 2023.

its work on police accountability and reforms.<sup>110</sup> A witness said that when the matter was reported at Nyando Police Station, the police refused to record it in the Occurrence Book.<sup>111</sup>

### *Children's Deaths and Injuries from Misused Tear Gas*

Between March and July 2023, two babies died in Nairobi's Kibera, a densely populated informal settlement, shortly after being exposed to tear gas in their homes. Police officers who fired the tear gas to disperse protests in those areas not only targeted residential areas where escape routes were visibly limited but also failed to check and ensure medical intervention for affected people after using the tear gas in the residential areas.

International guidelines such as the UN Principles on the Use of Force and Firearms and the United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement, provide that the police are expected to use discretion in crowd control tactics to ensure a proportionate response to any threat of violence, and to avoid exacerbating the situation.

Tear gas should not be used unless it is otherwise impossible to disperse a crowd where the situation has escalated to one of generalized violence (i.e. not until less harmful measures have failed to contain the violence).<sup>112</sup> Particular restraint is required in densely populated areas and tear gas should not be deployed where those potentially affected are unable to safely disperse.<sup>113</sup>

Jackline Moraa, 31, and her children—none of whom were participating in the protests—were also seriously affected when, on March 30, 2023, the police fired tear gas as they pursued protesters in the Kibera 42 area where she lives.<sup>114</sup> She said:

The demonstrations escalated. By around 6 p.m., protesters ran into our compound, followed by police wearing uniforms who started throwing tear gas [canisters]. The smoke entered our house, and I had to wash my

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<sup>110</sup> Ibid.

<sup>111</sup> Ibid.

<sup>112</sup> Amnesty International, "Amnesty International releases 30 rules to curb the use of chemical irritants by police," July 30, 2021, <https://www.amnesty.nl/media/police-human-rights-programme/amnesty-international-releases-30-rules-to-curb-the-use-of-chemical-irritants-by-police>.

<sup>113</sup> Ibid.

<sup>114</sup> Amnesty International and Human Rights Watch in-Person Interview with Jackline Moraa, her real name, Kibera, April 7, 2023.

children's eyes with water from the basin. However, my youngest child, 7-month-old Brighton, started coughing excessively and had a runny nose and fever, but we couldn't leave the house that night. When I took him to the hospital the following morning, the doctor said his chest was congested with a possible infection but didn't prescribe any medication. He referred us to Mbagathi Hospital, where a doctor prescribed medication. However, the child's condition didn't improve. He was still having breathing difficulties. I returned to Mbagathi Hospital the following Wednesday, April 4, 2023, and the doctor admitted the child to the ward. I was referred to Kenyatta Hospital, where he was put on oxygen because he still had trouble breathing. Unfortunately, he passed away on Thursday morning. All the hospitals I visited conducted tests and said the problem was in his chest. They suspected that the tear gas had affected my son's breathing because he had a persistent cough with black phlegm, which started the night of the demonstrations when the tear gas was fired. My other children were also affected by the tear gas and still have fevers. I did not report to the police because I was more concerned about my son, and I have not reported to them even after his death.<sup>115</sup>

Joyce Kemunto, another Kibera resident, lost her 4-month-old daughter after police fired tear gas into her house on March 30, 2023, as they dispersed protesters.<sup>116</sup> Kemunto said:

When the tear gas was lobbed, some of it landed on the roof, and the smoke came inside the house. I had a 4-month-old baby, Precious. My baby was affected, and she started crying. I took a cloth and water and began wiping her face alongside my other children. We could not leave the house. There was nowhere to go outside because teargas was being thrown everywhere. So, we stayed inside, and the baby cried until she stopped breastfeeding. By Friday, 3 a.m., the baby's condition worsened, and she

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<sup>115</sup> Ibid.

<sup>116</sup> Interview with Joyce Kemunto, her real name, Kibera, April 7, 2023. Her account of the events which led to the death of her baby, Precious, shortly after smoke inhalation has been described above in the summary section and reported in our previous publications. See: Human Rights Watch and Amnesty International "Kenya: End Abusive Policing of Protests," May 31, 2023, <https://www.hrw.org/news/2023/05/31/kenya-end-abusive-policing-protests>.

started bleeding from her nose, so I took her to the hospital, but she didn't make it in time and passed away.<sup>117</sup>

Augustus Okoth, 15, said that he lost three fingers after the police threw a teargas canister at him outside their house in Mathare, Nairobi, on July 21, 2023.<sup>118</sup> The Mathare Social Justice Centre also reported the incident.<sup>119</sup>

Edith Asava, said Lewis, her 4-year-old grandson, sustained serious head injuries on March 20, 2023 when police officers allegedly fired a teargas canister directly at him while he was playing with a group of children within Mbotela Estate, Nairobi.<sup>120</sup> Asava recounted that according to the other children who were playing with Lewis, a police Landcruiser approached, and police officers alighted and started chasing protesters along Jogoo Road. One of the officers fired a teargas canister that landed where the children were playing, hitting Lewis on the head. Lewis' medical record and injuries seen by researchers were consistent with these accounts.

Caroline Lucheli, 33, spent the evening of July 12, 2023, in the hospital tending to her 6-year-old son after police threw a canister into their house in Mlolongo while chasing protesters. Her son was treated and later discharged.<sup>121</sup> She described what happened:

I saw youth being chased by police coming towards the building. The police threw a teargas canister, which entered my house. I rushed in since my child was asleep, and my house was full of smoke.... He was coughing seriously as if he were choking. He is asthmatic. I took him outside since the house was full of teargas smoke. Some youth brought water and tried to pour it on him. One of the youths called a passing boda boda who came and rushed me to Athi River Mavoko Level 4 hospital since I couldn't afford

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<sup>117</sup> Ibid.

<sup>118</sup> Amnesty International and Human Rights Watch in-Person interview with Augustus Okoth, Mathare, August 7, 2023.

<sup>119</sup> "The Untold Terror of Police Violence During Maandamano," *Mathare Social Justice Centre*, August 2, 2023, <https://www.matharesocialjustice.org/eje-campaign/the-untold-terror-of-police-violence-during-maandamano/> (accessed November 12, 2024).

<sup>120</sup> Amnesty International and Human Rights Watch in-Person interview with Edith Asava, her real name, Mbotela, April 11, 2023.

<sup>121</sup> Amnesty International and Human Rights Watch in-Person interview with Caroline Lucheli, Mlolongo, August 10, 2023.

a private hospital around Mlolongo. This was around 3 p.m. The medics took him for emergency and put him on oxygen support.<sup>122</sup>

## Other Instances of Arbitrary, Unnecessary and Excessive Use of Force

In addition to the police's unlawful use of lethal force, kinetic impact projectiles and tear gas, witness accounts, photographic evidence and media reports suggest a pattern of police routinely beating protesters who posed no threat, amounting to torture or other ill-treatment. The police violated their duty to only use force to the extent necessary for the performance of their duties, to fulfil a legitimate aim and not in a way that causes a level of harm which would outweigh the harm they seek to prevent.

### *Beatings of Protesters and Bystanders*

Media reports, images, and videos corroborated by witness accounts showed police officers beating protesters and bystanders, including children, and using batons to disperse them. At least five people who spoke to Amnesty International Kenya and Human Rights Watch said that police beat them during the protests.

David Morias, 17, from Kibera Nairobi, said that on July 19, 2023, policemen visited his shop where he sold refillable drinking water. The police requested that Morias safely hold an officer's jacket and that they would pick it up in the course of the day.<sup>123</sup> He said:

It was around noon when [the police] came back and picked up the jacket they had left in the morning. They then turned against me and told me to show them where protesters were. When I told them that I do not know, they started beating me up. They kicked me, handcuffed me and threw me into their vehicle. In the vehicle as they were moving around, I heard one of the policemen say, 'We just arrested him because we must be seen to be working. And we also need money, but he is innocent.' They eventually took me to the District Commissioner's police station in Kibera. In that vehicle there were around seven boys whom I could identify. Some of the boys work in the garage around here; some were arrested near Legio-Maria

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<sup>122</sup> Ibid.

<sup>123</sup> Amnesty International and Human Rights Watch in-Person interview with David Morias, Kibera, August 9, 2023.



church along Joseph Kangethe Road just next to the garage. I spent the night at the station and then [was] taken to court the following day to answer to charges of participating in an unlawful demonstration, which I denied.<sup>124</sup>

Moras was then held at the Industrial Area Remand and Allocation prison and presented to court again on July 25 and released following pro bono representation by the Law Society of Kenya.

Esther Mukoma, 35, said that she was taking part in peaceful protests in Kibera on July 19, 2023, when police fired tear gas directly at them.<sup>125</sup> She said: “I fell and was trampled on by other protesters who were also running. The police caught up with me and started to beat me mercilessly. They beat me with runkus, kicks, and slaps. They then left me, and I painfully dragged myself to a safer zone.”<sup>126</sup> She was assisted by a motorcycle rider to get to hospital.

According to witness accounts and other information, some of the beatings reached the level of severity that would constitute torture and other ill-treatment prohibited under regional and international human rights standards.<sup>127</sup> Police beating peaceful protesters and bystanders without justifiable cause amounts to unlawful, and unnecessary use of force. Implicated police officers should be held accountable for violating the right to protest and the security of bystanders.

### *Violent Home Searches*

Between July 19 and 21, 2023, police in Kisumu conducted house-to-house searches to find and act against those who took part in the protests. They beat, intimidated, and threatened those they found, including people who were not involved in the protests.

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<sup>124</sup> Ibid.

<sup>125</sup> Amnesty International and Human Rights Watch in-Person interview with Esther Mukoma, Kibera, August 10, 2023.

<sup>126</sup> Ibid.

<sup>127</sup> African [Banjul] Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force October 21, 1986, ratified by Kenya on January 23, 1992, art.5; International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by Kenya May 1, 1972, art. 7; UN Convention on the Rights of the Child (CRC), adopted November 20, 1989, entered into force 1990, ratified by Kenya on January 26, 1990, art. 37.

Three people were killed during the searches.

These home searches, killings, and beatings seemed intended to spread fear among the residents of Nyalenda and Nyamasaria areas in Kisumu, and to dissuade them from taking part in future protests. There appears to be no justifiable reason for conducting the home searches, and victims said they were not informed of why their homes were being searched, and the police presented no search warrants. This violated the right of all persons to not have their homes or property searched without warrants as provided under article 31 of the constitution of Kenya and failed to meet the criterion set out in Section 57 of the National Police Service Act (No. 11A of 2011) requiring warrantless searches to be based on “reasonable cause.”<sup>128</sup>

Makaveli Orucho, 55-year-old man from Nyalenda in Kisumu was visiting his friend on July 21, 2023, when he said 10 police officers came knocking on his friend’s door. He described what happened:

As we were seated in the house, we heard a commotion outside, and the next thing, the police were shouting at us to open the door. We refused to open the door, so they kicked it open, entered the house and started beating us.... My friend managed to escape, I was shouting, telling them that I could not go to Maandamano at my age, and that I was just indoors, but they didn’t listen. They took me out of the house, beat me and broke my arm. As I am here, I cannot now feed my family. I went to Kisumu County Hospital where an X-ray was done, and they found my arm was broken. I was sent to Russia Hospital to set my arm in plaster.<sup>129</sup>

Medical records viewed by researchers showed that Orucho sustained a broken arm for which he was treated.

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<sup>128</sup> See also: Article 17(2) ICCPR which protects against arbitrary or unlawful interferences with one’s privacy, family, home or correspondence. International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by Kenya May 1, 1972, art. 17(2); National Police Service Act, No. 11A of 2011, Republic of Kenya.

<sup>129</sup> Amnesty International and Human Rights Watch in-Person interview with Makaveli Orucho, Nyalenda, August 9, 2023.

Witnesses also indicated that the police beat women and children who were not part of the protests while conducting illegal searches of their homes. Opiyo Ogango said he saw police harassing people, and that youth in Nakuru threw stones at the police to deter them from assaulting women and children in their homes. He said, “The police ... were harassing people and forcing them to sit down ... they assaulted women and children who were not part of the protests by beating them with sticks. Some youths ganged up and started confronting the police, throwing stones at them.”<sup>130</sup>

### *Unlawful Killings during Home Searches*

Valery Owuor<sup>131</sup> described how the police beat to death John Mwakisa, 26, in Nyalenda, Kisumu, on July 20, 2023. She said Mwakisa had spoken with her before his condition became critical and he could no longer communicate properly. According to Owuor, John said the police found and beat him in a friend’s house when they conducted door-to-door searches for protesters. She alleged that his neck was broken during the beating. She presented photos that showed his injuries. Mwakisa died of his injuries on July 30, 2023, while undergoing treatment at the Jaramogi Oginga Odinga Teaching and Referral Hospital (JOTRH).

On the night of July 19, 2023, Lucy Akinyi, a neighbor to cousins Brian Oniang’o, 22, and William Amulele, 24, said that people dressed in police uniform stormed their residence in Nyalenda.<sup>132</sup> According to Akinyi, the two did not participate in protests, but police were randomly targeting houses and beating up any men they found. She said:

After breaking the door and bringing the two boys out, over 20 police officers with rungas [wooden batons] were hitting them. When the police stopped beating them and left, Brian staggered to their door and collapsed. William was also in a lot of pain. We called for help and six women joined us because we were sure the officers could not attack us as we’re harmless women. We carried them to a nearby private hospital for treatment.<sup>133</sup>

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<sup>130</sup> Amnesty International and Human Rights Watch in-Person interview with Opiyo Ogango, Nakuru, August 17, 2023.

<sup>131</sup> Amnesty International and Human Rights Watch in-Person interview with Valery Owuor, Nyalenda, August 15, 2023.

<sup>132</sup> Amnesty International and Human Rights Watch in-Person interview with Lucy Akinyi, Nyalenda, August 1, 2023.

<sup>133</sup> Ibid.

Evelyn Achung'o, the mother to the two brothers, said she was assaulted by one officer when she tried to intervene:

I was in my house when I heard noises outside and voices shouting that my children were being killed.... I opened the gate and saw them being beaten. I knelt, pleading with them to leave the boys since they were not part of the Maandamano, but one officer came and ordered me to get back to the house.... He pushed me with his boots until I fell back, forcing me to step back. They ordered me back into our compound. They beat the boys. I waited until they stopped. The boys were in pain, and I decided to take them to hospital. My neighbors were around.<sup>134</sup>

Based on information received from family and staff at JOOTRH, William died on July 26, 2023, while Brian passed away on July 29, 2023, while receiving treatment for a broken skull and neck injuries.<sup>135</sup>

### *Verbal Abuse, Threats*

Officers also verbally abused and threatened protesters and others with violence.

Ten officers conducting home searches (discussed above) threatened to throw tear gas into 23-year-old Ronny Omondi's home in Nyalenda on July 21, 2023. They broke in, pulled him from his bed, took him outside and beat him with runkus.<sup>136</sup> He told researchers that the police, while assaulting him, said, "We did not come to play with you. We have come to kill and maim Luo people."<sup>137</sup> A Kisumu County official who raised concerns over the personal nature of the attacks and the statements being made by police corroborated these allegations.<sup>138</sup>

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<sup>134</sup> Amnesty International and Human Rights Watch in-Person interview with Evelyn Achungo, Nyalenda, August 1, 2023.

<sup>135</sup> Amnesty International and Human Rights Watch in-Person interview with Lucy Akinyi and Evelyn Achungo, Nyalenda, August 1, 2023.

<sup>136</sup> Amnesty International and Human Rights Watch in-Person interview with Ronny Omondi, Nyalenda, August 4, 2023.

<sup>137</sup> Ibid.

<sup>138</sup> Amnesty International, Law Society of Kenya, Kenya Medical Association, "Preliminary Communication on Human Rights Situation in Kisumu and Kisii Counties," August 4, 2023, <https://www.amnestykenya.org/preliminary-communication-on-human-rights-situation-in-kisumu-and-kisii/>.

A journalist who was attacked by police on August 20, 2023, while covering protests at outer ring road in Nairobi, said: “One of the police officers said ‘kufa, mbwa hiii!’ [die, you dog!]. I was bleeding profusely.... It was two other journalists who helped me. They took me to their vehicle and checked if I had my equipment—some of which got lost, even my memory card.”

## Arbitrary Arrests, Torture and Other Ill-treatment in Custody

Police officers arrested hundreds of people who were protesting peacefully or as they headed to demonstrations, in preemptive arrests to bar them from protesting. Human Rights Watch and Amnesty International Kenya documented at least 40 of these arbitrary arrests, including those of children. Some of those arrested were tortured and subjected to other ill-treatment during arrest or while in custody.

Article 49 of Kenya’s constitution, the ICCPR, and the ACHPR require arrests to be made on lawful grounds and to adhere to the rights of arrested persons, which include being informed of the reasons for arrest and being granted access and communication with family and legal counsel.<sup>139</sup> The UN Code of Conduct for law enforcement officials and the UN Rules for the Protection of Juveniles Deprived of their Liberty further provide that officers ensure that persons in police custody have access to medical care.<sup>140</sup> Peter Ongwang, 31, was arrested by police on July 13, 2023, in Machakos on suspicion that he was part of the protests that took place the previous day:

I was arrested by one of [the officers], who started punching me. His colleagues came, carried and threw me into the double cabin back vehicle [pickup]. My head hit the inside of the pickup, and I started bleeding along the way. As they took me to the police station, they continued beating me by punching and slapping me on the head, I couldn’t fight back or defend myself since they had handcuffed me. I was locked up in Machakos police

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<sup>139</sup> The Constitution of Kenya 2010, Chapter 4, art. 48-51.

<sup>140</sup> United Nations, Code of Conduct for Law Enforcement Officials, adopted by United Nations General Assembly resolution 34/169, December 17, 1979, art. 6; United Nations Rules for the Protection of Juveniles Deprived of Their Liberty, adopted by United Nations General Assembly resolution 45/113, December 14, 1990, paras. 49-55.

station, accusing me of Maandamano issues and taken to court next day with others on charges of participating in an unlawful assembly.<sup>141</sup>

Some suspects were detained in police stations or court-holding cells for up to seven days without adequate food and water and were assaulted by prison wardens in the holding cells.<sup>142</sup> The police presented some of the arrested persons in court up to three days after arrest,<sup>143</sup> in violation of Kenyan law, which stipulates that detainees be brought before a court of law within 24 hours after arrest.<sup>144</sup> Tristan Mugabi, 17, said he was arrested on July 19, 2023, in Dagoretti, Nairobi.<sup>145</sup> He said he was not a protester but was on his way to buy medicine for his sister, who corroborated his account. He pleaded not guilty at a Milimani court a day after his arrest, and his case was set to be heard on July 27. However, when his birth certificate was presented to the magistrate, showing he was a minor, the court on July 25 ordered his release.<sup>146</sup>

On July 20, 2023, two men in civilian clothes abducted Davis Abinda, a human rights defender from Kisumu was abducted by people he believed were police officers because they were armed with guns commonly used by the police and drove an SUV Subaru, which is also widely used by security agents. He and other members of his organization were taking part in peaceful protests in Kisumu when suddenly men on a motorcycle chased after him, overpowered him, and forced him into a car. He said the men forced him at gunpoint to keep his head down while they patrolled Kisumu town. He said that he asked to be taken to a police station, but his abductors refused.

The men took him to an isolated building in a sugar plantation and threatened him with guns, and held him without food, water, or warm clothing for over 24 hours. At one point the men told him to kneel and make his final prayer threatening to kill him for his involvement in the protests. While he knelt with his head on the ground, the two men left.

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<sup>141</sup> Amnesty International and Human Rights Watch in-Person interview with Peter Ogwang, Miwani- Machakos, August 8, 2023.

<sup>142</sup> Amnesty International and Human Rights Watch in-Person interview with Kevin Kawiri, Kibera, August 9, 2023; with Maximillian Tutu, Kibera, August 9, 2023.

<sup>143</sup> Amnesty International and Human Rights Watch in-Person interview with Kevin Kawiri, Kibera, August 9, 2023; with Emmanuel Mundai, Kibera, August 9, 2023; with Stephen Ochieng, Miwani- Machakos, August 8, 2023.

<sup>144</sup> The Constitution of Kenya 2010, Chapter 4, article 49.

<sup>145</sup> Amnesty International and Human Rights Watch in-Person interview with Tristan Mugabi, Kibera, August 9, 2023.

<sup>146</sup> Ibid.

Several minutes passed before he realized he was alone, after which he started running until he reached a main road.

## Attacks on Journalists and Other Media Professionals

While responding to demonstrations, the police and criminal gang members who appeared to be acting on behalf of the police threatened and attacked journalists and other media workers. Journalists covering the protests were injured and said they felt targeted and scared.

The threats and assaults against journalists not only violated their right to personal security but undercut the rights to media freedom and free expression protected under the Kenyan constitution and international human rights law.<sup>147</sup>

The Kenyan media reported at least 20 attacks on journalists covering protests in Nairobi and Kisumu between March and July 2023.<sup>148</sup> Staff of two media houses and three other journalists said that covering protests became a dangerous endeavor for them.

On March 22, 2023, the media reported a statement by the Communications Authority of Kenya in which it threatened to censure media houses covering protests, claiming that the coverage went against the programming code and was intended to cause panic and incite the public.<sup>149</sup> The High Court quashed the directive in October 2023.<sup>150</sup> Journalists said these threats of sanctions made them apprehensive, feeling the need to camouflage or use unbranded vehicles to cover the protests.

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<sup>147</sup> The Constitution of Kenya 2010, Chapter 4, art. 35; African [Banjul] Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force October 21, 1986, ratified by Kenya on January 23, 1992; International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by Kenya May 1, 1972, art. 19.

<sup>148</sup> "Kenya: At least 20 journalists assaulted covering protests," *International Press Institute*, April 4, 2023 <https://ipi.media/kenya-at-least-20-journalists-assaulted-covering-protests/> (accessed November 12, 2024).

<sup>149</sup> "CA Threatens To Revoke Licenses Of 6 TV Stations Over Coverage Of Azimio Protests," *Citizen Digital*, March 27, 2023, <https://www.citizen.digital/news/ca-threatens-to-revoke-licenses-of-6-tv-stations-over-coverage-of-azimio-protests-n316647> (accessed November 12, 2024).

<sup>150</sup> *Republic v. Chiloba, Director General Communications Authority of Kenya; Katiba Institute & 5 others (Ex parte Applicants)*, Judicial Review Application E041 of 2023, High Court at Nairobi (Milimani Law Courts), [2023] KEHC 23791 (KLR), October 19, 2023, judgment by Justice JM Chigiti; Sakwa Kombo, "Communications Authority Ordered to Review Unconstitutional Regulations," *Techweez*, October 23, 2023, <https://techweez.com/2023/10/23/communications-authority-protest-coverage-regulations/> (accessed November 12, 2024).

On March 30, 2023, journalists from various media outlets turned up to cover protests along the Outer Ring Road in Nairobi's Eastlands area.<sup>151</sup> That afternoon, the police from both sides blocked vehicles and protesters on foot with no exit route. Journalists covering the protests said the police fired tear gas and sprayed, pink-colored water from water cannons, forcing people to reroute toward Pipeline estate. Press crews were also prevented from exiting the road, and plain clothed police attacked their cars. Three journalists said they believed that the police wanted to avoid a live broadcast of what was happening at the Outer Ring Road.<sup>152</sup>

Billy Nyachae,<sup>153</sup> a journalist with the Nation Media Group who covered the protests on March 20, 2023, described how he sustained cuts and bruises on his face when the police threw teargas canisters that hit his crew. There seems to be no basis for the police to assault the vehicle whether it was being used by the media or others. However, at the time of the attack, he covered the protests from a vehicle loaded with media speakers and cameras, easily identifiable as a media vehicle. Given that attacks on certain media houses are routine, it is not uncommon for Kenyan journalists to use unmarked and unbranded vehicles for security reasons. In addition, the journalist wore a bulletproof jacket, which journalists ordinarily wear while covering stories in potentially volatile situations. Nyachae described the moment the police attacked the vehicle:

The first tear gas passed me and hit the Kenya Television Network guy on the back of his head. He didn't even notice that three others were thrown, but he noticed the one that hit me. The second one hit a bulletproof vest I wore and went straight into my stomach—I [now] have a scar on my stomach.

After packing his camera, Billy realized the canister was stuck on his body. He removed it, and as he attempted to throw it away, it exploded, injuring the other journalists in the car, and they all rushed to get out. He quickly tried to get off the vehicle, but another canister landed on his face, which was the last thing he remembered before becoming

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<sup>151</sup> "Police on Spot as Journalists Attacked, Equipment Vandalized during Azimio Protests," *Capital Fm*, March 30, 2023, <https://www.capitalfm.co.ke/news/2023/03/several-journalists-attacked-equipment-stolen-during-azimio-protests/> (accessed November 12, 2024).

<sup>152</sup> Amnesty International and Human Rights Watch in-Person interview with Billy Nyachae, Nairobi, August 2, 2023.

<sup>153</sup> Ibid.



unconscious. When he regained consciousness, he realized he had fallen out of the vehicle and was lying beside it.

In Kisumu, journalists had to rely on safe routes created by human rights defenders on July 20, 2023, to access demonstration sites. They were targeted by police officers who wanted to prevent coverage of the protests and by suspected criminal elements who had infiltrated the protests to steal cameras and other equipment.<sup>154</sup> One media outlet reported that over 25 journalists were attacked by police officers and these unidentified individuals who joined the protests and were believed to be working for the police.<sup>155</sup> Journalists lost their equipment, were arrested, spent nights in police cells, and endured verbal abuse and physical attacks.<sup>156</sup>

## Assaults by Plain Clothed Police and Alleged Police Agents

Many victims and witnesses who spoke to Amnesty International Kenya and Human Rights Watch said they saw police working with people in civilian clothes who were armed and were seen committing abuses against protesters. They harassed, beat, and assaulted protesters with crude weapons. They carried out arrests. The Kenya National Human Rights Commission (KHRC), a state agency, and civil society groups in a statement issued on July 21, 2023, expressed concern about what they said was a “disturbing pattern” of the police working with people who were intimidating and attacking protesters.<sup>157</sup>

The UN Human Rights Committee, in its General Comment No. 37 on the right to peaceful assembly has stated: “Any deployment of plain-clothed officers in assemblies must be strictly necessary in the circumstances and such officers must never incite violence. Before conducting a search, making an arrest, or resorting to any use of force, plain-clothed officers must identify themselves to the persons concerned.”<sup>158</sup>

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<sup>154</sup> Amnesty International and Human Rights Watch online interview with Davis Abinda, Nairobi, November 8, 2023.

<sup>155</sup> Mohamed Yusuf, “Journalists Attacked as Anti-Government Protests Continue in Kenya,” *Voice of Africa*, March 31, 2023, <https://www.voanews.com/a/journalists-attacked-as-anti-government-protests-continue-in-kenya-/7030753.html> (accessed November 12, 2024).

<sup>156</sup> Ibid.

<sup>157</sup> “Kenya Marching Slowly into a police State,” Kenya National Human Rights Commission press release, July 21, 2023, <https://khrc.or.ke/press-release/kenya-marching-slowly-into-a-police-state/> (accessed September 19, 2024).

<sup>158</sup> United Nations Human Rights Committee, General Comment No. 37 on Article 21, Right of peaceful assembly, CCPR/C/GC/37, July 27, 2020, <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-37-article-21-right-peaceful>, para 92.

Victims and witnesses said the assailants were either dressed in police uniforms or in civilian clothes and were armed with guns, machetes, knives, and batons. Some of the plain-clothed police wore helmets and red berets, indicating they were possibly from the General Service Unit, which comprises specially trained police and soldiers, often deployed to control riots and counter terrorism activities.<sup>159</sup>

Some victims and witnesses said that they heard uniformed police officers give instructions directly to these assailants or saw them assault people in the presence of the police without police intervention.<sup>160</sup> Some said that they saw men not in uniform transported in police vehicles.<sup>161</sup>

Media reports and live footage showed an instance in which a plain-clothed police officer who had initially posed as a journalist in Mathare, later arrested a protester and put him into a police truck, as other officers hit him with batons and verbally abused him.<sup>162</sup> Police presenting themselves as journalists violates provisions of the National Police Service Act on the police dress code and identification.<sup>163</sup>

Daniel Ouma Obare, 19, said that he was shot in Kisumu on July 20, 2023, by individuals dressed in plain clothes, but whom he suspected to be police officers because they were armed and later left scene in a police vehicle.<sup>164</sup> He showed researchers his hospital discharge summary and a photo taken at the hospital that indicated he had been shot:

I was running away as five police officers approached at a distance. I ran fast, with the intention of branching off the road at Coptic House. But before I could branch off a person dressed in a t-shirt, jeans trousers, and

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<sup>159</sup> See more on the role of the GSU: General Service Unit (GSU), KenyaPolice.go.ke, 2024, <https://www.gsu.go.ke/mandate-functions> (accessed November 12, 2024).

<sup>160</sup> Amnesty International and Human Rights Watch in-person interview with Cliff Jimmy, Kangemi, July 9, 2023.

<sup>161</sup> Amnesty International Kenya and Human Rights Watch in-person interview with Paul Andama, Nakuru Town, July 20, 2023; with Tonny Omoll, PGH, Nakuru, July 20, 2023.

<sup>162</sup> “Man Arrested By Cop Masquerading As Journalist Was Criticizing Police For Tear-Gassing Children,” *Citizen Digital*, July 20, 2023, <https://www.citizen.digital/news/man-arrested-by-cop-masquerading-as-journalist-was-criticising-police-for-tear-gassing-children-n323845> accessed November 12, 2024).

<sup>163</sup> National Police Service Act, No. 11A of 2011, Republic of Kenya, Schedule 6.

<sup>164</sup> Amnesty International and Human Rights Watch in-person interview with Daniel Ouma Obare, Student, Nyamasaria, August 4, 2023.

police boots approached me and suddenly pointed a gun at me. It was at this point that I realized that he might be a plain-clothed police officer, and I immediately stopped and raised both my hands, facing him. The man with a gun shot me in the left jaw and the bullet got stuck. As bystanders were helping me get to a hospital, I saw my assailant hanging at the back of a vehicle with GK [Government of Kenya] numberplates heading towards Nyamasaria. This confirmed my suspicion that the assailant was a police officer.<sup>165</sup>

Allegations of involvement of gangs in assaulting protesters were reported in Nakuru and Nairobi. Several witnesses in Nakuru said that they believed that a working relationship existed between the police and these gangs.<sup>166</sup> They said they identified the assailants as members of local gangs known to the witnesses. They appeared to work hand-in-hand with the police. They alleged that the police used the gang members to identify residents who were involved in protests and in some cases “allowed” the gang members to “punish protesters.”<sup>167</sup> Witnesses also pointed out that in some cases, men suspected to be members of gangs joined the police in beating the protesters with *rungus* (wooden batons) and *pangas* (machetes).<sup>168</sup>

Many victims and witnesses said that they saw men dressed in civilian clothes physically assault protesters while police officers stood by and watched without intervening in or stopping the assaults. Paul Andama,<sup>169</sup> a protester, said that even after he raised his hands in surrender, the police still beat him with a stick, and then dragged him to a group of men referred to as the “Bob gang,” whose members were well known to residents. They accused Andama of causing the government trouble by participating in the protests. The

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<sup>165</sup> Ibid.

<sup>166</sup> Amnesty International and Human Rights Watch in-person interview with Tonny Omokll and Janet Atieno, Nakuru, July 20, 2023; with Paul Andama, Nakuru, July 20, 2023.

<sup>167</sup> Amnesty International and Human Rights Watch in-person interview with Tonny Omokll and Janet Atieno, Nakuru, July 20, 2023; with Paul Andama, Nakuru, July 20, 2023.

<sup>168</sup> Human Rights Watch research has in the past shown a link between criminal gangs like the Mungiki, and Kenyan authorities. During the 2007/2008 post-election violence, Human Rights Watch found that the Mungiki committed retaliatory attacks against people who voted for the opposition Orange Democratic Movement and were often backed by politicians. See: Human Rights Watch, “*We Were Sent to Kill You: Gang Attacks in Western Kenya and the Government’s Failed Response*” (New York: Human Rights Watch, 2014), [https://www.hrw.org/sites/default/files/reports/kenyao414\\_ForUpload.pdf](https://www.hrw.org/sites/default/files/reports/kenyao414_ForUpload.pdf).

<sup>169</sup> Amnesty International and Human Rights Watch in-person interview with Paul Andama, Nakuru Town, July 20, 2023.

gang members attacked him with a panga on his buttocks and on his left wrist. He sustained cuts as a result.

Several victims and witnesses from Nakuru County said that the police ignored criminal activities and distress calls from victims of gang attacks even when asked to intervene.<sup>170</sup> According to one victim who was allegedly stabbed by members of a criminal gang in Nakuru town, when he reported the attack to the police, they refused to investigate or facilitate access to medical care, contrary to principles enshrined in the UN Code of Conduct for Law Enforcement Officials.<sup>171</sup>

## Health and Economic Impacts of Abuses

The abuses committed by police left a physical, mental, and financial toll on victims and their families. Many interviewed days or months after the abuses they experienced, spoke of how the injuries have impacted their health, livelihoods, and other long-term consequences. Some still have bullet remnants lodged in their bodies, others sustained bone fractures or acquired disabilities after being hit by bullets or less lethal projectiles and must live with the health and economic consequences of these injuries.<sup>172</sup> The Kenyan government has not implemented measures to ensure that those who acquired disabilities during the protests receive the necessary support for living and inclusion in the community.

The police presence, teargas smoke, and protesters blocking roads hindered access to medical care or delayed treatment for victims.<sup>173</sup> In at least three cases, the police prevented or did not assist injured protesters or bystanders in getting treatment.

Cleopas Odinga, 37, from Manyatta settlement said he went to an M-Pesa Shop [mobile phone-based money transfer service agent] on July 21 in the evening. A group of police officers there shot him. He said, “I lost control and fell holding my legs at first thinking I

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<sup>170</sup> Amnesty International and Human Rights Watch in-person interview with Tonny Omollo, Nakuru, July 20, 2023.

<sup>171</sup> United Nations Human Rights Office of the High Commission of Human Rights, Code of Conduct for Law Enforcement Officials, December 17, 1979, <https://www.ohchr.org/en/instruments-mechanisms/instruments/code-conduct-law-enforcement-officials>, art.6.

<sup>172</sup> Amnesty International and Human Rights Watch in-person interview with Evans Baraza, Kisumu, August 11, 2023; with Tobia Oyuko Ongare, Nyalenda, August 14, 2023.

<sup>173</sup> Amnesty International and Human Rights Watch in-person interview with Gad Onguko, Nyamasaria, August 12, 2023, Nyamasaria; with Vincent Olal, Nyalenda, August 14, 2023.

was shot in the leg but when I tried to stand, I saw my intestines were out of my stomach and realized I had been shot at the back around the waist on my right side and the bullet came out through the abdomen pushing the intestines out.”<sup>174</sup>

Odinga said that people nearby tied his stomach with his vest and put him on a boda boda. Witnesses and the boda boda rider took him to two clinics that could not handle the issue before trying to get to JOOTRH. He said:

On the way near Nightingale hospital, we found the police barricading the road and blocked and tried to hit us, we made a turn to go back but moved like 10 meters and found more police then but there was only one route. One of the uniformed police who were standing next to the barricade came to us and almost hit us, but we showed him the wound. The police officer asked them what had happened, but we didn't tell him fearing [what they would do if we reported a police attack]. The motorbike rider only said I had been injured; the officer was able to let us go. At the Kondele [district] flyover we got blocked with heavy presence of police officers both in civilian [clothes] and in uniform, but we were able to penetrate through ... that is how we found our way to the JOOTRH hospital where I was treated for a week.

A witness corroborated this incident.<sup>175</sup>

While hospital bills for the injured were waived in some cases, either as hospital policy toward individuals with little to no means to pay or shouldered by politicians, well-wishers or, in some cases, police, others were left with hospital bills they have been unable to pay. Emmanuel, a 14-year-old student, was treated at the Nakuru Provincial General Hospital for a head injury he sustained on July 19 after being beaten by police and unidentified assailants who seemed to be working on their behalf. He said the hospital detained him for a week after he had been discharged because he could not pay for the cost of his care.<sup>176</sup> His mother, Ephemia Akoth, a daily laundry worker, said:

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<sup>174</sup> Amnesty International and Human Rights Watch in-person interview with Cleopas Odinga, Manyatta, August 11, 2023.

<sup>175</sup> Amnesty International and Human Rights Watch in-person interview with Clain Ojiambo, Manyatta, August 11, 2023.

<sup>176</sup> Amnesty International and Human Rights Watch in-person interview with Emmanuel Sarange, Kaptembwo, Nakuru, August 2, 2023.

On [July] 29, I was informed about the hospital bill of Ksh 27,000 [US\$250] which I did not have. My husband took his National Hospital Insurance Fund card which the hospital informed us could only cater for a bed but not the Ksh 27,000 [US\$250], which were for theatre and other medical bills.<sup>177</sup>

Detaining someone for non-payment of a debt violates article 11 of the International Covenant on Civil and Political Rights (ICCPR), which states: “No one shall be imprisoned merely on the ground of inability to fulfill a contractual obligation.”<sup>178</sup> .

Glena Kwamboka, a 42-year-old office cleaner in Kisii, was shot in her arm and hand on July 7 by a police officer while she was at work. She struggled to pay a hospital bill of Ksh 180,000 (US\$3,000) on her salary of Ksh 6,000 a month (US\$50) and having seven children to care for. She said:

When the bullet was removed, I was brought to this bed, where I continued to get treatment. I finished the treatment, but I have not been discharged. I have been in this hospital for over a month because of the bill, which is more than Ksh 180,000 (US\$3,000) and is still increasing. I don’t know how I am going to clear the bill.... My life is totally shattered. My hands are very weak, so I cannot do the work that I used to do. The owner of the building has never come to see me. It is now hard for me, and I don’t know how I will bring up my children.<sup>179</sup>

Mary Gecheo, a 45-year-old fruit seller in Kisii market, was shot by police in the chest on July 7. She told researchers that she experienced pain and psychological distress: “I have pains; they increase at night. I also easily tire and get nightmares and repeat to myself that I would be dead and buried by now.”<sup>180</sup>

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<sup>177</sup> Amnesty International and Human Rights Watch in-person interview with Ephemia Akoth, Kaptembwo, Nakuru, August 2, 2023.

<sup>178</sup> International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by Kenya May 1, 1972, art. 11.

<sup>179</sup> Amnesty International and Human Rights Watch in-person interview with Glenna Kwamboka, Hema Hospital, Kisii Town, August 8, 2023.

<sup>180</sup> Amnesty International and Human Rights Watch in-person interview with Meshach Gichaba and Mary Gecheo, Kisii, August 8, 2023.

Her husband, Meshach Gichaba, a 48-year-old milk seller, said his wife's situation had compounded their financial difficulties as she could no longer work, and he also needed to take care of her: "Now my wife cannot do any work. Now we are just at home, and she has lost weight. My wife is very weak.... Her heart beats faster when she talks for long, and she starts to feel more pain."<sup>181</sup>

Naftali Okeyo, a 30-year-old casual laborer and a single father, was shot in his back with a rubber bullet while protesting on July 19, 2023, in Mathare. He told researchers he could no longer work: "I am a general laborer but have not been working since the incident happened. I cannot walk because I have a backache and cannot stand for long, which was caused by the rubber bullet. I depend on my mother, who works as house help in Westlands, for financial support, including paying school fees for my son."

Jack Ogana did not return home following protests on July 19 in Nakuru. His family searched for him for nine days until he was found at the county mortuary. His family was unable to pay the postmortem investigation fees required before they could take the body for burial. A family member said:

On July 28, 2023, we visited Nakuru County Mortuary where we were informed that there was an unknown body which was brought in on July 19 at around 6 p.m. by police from Kaptembwo police station. We were shown the dead body, and we identified it as that of Jack Ogana. We did not know what to do. We were informed by the police that we could not bury the body before a postmortem was done as we had requested the body to be given to bury. We did not have money. We even tried to get an order from the court so that we could be given the body to bury. But the DCI [Directorate of Criminal Investigations] insisted the postmortem had to be done.

A nongovernmental organization that provides medical and psychosocial rehabilitation for survivors of torture, paid for the postmortem investigation and the family was able to bury Ogana on August 18. The postmortem report, on file with Amnesty International Kenya and Human Rights Watch, indicated that Jack Ogana's cause of death was fatal brain damage from the serious injuries from blunt force trauma to the head. Another person who was

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<sup>181</sup> Ibid.

undergoing treatment for beatings from the police told researchers he was with Ogana in Kenlands and had witnessed police beat him until he died.<sup>182</sup>

The deaths of family members—wives, husbands, and children—caused tremendous emotional pain and deeply impacted the mental health of their survivors.

A 50-year-old peasant farmer whose son, John, had been shot dead on July 7 in Kisii by police, said:

It was a very sad day when I got the news on the phone. I cried and wondered why my son was killed, and yet he was not a criminal. My son did not fall sick. His death came too fast. My son supported me in everything. He liked calling me and asking me if I needed any support. He wanted to come home and stay so that he could help me to educate his siblings. John was my eye. The eye has gone.... I don't know what to do.<sup>183</sup>

Milka Katuo, a vegetable seller whose son Brian Malika Muendo was apparently shot by police on July 19 in, Makueni, believed justice for her son's killing, could help her: "The police brutally shot my son ... people and children should not die from police brutality, and there should be a way of dealing with Maandamano."<sup>184</sup>

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<sup>182</sup> Amnesty International and Human Rights Watch in-person interview with Jack Ogana, Nakuru, August 12, 2023.

<sup>183</sup> Amnesty International and Human Rights Watch in-person interview with Elizabeth Kerubo, August 10, 2023, Kisii.

<sup>184</sup> Amnesty International and Human Rights Watch in-person interview with Milka Katuo, Emali, August 14, 2023.



## Impunity for Police Abuses

Kenyan police have a long record of using unnecessary or excessive force against protesters.<sup>185</sup> Victims and witnesses interviewed for this report repeatedly expressed their frustration with the lack of accountability and have made clear calls for justice for abuses committed. They want to see perpetrators held responsible and see them appropriately punished, as they consider it to be the only way to break the cycle of violence and impunity.

Evans Komollo, a secondhand clothes seller, was shot in the leg by police on July 19, 2023, on his way home in Mathare. He said:

It is unlawful for police officers to use guns carelessly.... It is wrong when police officers misuse their powers against an innocent person. I cannot walk and cannot work. I am already disabled. Action must be taken against the involved police officers so that it can be a lesson to others. Should this injustice go unchecked, many Kenyans will continue suffering under the hands of police officers.<sup>186</sup>

Police violence in Kenya has not been effectively addressed over time by the agencies with police oversight mandates, notably the Independent Policing Oversight Authority (IPOA) and the National Police Service Internal Affairs Unit.<sup>187</sup>

In a memorandum orally submitted before the parliamentary National Dialogue Committee in September 2023, IPOA noted that they had received and reviewed over 270 cases of police use of unnecessary or excessive force against protesters in the period between March and July 2023.<sup>188</sup> The oversight authority said at least 57 of these people were killed

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<sup>185</sup> “The Senate approves the National Dialogue Committee during a special sitting,” *Parliament of Kenya*, undated, <http://www.parliament.go.ke/node/20708> (accessed November 12, 2024).

<sup>186</sup> Amnesty International and Human Rights Watch in-person interview with Evans Komollo, Mathare, August 11, 2023.

<sup>187</sup> Independent Policing Oversight Authority Act, No. 35 of 2011, Republic of Kenya. The Internal Affairs Unit was established under section 87 of the National Police Service Act No. 11A of 2011 with a mandate to investigate complaints against the police and is empowered to recommend suspensions and criminal proceedings; National Police Service Act, No. 11A of 2011, Republic of Kenya. The ODPP under article 157(6) is empowered to direct the Inspector General of the National Police Service to investigate any information or allegation of criminal conduct.

<sup>188</sup> “IPOA Submits Its Proposal to National Dialogue Team,” September 29, 2023, video clip, YouTube, Presentation before the National Dialogue Committee, <https://youtu.be/QLqg6gFMWeA?si=UYFHsrsLAY8eFZK4>; “57 people died during anti-govt

during those protests, 30 of whom were recorded in Kisumu County.<sup>189</sup> This was the first acknowledgment by a government agency detailing the impact of police action during the protests. IPOA said that the cases were referred to the Office of the Director of Public Prosecution (ODPP) but there have been no reported arrests or criminal cases prosecuted to date.<sup>190</sup>

IPOA revealed that investigations had been frustrated by police agencies, saying in part:

The Directorate of Criminal Investigations (DCI) is part of the police and therefore under the command of the Inspector General of Police (IGP) and therefore cannot be independent. It denies or alters evidence because they must give us [IPOA] reports. For instance, when they give reports on the weapon used, they would say, ‘as per our analysis, the weapons used were not in possession of police officers at the time of the action.’<sup>191</sup>

Despite having investigative powers, IPOA has made it clear that without prosecutorial and additional resources, the agency will not be able to perform its constitutional obligations effectively.<sup>192</sup> Under the IPOA Act,<sup>193</sup> the authority’s duties include investigations of complaints against the police, monitoring police operations, auditing, monitoring, and reviewing investigations conducted by the Internal Affairs Unit of the police, reporting on its work and issuing recommendations.<sup>194</sup>

In response to our letter seeking clarification on the number of deaths recorded during the 2023 countrywide protests, IPOA indicated that it had recorded 67 deaths.<sup>195</sup> The agency was still investigating 55 cases while 6 had been referred to the ODPP for inquest.

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protests-IPOA,” *the Star*, September 27, 2023, <https://www.the-star.co.ke/news/2023-09-28-57-people-died-during-anti-govt-protests-ipoa> (accessed November 12, 2024).

<sup>189</sup> Ibid.

<sup>190</sup> “IPOA Submits Its Proposal to National Dialogue Team,” September 29, 2023, video clip, YouTube, Presentation before the National Dialogue Committee, <https://youtu.be/QLqg6gFMWeA?si=UYFHsrsLAY8eFZK4> (accessed November 12, 2024).

<sup>191</sup> Ibid; Also see: “IPOA details How Corrupt Officers manipulate Forensic Investigations,” *Kenyans.co.ke*, September 27, 2023, <https://www.kenyans.co.ke/news/93354-ipoa-loggerheads-dci-ig-koome-over-forensic-lab> (accessed November 12, 2024).

<sup>192</sup> “IPOA Submits Its Proposal to National Dialogue Team,” September 29, 2023, video clip, YouTube, Presentation before the National Dialogue Committee, <https://youtu.be/QLqg6gFMWeA?si=UYFHsrsLAY8eFZK4> (accessed November 12, 2024).

<sup>193</sup> Independent Policing Oversight Authority Act, No. 35 of 2011, Republic of Kenya.

<sup>194</sup> National Police Service Act, No. 11A of 2011, Republic of Kenya, Section 87.

<sup>195</sup> IPOA Letter dated October 29, 2024, is annexed.

Upon concluding its investigations, IPOA must refer cases to the ODPP, which has the authority to decline to prosecute where they believe the evidence is insufficient. This not only means that there are delays in prosecutions but also highlights existing structural and administrative challenges in delivering justice for protesters affected by police violence. Additionally, the Internal Affairs Unit of the police may conduct investigations on misconduct and hear complaints at the request of IPOA.<sup>196</sup> However, IPOA retains the power to take over the investigations at any stage if the authority believes that there has been an inordinate delay, or the investigations are manifestly unreasonable.<sup>197</sup>

## Fear of Reporting

In the cases documented for this report, some victims and witnesses said they were not familiar with IPOA's reporting procedures, while others failed to report abuses because they were skeptical of the authority's ability to resolve their matters conclusively.

Joseph Kavyu, whose sister-in-law Eunice was shot dead on July 7, 2023, during protests in Kisii town, expressed his frustration: "We had managed to keep three bullets which we collected from the shop [where she was killed]. The IPOA team came and took them, promising to return after the burial for more information, but they did not."<sup>198</sup>

In its oral submission to the National Dialogue Committee (NADCO), IPOA noted that the police had frustrated their investigations, allegedly to shield police officers from accountability.<sup>199</sup> They also alleged that they had submitted more than 500 files requiring prosecutions on cases filed in relation to the March-July 2023 protests, to the ODPP.<sup>200</sup>

Victims of police abuses said that they were reluctant to file complaints with the police due to fear of reprisals.

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<sup>196</sup> National Police Service Act, No. 11A of 2011, Republic of Kenya, Section 87(4)(e).

<sup>197</sup> National Police Service Act, No. 11A of 2011, Republic of Kenya, Section 87(5).

<sup>198</sup> Amnesty International and Human Rights Watch in-person interview with Joseph Kavyu, Kisii Town, August 7, 2023.

<sup>199</sup> "IPOA Submits Its Proposal to National Dialogue Team," September 29, 2023, video clip, YouTube, Presentation before the National Dialogue Committee, <https://youtu.be/QLqg6gFMWeA?si=UYFHsrsLAy8eFZK4> (accessed November 12, 2024).

<sup>200</sup> Maisha Television Kenya "IPOA Submits its proposal to the National Dialogue Committee" November 1, 2023.

In the case of Mary Oyugi, her daughter Caroline said that the police refused to record a statement because she “did not have evidence implicating the police” in her mother's shooting.<sup>201</sup> This is despite the statutory obligation bestowed upon police to investigate crime.<sup>202</sup> Mary Oyugi was selling fish in Mathare, a Nairobi neighborhood, on the evening of July 20, 2023, when armed police allegedly started hurling teargas canisters at protesters running. She said:

I told myself I wouldn't run away since I was on my business premises, and I was not doing anything wrong. I am not a thief. Can a mature woman like me steal someone's property? The officers who were carrying “shotguns” started throwing teargas canisters towards the crowd and at my business. I finally ran away towards my neighbor's house. It was my neighbor (name withheld) who made me realize that I had been shot in the left arm.<sup>203</sup>

Caroline Oyugi said:

I went to make a formal report on July 21, 2023, but the officer I found at the report office [Muthaiga Police Station] told me to produce evidence that a police officer shot my mother. The officer said that she had to consult a senior officer first. I left the station without being helped.<sup>204</sup>

Clifford Nyauke from Nyalenda, Kisumu, said that on July 20, 2023, he was beaten in his house by people he suspected were police because they were dressed in the police jungle green uniform. He said that although he had not been protesting that day, the men accused him of taking part in the protests and causing disturbance.<sup>205</sup> Nyauke said he was afraid to report the assault because he thought the officers who assaulted him could be the same ones who would take his statement. He said: “How can you report a police officer at a police station? Police beat many friends around here, and they are afraid to leave the house, thinking the police will come after them.”<sup>206</sup>

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<sup>201</sup> Amnesty International and Human Rights Watch in-person interview with Caroline Oyugi, Mathare, August 1, 2023.

<sup>202</sup> National Police Service Act, No. 11A of 2011, Republic of Kenya, Section 24(e).

<sup>203</sup> Amnesty International and Human Rights Watch in-person interview with Mary Oyugi, Mathare, August 1, 2023.

<sup>204</sup> Amnesty International and Human Rights Watch in-person interview with Caroline Oyugi, Mathare, August 1, 2023.

<sup>205</sup> Amnesty International and Human Rights Watch in-person interview with Clifford Nyauke, Nyalenda, August 4, 2023.

<sup>206</sup> Ibid.

Similarly, Josephat Pele, 19, who was shot by the police on July 12, 2023, said he could not report the abuse because he feared that he would be arrested.<sup>207</sup>

At the time of writing this report, no police officer had been charged for unlawful actions during the 2023 anti-government protests. Despite evidence suggesting that the police may have been working in conjunction with criminal gangs to threaten and beat protesters, ODPP has failed to institute investigations into the police's alleged complicity in the attacks by criminal gangs against protesters under the Prevention of Organized Crimes Act of 2010<sup>208</sup> and the Police Act. Both laws spell out measures that authorities ought to take to ensure accountability for crimes by gangs, including killings, causing bodily injury, and stealing from victims.<sup>209</sup>

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<sup>207</sup> Amnesty International and Human Rights Watch in-person interview with Josephat Pele, Machakos, August 12, 2023.

<sup>208</sup> The Prevention of Organized Crimes Act, Chapter 59, Republic of Kenya, 2023.

<sup>209</sup> National Police Service Act, No. 11A of 2011, Republic of Kenya.

## Legal Framework

The Kenyan government, including the police and other state agencies, are beholden to Kenya's obligations under international human rights law. These encapsulate regional and international treaties, as well as customary international law. Regional and international law form part of the laws of Kenya by dint of articles 2(5) and (6) of the Constitution of Kenya, which states:

- (5) The general rules of international law shall form part of the law of Kenya.
- (6) Any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution.

Police operations in Kenya are regulated by the constitution and acts of parliament, including the National Police Service Act and the Police Act. This report analyses the conduct of Kenya's police during the March–July 2023 protests vis a vis Kenyan domestic legislation, and regional and international human rights law and standards.

## National Framework

### *Constitution of Kenya, 2010*

The Constitution of Kenya, the supreme law binding all persons and all state organs, protects the right to protest in Article 37.<sup>210</sup>

The article guarantees that “all persons have a right, peaceably and unarmed, to assemble, demonstrate, picket, and present petitions to public authorities.”<sup>211</sup> The state has an obligation to create an enabling environment in which protesters can freely express themselves, use the media to share information, and demand information, which is vital in realizing their rights.<sup>212</sup> Protesters also have the freedom to associate in the activities of any association.<sup>213</sup> This intertwining of rights is vital as the right to demonstrate cannot

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<sup>210</sup> The Constitution of Kenya 2010.

<sup>211</sup> The Constitution of Kenya, 2010, Chapter 4, article 37,

<sup>212</sup> The Constitution of Kenya 2010, Chapter 4, article 33, 34, and 35.

<sup>213</sup> The Constitution of Kenya 2010, Chapter 4, article 36.

exist in a vacuum. Accordingly, the rights of protesters may only be limited within the confines of the law.<sup>214</sup> The limitation must be legislative, proportionate, justifiable, and necessary in a democratic society. The limitation must be modelled to prevent the right from losing its essential content.<sup>215</sup>

The police have obligations under the Bill of Rights under Chapter Four of the Constitution to protect the right to life, protect individuals from torture and other ill-treatment, respect human dignity, freedom of association, and the right to picket and demonstrate. The Constitution guarantees all Kenyans the right to human dignity, freedom, and security of the person.

The Constitution of Kenya establishes the National Police Service Act and requires the police to respect human rights and fundamental freedoms, as well as train staff to comply with human rights standards.<sup>216</sup>

## Kenyan Laws Regarding Protests

### *Penal Code*

Kenya's Penal Code under section 78(1) provides that:

When three or more persons assemble with intent to commit an offence, or, being assembled with intent to carry out some common purpose, conduct themselves in such a manner as to cause persons in the neighborhood reasonably to fear that the persons so assembled will commit a breach of the peace, or will by such assembly needlessly and without any reasonable occasion provoke other persons to commit a breach of the peace, they are an unlawful assembly.<sup>217</sup>

As documented in this report, protesters were charged under this provision, which provides for penalties of up to one year.

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<sup>214</sup> The Constitution of Kenya 2010, Chapter 4, article 24.

<sup>215</sup> Ibid.

<sup>216</sup> The Constitution of Kenya 2010, Chapter 14, article 243 and 244.

<sup>217</sup> The Penal code Act, Republic of Kenya, Chapter 63, 2023.

### *Public Order Act*

The Public Order Act No. 36 of 1950, enacted by Kenya's former colonial administration, was heavily relied upon by the state in charging protesters with unlawful assembly, loitering, and justifying the suppression of the right to protest. The constitution provides that for any law to purpose to limit a right, the limitation must, among other things, be justifiable in an open and democratic society.<sup>218</sup>

The Public Order Act imposes limitations beyond what is permissible under the Kenyan constitution and regional and international human rights standards. The Public Order Act does not protect spontaneous assemblies when it is not possible to comply with the notification framework set out under section 5(2) of the Public Order Act. Additionally, the Public Order Act, further imposes time limitations, requiring protests to be organized between 6 a.m. and 6 p.m.<sup>219</sup> States have an obligation to facilitate and expand freedom of assembly rather than impose unnecessary restrictions.<sup>220</sup>

The apparent “first-come, first-served” provision in the Public Order Act amounts to insufficient protection for simultaneous assemblies and counter demonstrations.<sup>221</sup> This was exhibited when the police declared that protests could not take place because a different assembly had been planned along the same route. The absence of any timeframe under sections 5(4), (5), and (6) for the regulating officer to notify protest organizers of any imposition of restrictions further limits freedom of assembly and to protest as last-minute changes or communication from the regulating officer might limit the efficiency of protests.

The Public Order Act requires protest organizers or their agents to assist the police in maintaining peace and order. If they fail to assist in duties that are ordinarily meant to be police responsibilities, they are criminally culpable. These sections appear aimed to deter protest organizers and exclude police liability to distinguish criminal elements from peaceful protesters.

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<sup>218</sup> The Constitution of Kenya 2010, Chapter 4, article 24.

<sup>219</sup> The Public Order Act, Republic of Kenya, June 13, 1960, Chapter 56, Section 5(3)(b).

<sup>220</sup> OSCE Office for Democratic Institutions and Human Rights (ODIHR), *Guidelines on Freedom of Peaceful Assembly*; Handbook on Monitoring Freedom of Peaceful Assembly, 2011, p. 21.

<sup>221</sup> The Public Order Act, Republic of Kenya, June 13, 1960, Chapter 56, section 5(4).



In May 2021, the UN Human Rights Committee, the body of independent experts that monitors the implementation of the International Covenant on Civil and Political Rights (ICCPR) had expressed concern about reports from Kenya that “the requirements in the Public Order Act (1950) to notify the police of all assemblies are being used in practice by the authorities to deny authorization for peaceful assemblies.”<sup>222</sup> Further, the Committee pointed out the need to revise and repeal the above mentioned Public Order Act provisions. The Committee also expressed concern “about reports of the excessive use of force to disperse protests and of the arbitrary detention and arrest of human rights defenders for exercising their right to peaceful assembly.”<sup>223</sup> This report found an alarming pattern of the police detaining protesters without bringing them before a judge within the required 24-hour period.<sup>224</sup>

On the issuance of protest notices, the Public Order Act requires that anyone planning or organizing protests should notify the Officer Commanding Station (OCS) of the area where the protests are expected to occur at least three days before the demonstrations.<sup>225</sup>

Protest notices are issued to give the police and other state agencies time to prepare and facilitate the smooth operation of other services and protection of protesters. This requirement should not be the basis for limiting the right to protest.<sup>226</sup> Additionally, the notice period should be reasonable.

The Human Rights Committee General Comment No. 37 on Article 21 of ICCPR on the right of peaceful assembly, states that failure to meet the provided notice period is not a reason to prohibit assemblies, nor does it make the assemblies unlawful as there needs to be provision for spontaneous protest, which, by their nature, does not require notification.<sup>227</sup>

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<sup>222</sup> United Nations Human Rights Committee, “Concluding observations on the 4th periodic report of Kenya,” CCPR/C/KEN/CO/4, May 11, 2021, <https://digitallibrary.un.org/record/3925702?ln=en&v=pdfaccessible> (accessed November 11, 2024).

<sup>223</sup> Ibid.

<sup>224</sup> Human Rights Watch and Amnesty International “Kenya: End Abusive Policing of Protests,” May 31, 2023, <https://www.hrw.org/news/2023/05/31/kenya-end-abusive-policing-protests>.

<sup>225</sup> The Public Order Act, Republic of Kenya, June 13, 1960, Chapter 56, section 5.

<sup>226</sup> United Nations Human Rights Committee, General Comment No. 37 on Article 21, Right of peaceful assembly, CCPR/C/GC/37, July 27, 2020, <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-37-article-21-right-peaceful> (accessed November 14, 2024).

<sup>227</sup> Ibid., paras. 72-73.

On the question of accountability, the African Commission on Human and Peoples' Rights (ACHPR) Guidelines on Freedom of Association and Assembly in Africa states that “[n]either the organizers nor fellow participants of a public assembly shall be subjected to sanctions of any kind on the basis of acts committed by others.”<sup>228</sup>

### **Proposals to Amend the Public Order Act**

The Kenyan government has been adamant that the police performed its duties properly and professionally during the protests.<sup>229</sup> The government said that the use of force by police was essential in “restoring order” in the country.<sup>230</sup> In a televised appearance, President Ruto backed the cabinet secretary for Interior and Coordination of National Government’s assertions that the force used by the police against protesters was proportionate.<sup>231</sup>

Even though the Kenyan government pledged to repeal the Public Order Act in 1997 as a response to advocacy efforts by local and international organizations, in March 2023, the Ministry of Interior proposed new regulations to enforce the law, which places undue restrictions on the rights to freedom of assembly, expression, and association. The ministry said that the proposed regulations were to provide guidelines on the issuance of notice to protest, demarcation of areas to demonstrate, picket and present petitions, consent requirements by persons whose businesses are likely to get affected by demonstrations, duties of organizers of assemblies, and limitation of the number of persons who can be allowed to take part in a protest.<sup>232</sup>

This report finds that the proposed amendments to the Public Order Act raise serious constitutional concerns and are contrary to international law guidelines on the right to peaceful assembly, including engaging in spontaneous protest. They unjustifiably convert

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<sup>228</sup> Africa Commission on Human and Peoples' Rights, “Guidelines on Freedom of Association and Assembly in Africa,” May 22, 2017, <https://achpr.au.int/en/special-mechanisms-reports/guidelines-freedom-association-and-assembly-africa> art. 101.

<sup>229</sup> Esther Nyambura, “You are doing a good job, Ruto tells police,” *the Standard*, 2023, <https://www.standardmedia.co.ke/article/2001477738/you-are-doing-a-good-job-ruto-tells-police>; “President Ruto maintains police did a good job during protests,” *Citizen TV*, July 27, 2023, <https://www.youtube.com/watch?v=dsXQv8nYE3g> (accessed November 13, 2024).

<sup>230</sup> “President Ruto maintains police did a good job during protests,” *Citizen TV*, July 27, 2023, <https://www.youtube.com/watch?v=dsXQv8nYE3g> (accessed November 13, 2024).

<sup>231</sup> *Ibid.*

<sup>232</sup> Ministry of Interior and Coordination Kenya (@InteriorKE), post to X (formerly known as Twitter) March 26, 2023 <https://twitter.com/InteriorKE/status/1640036351541145600> (accessed November 13, 2024).

protest organizers to duty bearers, with the responsibility of maintaining law and order, by virtue of sections 5(7) and (9) of the Public Order Act. The Kenyan government should reject these sections to ensure effective realization of the right to freedom of assembly.

The proposed amendments to the Public Order Act could also result in unfair and unlawful limitation of the right to protest in cases where the “affected people” would reject notifications to hold protests. The proposal to introduce long procedures before organizing protests limits the right to hold spontaneous gatherings and protests, violating the government’s obligation not to impose excessive restrictions that effectively deny the practical enjoyment of fundamental rights.<sup>233</sup> The regulations were not published at the time of writing this report.

## African Regional Standards

Kenya ratified the African Charter on Human and Peoples’ Rights (ACHPR) on January 23, 1992.<sup>234</sup> The African Charter recognizes the centrality of human rights in the well-being of all persons.<sup>235</sup> Kenya ratified the African Charter on the Rights and Welfare of the Child on July 25, 2000.<sup>236</sup>

Both treaties obligate states parties to protect individuals under their jurisdiction from violations of their rights to life, torture, and other ill-treatment, and arbitrary arrest and detention, and protect the right of all persons to freely express opinions, associate, and assemble with others without any undue restrictions.<sup>237</sup>

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<sup>233</sup> United Nations Human Rights Committee, General Comment No. 37 on Article 21, Right of peaceful assembly, CCPR/C/GC/37, July 27, 2020, <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-37-article-21-right-peaceful>, Para 14 and 72.

<sup>234</sup> See: State Parties to the African Charter, *African Charter on Human and Peoples’ Rights (ACHPR)*, 2024, <https://achpr.au.int/en/states> (accessed November 13, 2024).

<sup>235</sup> African [Banjul] Charter on Human and Peoples’ Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force October 21, 1986, ratified by Kenya on January 23, 1992, [https://au.int/sites/default/files/treaties/36390-treaty-0011\\_-\\_african\\_charter\\_on\\_human\\_and\\_peoples\\_rights\\_e.pdf](https://au.int/sites/default/files/treaties/36390-treaty-0011_-_african_charter_on_human_and_peoples_rights_e.pdf).

<sup>236</sup> African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49 (1990), entered into force November 29, 1999.

<sup>237</sup> African [Banjul] Charter on Human and Peoples’ Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force October 21, 1986, ratified by Kenya on January 23, 1992, [https://au.int/sites/default/files/treaties/36390-treaty-0011\\_-\\_african\\_charter\\_on\\_human\\_and\\_peoples\\_rights\\_e.pdf](https://au.int/sites/default/files/treaties/36390-treaty-0011_-_african_charter_on_human_and_peoples_rights_e.pdf), article 11; African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49 (1990), entered into force November 29, 1999, art. 8 (association and assembly) and arts. 16-17 (protection from torture, inhuman and degrading treatment, and separation from adults in detention).

Kenya has also ratified the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa on November 15, 2021. The Protocol recognizes the rights of people with disabilities to live in the community, access habilitation and rehabilitation services, and enjoy an adequate standard of living.<sup>238</sup>

The ACHPR Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa recognize that protests are the cornerstones of democracy. They obligate states to ensure that they form proper and clear command structures of law enforcement officials manning protests to ensure accountability of activities or happenings.<sup>239</sup> The guidelines further propose the creation of oversight mechanisms which are supposed to hold officers to account, take complaints, investigate, and recommend actions to be taken against errant officers.<sup>240</sup> Kenya has created such a mechanism in the form of IPOA, but measures need to be undertaken to ensure its effectiveness.

The guidelines require that officers policing protests be dressed in uniforms for ease of identification and limit searches and arrests to only dire situations which cannot be addressed through de-escalation. The guidelines also mandate the authorities to give first aid and actively assist persons injured during protests.<sup>241</sup> This report finds that during the March-July 2023 protests, many officers were not dressed in uniform, making it difficult to identify them, take commands from them, or seek accountability in cases where violations were recorded. Kenyan authorities also failed to help those injured during the protests. Further, police conducted house searches without legitimate objectives, seemingly only aiming to punish those suspected of having taken part in the protests.<sup>242</sup>

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<sup>238</sup> Art 3, Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa, January 29, 2018, <https://au.int/en/treaties/protocol-african-charter-human-and-peoples-rights-rights-persons-disabilities-africa> (accessed November 14, 2024).

<sup>239</sup> African Commission on Human and Peoples' Rights, Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa, March 4, 2017, <https://achpr.au.int/en/soft-law/guidelines-policing-assemblies-law-enforcement-officials-africa>, Guideline 5.

<sup>240</sup> African Commission on Human and Peoples' Rights, Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa, March 4, 2017, <https://achpr.au.int/en/soft-law/guidelines-policing-assemblies-law-enforcement-officials-africa>, Guideline 8

<sup>241</sup> Ibid.

<sup>242</sup> United Nations Human Rights Committee, General Comment No. 37 on Article 21, Right of peaceful assembly, CCPR/C/GC/37, July 27, 2020, <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-37-article-21-right-peaceful>, para. 14.

In accordance with the principles enshrined in the ACHPR Guidelines,<sup>243</sup> all persons whose rights were violated or infringed upon during the anti-government protests, including organizers and participants, have a right to a remedy. They include compensation for any harms that occurred; those responsible for pursuing groundless or disproportionate sanctions or dispersal should be held accountable; discriminatory conduct or physical attack or harassment or threats by private individuals should be investigated and appropriately prosecuted; and other measures should be appropriately taken, such as satisfaction and guarantees of non-repetition.<sup>244</sup>

## International Standards

Kenya is party to the core international human rights treaties that protect the rights to life and security of the person, and fundamental freedoms including the right to free expression and peaceful assembly. Key among these are the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Discrimination against Women; the Convention on the Rights of the Child (CRC); the Convention on the Rights of Persons with Disabilities (CRPD).

The ICCPR protects the rights to freedom of expression and peaceful assembly.<sup>245</sup> Law enforcement personnel are obligated to protect and uphold those fundamental rights.

The United Nations Human Rights Committee, an international expert body that monitors compliance with the ICCPR, issued General Comment 37 on the right to peaceful assembly. Restrictions on the right to peaceful assembly must be “provided by law” and be a

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<sup>243</sup> African Commission on Human and Peoples’ Rights, Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa, March 4, 2017, <https://achpr.au.int/en/soft-law/guidelines-policing-assemblies-law-enforcement-officials-africa>.

<sup>244</sup> African Commission on Human and Peoples’ Rights, Guidelines freedom of association and assembly, September 21, 2017, <https://achpr.au.int/en/soft-law/guidelines-policing-assemblies-law-enforcement-officials-africa>, para. 103.

<sup>245</sup> International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by Kenya May 1, 1972, article 19 states that: “Everyone shall have the right to hold opinions without interference. 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. 3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order, or of public health or morals. ICCPR article 21 provides that: The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law, and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

proportionate response to the situation. The Committee stated that the “laws in question must be sufficiently precise to allow members of society to decide how to regulate their conduct and may not confer unfettered or sweeping discretion on those charged with their enforcement.”<sup>246</sup>

The possibility of a violent assembly is an insufficient basis to stop the demonstration:

An unspecified risk of violence, or the mere possibility that the authorities will not have the capacity to prevent or neutralize the violence emanating from those opposed to the assembly, is not enough; the State must be able to show, based on a concrete risk assessment, that it would not be able to contain the situation, even if significant law enforcement capability were to be deployed.<sup>247</sup>

The Committee stated that, “The prohibition of a specific assembly can be considered only as a measure of last resort”:

Where the imposition of restrictions on an assembly is deemed necessary, the authorities should first seek to apply the least intrusive measures. States should also consider allowing an assembly to take place and deciding afterwards whether measures should be taken regarding possible transgressions during the event, rather than imposing prior restraints in an attempt to eliminate all risks.<sup>248</sup>

Under the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Personnel, law enforcement may only use force when strictly necessary and to the extent required to achieve a legitimate policing objective. Law enforcement officials should make use of non-violent means before resorting to force and avoid the use of force to disperse non-violent protests, regardless of whether the authorities deem the protests illegal. Any use of force by law enforcement must be preceded by clear warnings and should only be

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<sup>246</sup> United Nations Human Rights Committee, General Comment No. 37 on Article 21, Right of peaceful assembly, CCPR/C/GC/37, July 27, 2020, <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-37-article-21-right-peaceful>, para. 39.

<sup>247</sup> Ibid., para. 52.

<sup>248</sup> Ibid., para. 37.

used if other measures to address a genuine threat have proved ineffective or have no likelihood of achieving the intended result. When using force, law enforcement should exercise restraint and act proportionately, taking into account both the seriousness of the offense and the legitimate objective to be achieved.

With respect to the dispersal of protests, the Human Rights Committee has stated:

Only in exceptional cases may an assembly be dispersed. Dispersal may be resorted to if the assembly as such is no longer peaceful, or if there is clear evidence of an imminent threat of serious violence that cannot be reasonably addressed by more proportionate measures such as targeted arrests. In all cases, the law enforcement rules on use of force must be strictly followed.<sup>249</sup>

The 2020 UN Guidance on Less-Lethal Weapons in Law Enforcement provides that tear gas should only be employed when necessary to prevent further physical harm and should not be used to disperse nonviolent demonstrations.<sup>250</sup> Tear gas should only be used after a warning is given and participants have been given time to obey the warning and have a safe space or route for them to move.<sup>251</sup>

While tear gas is considered a less lethal weapon, it can cause serious medical problems for people exposed to it, even when it is used with restraint.<sup>252</sup> Because of the nature of its use, tear gas should never be used in confined areas where it is difficult for people to disperse.<sup>253</sup> This provision was not adhered to as police used tear gas in crowded

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<sup>249</sup> Ibid., para. 85.

<sup>250</sup> OHCHR, “United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement,” June 1, 2020, <https://www.ohchr.org/en/publications/policy-and-methodological-publications/united-nations-human-rights-guidance-less> (accessed November 14, 2024).

<sup>251</sup> Ibid.

<sup>252</sup> “The Very Real Health Impacts of Teargas,” *Physicians for Human Rights*, December 11, 2018, <https://phr.org/our-work/resources/the-very-real-health-impacts-of-tear-gas/>; “Health Impacts of Crowd-Control Weapons: Chemical Irritants (Tear Gas and Pepper Spray),” *Physicians for Human Rights*, January 1, 2017, <https://phr.org/our-work/resources/health-impacts-of-crowd-control-weapons-chemical-irritants-tear-gas-and-pepper-spray/> (accessed November 14, 2024); Jennifer L. Brown, Carey E. Lyons, Carlee Todd, Timothy Monko, and Roman Tyshynsky, “Tear Gas Safety and Usage Practices,” *Journal of Science Policy & Governance*, Volume 18, Issue 01, March 24, 2021, <https://doi.org/10.38126/JSPG180104>.

<sup>253</sup> Tear Gas: An Investigation, *Amnesty International*, 2024, <https://teargas.amnesty.org/#incident-map> (accessed November 14, 2024); Amnesty International, “Amnesty International releases 30 rules to curb the use of chemical irritants by police,” July 30, 2021, <https://www.amnesty.nl/media/police-human-rights-programme/amnesty-international-releases-30-rules-to-curb-the-use-of-chemical-irritants-by-police>, p. 9-10, 12-14.

residential areas, including Kibera, where people had no means of escape or dispersal without causing more harm. Contextual factors must always be considered before deciding to deploy tear gas.<sup>254</sup> These include the geographical nature of the deployment site, temperature, wind and weather patterns, and the existence of hospitals, schools or dense, uninvolved populations in the vicinity.<sup>255</sup> Hence, given the increased and unacceptable risks involved, tear gas should never be used in the particularly dense setting of informal settlements.

Efforts by police to deny injured protesters and others harmed, access to medical care violated Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which recognizes the right of everyone to the enjoyment of the highest attainable standard of health.<sup>256</sup> Governments have an obligation to respect the right to health by ensuring those needing care are able to access health services.<sup>257</sup>

The ICCPR and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ban “cruel, inhuman, or degrading treatment or punishment.”<sup>258</sup> Under the CRC, children should be detained only as a measure of last resort and for the shortest appropriate period of time.<sup>259</sup> Those who acquire disabilities as a result of protests are protected under the Convention on the Rights of Persons with Disabilities (CRPD), which Kenya ratified on May 19, 2008.<sup>260</sup>

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<sup>254</sup> Ibid.

<sup>255</sup> Amnesty International, “Amnesty International releases 30 rules to curb the use of chemical irritants by police,” July 30, 2021, <https://www.amnesty.nl/media/police-human-rights-programme/amnesty-international-releases-30-rules-to-curb-the-use-of-chemical-irritants-by-police>, p. 9-10, 12-14.

<sup>256</sup> International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force January 3, 1976, <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx> (accessed August 28, 2024).

<sup>257</sup> UN Committee on Economic, Social and Cultural Rights, General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12), adopted at the twenty-second session, August 11, 2000, <https://www.refworld.org/legal/general/cescr/2000/en/36991>, art. 12, para. 50.

<sup>258</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), adopted December 10, 1984, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987.

<sup>259</sup> UN Convention on the Rights of the Child (CRC), adopted November 20, 1989, entered into force 1990, ratified by Kenya on January 26, 1990, art. 37(b).

<sup>260</sup> Convention on the Rights of Persons with Disabilities, adopted by the UN General Assembly at its 61<sup>st</sup> session, resolution A/RES/61/106, December 12, 2006, ratified by Kenya on May 19, 2008, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities> (accessed November 11, 2024).



Finally, international human rights law provides victims of human rights violations a right to a remedy.<sup>261</sup> Under article 2 of the ICCPR, “any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity. The Human Rights Committee, in its general comment on the legal obligations of states under the ICCPR, has stated that governments “must ensure that individuals also have accessible and effective remedies to vindicate those rights.”<sup>262</sup> In addition, “[a]dministrative mechanisms are particularly required to give effect to the general obligation to investigate allegations of violations promptly, thoroughly, and effectively through independent and impartial bodies.”<sup>263</sup>

Kenyan security agencies deployed in the policing of demonstrations, protests, and assemblies need to explore other non-violent means, such as de-escalation, before resorting to the use of force in response to violence. States are obligated to craft legislation to encourage the exercise of the right to freedom of peaceful assembly.<sup>264</sup>

This report found that Kenya has yet to meet international human rights standards regarding exercising and protecting the right to protest in the country.

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<sup>261</sup> See: Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, G.A. Res. 60/147, U.N. Doc A/RES/60/147, December 16, 2005; Human Rights Watch, *“Kettling” Protesters in the Bronx Systemic Police Brutality and Its Costs in the United States* (New York: Human Rights Watch, 2020), <https://www.hrw.org/report/2020/09/30/kettling-protesters-bronx/systemic-police-brutality-and-its-costs-united-states>; International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by Kenya May 1, 1972, art. 2(3).

<sup>262</sup> United Nations Human Rights Committee, General Comment No. 37 on Article 21, Right of peaceful assembly, CCPR/C/GC/37, July 27, 2020, <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-37-article-21-right-peaceful>, para. 15.

<sup>263</sup> UN Human Rights Committee, General Comment No. 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, CCPR/C/21/Rev.1/Add.13, adopted March 29, 2004, May 26, 2004, <https://www.refworld.org/legal/general/hrc/2004/en/52451>, para. 15.

<sup>264</sup> UN Office of the High Commissioner for Human Rights, Basic Principles on the Use of Force and Fire Arms by Law Enforcement Officials, September 7, 1990, <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-use-force-and-firearms-law-enforcement>, Principle 7.

## Acknowledgments

This report is the outcome of a joint research project between Amnesty International Kenya and Human Rights Watch, aimed at providing comprehensive evidence of the scale and impact of police abuses committed in the 2023 protests and the obstacles towards accountability for police excesses.

The report was written by Nyagoah Tut Pur, Africa researcher at Human Rights Watch and Benta Moige, Country researcher at Amnesty International Kenya based on the research of 25 data monitors and 15 research assistants.

At Amnesty International Kenya, executive director Irūngū Houghton and Senior Communications and Campaigns Officer Ramadhan Rajab and other Amnesty legal and policy researchers reviewed the report.

At Human Rights Watch, Mausi Segun, Africa director and Laetitia Bader, deputy director in the Africa Division, edited the report. Babatunde Olugboji, deputy program director, provided program review. James Ross, legal and policy director, provided legal review. Zama Neff, child rights director, Elizabeth Kamundia, disability rights acting director, Mark Hiznay, crisis, conflict and arms, associate director, Otsieno Namwaya, associate Africa director, Sara Saadoun, economic justice and rights senior researcher, Matt McConnell, health and human rights researcher, Allan Ngari, Africa Advocacy director, Nicole Widdersheim, deputy Washington director, Philippe Dam, European Union director provided specialist review.

The report was prepared for publication by Africa Associate Eunice Njagi; publications officer, Travis Carr; and senior administrative manager, Fitzroy Hepkins.

Amnesty International Kenya and Human Rights Watch are grateful to all victims and eyewitnesses who agreed to share their experiences. This report would not have been possible without their willingness or courage to speak out. We also express gratitude to medical practitioners and civil society representatives, who helped arrange some of the interviews and contributed to our documentation and analysis by sharing their expertise.

# Annex I: Letter to the Office of the Director of Public Prosecutions (ODPP)



October 9, 2024

Mr. Renson M. Ingonga, OGW  
Director of Public Prosecutions  
ODPP House, Ragati Road, Upper Hill  
P. O. Box 30701 - 00100  
Nairobi, Kenya.

Dear Mr. Renson M. Ingonga,

**RE: REQUEST FOR YOUR RESPONSE TO AMNESTY INTERNATIONAL KENYA AND HUMAN RIGHTS WATCH'S FINDINGS ON ABUSES DURING THE 2023 NATIONWIDE PROTESTS (MAANDAMANO)**

We write on behalf of Amnesty International Kenya and Human Rights Watch. Amnesty International is a global human rights movement with more than 15 million members and supporters worldwide who work to protect human rights. Human Rights Watch is an international human rights organization that conducts research and advocacy on human rights abuses in over 90 countries worldwide.

Our organizations conducted joint research into human rights abuses committed during nationwide protests held between March-July 2023. We conducted 226 interviews in Nairobi, Kisumu, Machakos, Nakuru, Kisii, Nyamira, Homa Bay, Siaya and Makueni counties with victims, witnesses, and family members of those affected by police violence during the protests. The interviewees included 155 men, 61 women, and 10 children (interviewed with an adult present).

Our report finds that:

- i. The National Police Service (the police), who were deployed during the March-July 2023 nationwide protests, used unlawful force, including lethal ammunitions, leading to the killing of at least 32 protesters across the country. Hundreds of others sustained serious injuries from live and rubber bullets and severe blunt force trauma,
- ii. At least 50 cases of human rights violations against children were recorded during the protests. The violations included arbitrary arrests, torture and other ill-treatment, unnecessary and excessive use of force such as beatings, and the unlawful use of lethal force,
- iii. The police used teargas, causing injury and other health impacts, despite the protests being largely peaceful before police intervention. Bystanders, as well as children who were in school and not taking part in the protests, were also affected by the indiscriminate use of teargas by the police. Two babies aged four months and seven months died following reckless use of teargas by police in residential areas,
- iv. The report records arbitrary, unnecessary and excessive use of force where our organizations recorded a pattern of police routinely engaging in beatings of unarmed protesters who did not pose

any threat, amounting in some cases to torture and other ill-treatment. We recorded cases where protesters and bystanders were beaten with batons,

- v. In Kisumu, police conducted violent home searches where to find and ‘punish’ those who had taken part in the protests by beating, intimidating and threatening them. One person was shot dead and two people were beaten to death during such events,
- vi. Some protesters and by-standers were subjected to arbitrary arrests, torture, and other ill-treatment in custody where some protesters and bystanders were detained in police stations or court-holding cells for up to seven days without adequate food and water and were assaulted by prison wardens in the cells in which they were being held. Further, the police presented some arrested persons in court days after the arrest, with some spending up to three days in custody before a court appearance,
- vii. Our research also details attacks by unidentified attackers, criminal gangs and people not in uniform, some who were reportedly working with the police and people not in uniform who were armed and were also attacking and harassing protesters. The people not in uniform beat and assaulted protesters with crude weapons, including machetes and knives and in at least one case, arrested a journalist,

Our organizations strive to reflect all perspectives in our research and publications. We would therefore appreciate your response to the following questions and any other information you can provide to ensure your views are reflected in our reporting:

- The Independent Policing Oversight Authority (IPOA) presented a report before the National Dialogue committee stating that they had conducted investigations on police conduct during the March-July 2023 protests and submitted cases to your office for prosecution. Could you clarify whether you have received the IPOA report or how many cases you have received for prosecution and of these how many you have initiated prosecutions on and what the status of those cases is?
- Could you clarify whether any police officer has been charged or prosecuted for conduct/actions during the March-July 2023 nationwide protests of your own accord or resulting from other independent investigations? If so, what are their ranks, units and the status of the cases?

Amnesty International Kenya and Human Rights Watch would be grateful to receive your response to these findings by **October 15, 2024**, by email to be able to reflect your input in our forthcoming publication. If you decide not to respond, please indicate as such.

Please note that we may reflect any information we receive from you in our published materials, as appropriate, which may include quoting your responses verbatim. We would also welcome the opportunity to meet with you and discuss these issues in person at a time and date convenient for you.

Best wishes,

## Annex II: Letter to the Independent Policing Oversight Authority (IPOA)



October 9, 2024

Anne Makori, EBS,  
Chairperson, Independent Policing Oversight Authority  
1st Ngong Avenue, ACK Garden Annex  
P. O. Box 23035 - 00100  
Nairobi, Kenya.  
Telephone: 020 490 6000  
Email: [info@ipoa.go.ke](mailto:info@ipoa.go.ke)

Dear Ms. Anne Makori,

**RE: REQUEST FOR YOUR RESPONSE TO AMNESTY INTERNATIONAL KENYA AND HUMAN RIGHTS WATCH'S FINDINGS ON ABUSES DURING THE 2023 NATIONWIDE PROTESTS (MAANDAMANO)**

We write on behalf of Amnesty International Kenya and Human Rights Watch. Amnesty International is a global human rights movement with more than 15 million members and supporters worldwide who work to protect human rights. Human Rights Watch is an international human rights organization that conducts research and advocacy on human rights abuses in over 90 countries worldwide.

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- ii. At least 50 cases of human rights violations against children were recorded during the protests. The violations included arbitrary arrests, torture and other ill-treatment, unnecessary and excessive use of force such as beatings, and the unlawful use of lethal force,
- iii. The police used teargas, causing injury and other health impacts, despite the protests being largely peaceful before police intervention. Bystanders, as well as children who were in school and not taking part in the protests, were also affected by the indiscriminate use of teargas by the police. Two babies aged four months and seven months died following reckless use of teargas by police in residential areas,
- iv. The report records arbitrary, unnecessary and excessive use of force where our organisations recorded a pattern of police routinely engaging in beatings of unarmed protesters who did not pose



- any threat, amounting in some cases to torture and other ill-treatment. We recorded cases where protesters and bystanders were beaten with batons,
- v. In Kisumu, police conducted violent home searches to find and 'punish' those who had taken part in the protests by beating, intimidating and threatening them. One person was shot dead and two people were beaten to death during such events,
  - vi. Some protesters and by-standers were subjected to arbitrary arrests, torture and other ill-treatment in custody where some protesters and bystanders were detained in police stations or court-holding cells for up to seven days without adequate food and water and were assaulted by prison wardens in the cells in which they were being held. Further, the police presented some arrested persons in court days after the arrest, with some spending up to three days in custody before a court appearance,
  - vii. Our research also details attacks by unidentified attackers, criminal gangs and people not in uniform, some who were reportedly working with the police and people not in uniform who were armed and were also attacking and harassing protesters. The people not in uniform beat and assaulted protesters with crude weapons, including machetes and knives and in at least one case, arrested a journalist,

Our organizations strive to reflect all perspectives in our research and publications. We would therefore appreciate your response to the following questions and any other information you can provide to ensure your views are reflected in our reporting:

- According to a report you submitted before the National Dialogue Committee (NADCO) in September 2023, at least 57 people were killed during the 2023 nationwide protests. Please can you share with us a written copy of your presentation before the NADCO or a summary of your investigation findings?
- At time of writing this report, the Independent Policing and Oversight Authority (IPOA) had not issued updates on the progress of investigations into police excesses during the 2023 protests. What is the status of the inquiry into these killings? Kindly furnish us with a status report on these investigations, if any.
- Regarding police accountability for protestor related violence in 2023, what challenges has IPOA faced in the execution of your mandate?
- How many cases or police officers linked to violations March-July 2023, have you referred for disciplinary actions and/or prosecutions; what are their ranks, units and what is the status of these cases?

Amnesty International Kenya and Human Rights Watch would be grateful to receive your response to these findings by **October 15, 2024**, by email to be able to reflect your input in our forthcoming publication. If you decide not to respond, please indicate as such.

Please note that we may reflect any information we receive from you in our published materials, as appropriate, which may include quoting your responses verbatim. We would also welcome the opportunity to meet with you and discuss these issues in person at a time and date convenient for you.

Best wishes,

## Annex III: Response from the Office of the Director of Public Prosecutions (ODPP)



### OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

Telegraphic address: "Personnel", Nairobi  
Telephone: Nairobi 2732090/2732240  
Mobile: 0723202888/ 0787880580  
Fax: 2243524/2251808  
Email: [info@odpp.go.ke](mailto:info@odpp.go.ke)

ODPP House  
Ragati Road, Upper Hill  
P.O. Box 30701 – 00100  
**NAIROBI**  
**KENYA**

When replying please quote:

**Ref:** ODPP/CONF/6A

**Date:** 5<sup>th</sup> November, 2024

**Irungu Houghton**  
Section Director  
Amnesty International Kenya  
197 Lenna Place, 1<sup>st</sup> Floor  
Lenana Road  
**NAIROBI**

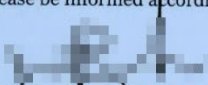
**Otiso Namwaya**  
Associate Africa Director  
Human Rights Watch  
KREP Plaza, Suite 2B, Wood Avenue  
Off Argwings Kodhek Road  
**NAIROBI**

**RE: RESPONSE TO AMNESTY INTERNATIONAL KENYA AND HUMAN RIGHTS WATCH'S FINDINGS ON ABUSES DURING THE 2023 NATIONWIDE PROTESTS (MAANDAMANO)**

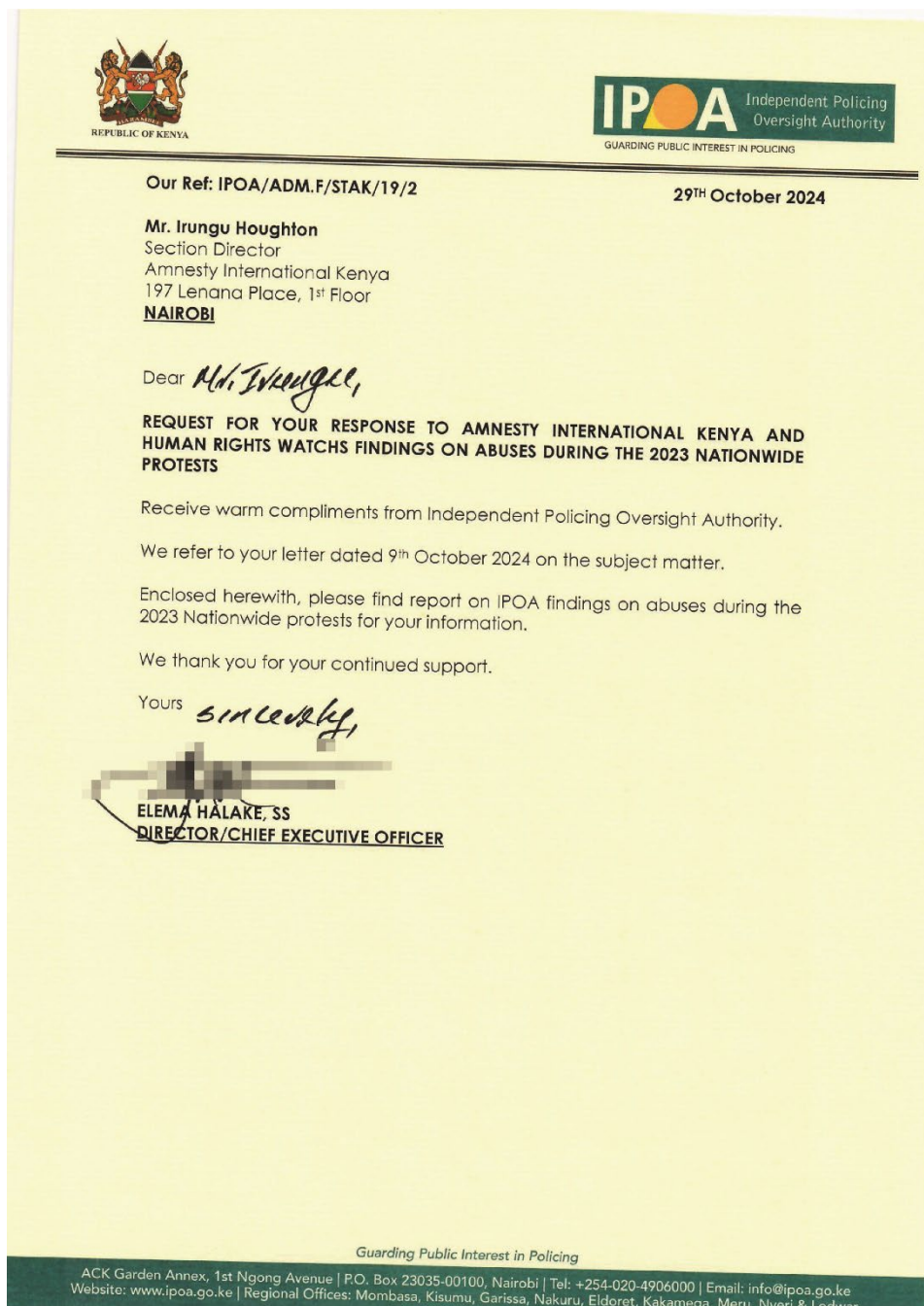
Reference is made to the above captioned subject matter.

We acknowledge the receipt of your letter dated 9<sup>th</sup> October, 2024, regarding a report of human rights violations allegedly perpetrated by law enforcement officers between March and July 2023. Further, in your letter you make reference to a report submitted by IPOA to the National Dialogue Committee. Please take note that we don't have these reports and information contained therein is unknown to us. However, I would like to inform you that the Office of the Director of Public Prosecutions received numerous case files from IPOA and which are not categorized as indicated in your letter. In the absence of these reports the Office of the Director of Public Prosecutions cannot avail the information sought.

Please be informed accordingly.

  
**RENSON M. INGONGA, OGW**  
**DIRECTOR OF PUBLIC PROSECUTIONS**

## Annex IV: Response from the Independent Policing Oversight Authority (IPOA)







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Independent Policing Oversight Authority

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AMNESTY INTERNATIONAL REQUEST FOR INFORMATION

28<sup>TH</sup> OCTOBER, 2024

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## 1.0. Background

Vide a letter dated 9<sup>th</sup> October 2024, the Independent Policing Oversight Authority (hereinafter IPOA or Authority) received a request from Amnesty international to provide:

- a) Copy of IPOA report presented to NADCO in September 2023;
- b) The total number of deaths reported to the IPOA during Azimio Demonstrations;
- c) Status update on ongoing investigations into the deaths during Azimio along with preliminary findings on the same;
- d) Challenges faced by IPOA in the course of investigations; and,
- e) Number of officers recommended for prosecution or disciplinary, their rank and units.

This brief sets out the Authority's position and views on the areas of concern.

## 2.0. Introduction

The Independent Policing Oversight Authority (IPOA) is a statutory body established by the Independent Policing Oversight Authority Act Cap 86 to provide for civilian oversight over the work of the National Police Service (hereinafter the Service or NPS). The objectives of the Authority as set out in Section 5 of its constitutive Act are to:

- a. hold the Police accountable to the public in the performance of their functions;
- b. give effect to the provision of Article 244 of the Constitution that the Police shall strive for professionalism and discipline and shall promote and practice transparency and accountability; and
- c. ensure independent oversight of the handling of complaints by the Service.

The functions of the Authority as set out in Section 6 of the Act include investigating any complaints related to disciplinary or criminal offences committed by any member of the Service; ensuring independent oversight in handling of complaints by the Service; conducting inspections of Police premises; and monitoring policing operations affecting members of the public.

In realizing its mandate, the Authority put in place a strategic plan and has currently extended implementation of the second strategic plan 2018-2024 for a period of one year pending development of the third strategic plan. The Authority's Strategic Plan set out the goals that the Authority has pursued and provides the framework to guide the development and implementation of Annual Work Plans to ensure efficient and optimal use of resources. In the Plan, the Authority envisions "a transformative civilian oversight Authority that promotes public trust and confidence in the National Police Service committed to conduct independent and impartial investigations, inspections, audits and monitoring of the National Police Service to enhance professionalism and discipline in the Service".

The Authority's Strategic Plan identifies four Key Result Areas (KRAs) as follows: -

KRA 1: Police Accountability

KRA 2: Stakeholder Cooperation and Complementarity



KRA 3: Research and Information Management  
KRA 4: Institutional Capacity

IPOA's Headquarter office is located in Nairobi and is supported by nine (9) regional offices located in Nairobi, Mombasa, Kisumu, Nakuru, Eldoret, Meru, Kakamega, Garissa and Nyeri.

### 3.0. The total number of deaths reported during Azimio Demonstrations

Arising from the Authority's monitoring of public order management during Azimio protest in Nairobi, Kisumu, Mombasa, Nakuru, Kakamega and, complaints lodged with it by victims, their relatives and on its own motion initiatives, IPOA is pursuing investigations into **67 deaths**.

### 4.0. Status of investigations with the preliminary findings

Based on complaints lodged and those taken up on its own motion, the Authority actively investigated twelve (**12**) cases where **6** deaths were investigated as one case and forwarded to ODPP with a recommendation of inquest. Four (**4**) were closed internally (**2** cases for non mandate, **1** due to lack of sufficient evidence to link the death with police and **1** death could not be established). The remaining 57 cases are at various stages of investigations as detailed in this report's appendix.

### 5.0. Challenges

- a) **Multi-Agency approach in policing:** Law enforcement under the ambit of the multi-agency approach challenges civilian oversight efforts as it brings on board actors which fall outside the purview of the IPOA Act.
- b) **Emerging trend of anonymized policing:** The Authority has observed an emerging trend whereby NPS officers during their operations conceal their identities, use unmarked cars and distort vehicle number plates. Police superiors also fail to prepare and/ or provide operation orders and deployment schedules to the Authority. The above gravely undermines the Authority's efforts to hold individual police officers to account.
- c) **Non cooperation by witnesses:** The witnesses are difficult to come by therefore impeding investigations.

# 6.0 Appendix

STATUS	NO. OF VICTIMS	REGION	COUNTY	REMARKS
At ODPP	6	Nairobi	Mlolongo Town in Machakos County	The Six merged as one file and Inquest recommended-File at ODPP for review and direction.
Closed files	4	3- Nairobi	Traffic Accident- Machakos Town	2- Closed for non-Mandate- (1-Traffic Accident and 1-death as a result of hypertension)
			Hypertension case- Body collected at Makina in Kibra	
			Kibra	1-Alleged death of 3-day-old; Unable to identify the family and neither was the body found. Matter had been taken up as an own motion.
		1-Kisumu	Kisumu	Lack of sufficient evidence to link the death to police
Internal Review	2	Nairobi	Wote and Email in Makueni	Undergoing internal review
Under Active Investigations	55	Nairobi- 16	2-Kibra	At various stage in Investigations
			1-Jacarada	
			1-Pipeline in Embakasi	
			2-Mathare Area	
			2-succumbed at KNH	
			3-Kitengela Town in Kajiado	
			2-Athi River town in Kajiado	
			1-Makadara	
			1-Tassia in Embakasi	
			1-Kangemi	
		Kisumu-32	22-Deaths in Kisumu	



			4-Deaths in Migori	
			2-Deaths in Siaya	
			4-Deaths in Kisii	
		Nakuru-3	Nakuru West	
		Kakamega-4	Busia Town	
<b>TOTAL</b>				<b>67</b>

  
**STELLA HALAKE, SS**  
**DIRECTOR/ CHIEF EXECUTIVE OFFICER**