

**Protests under threat**



# **KENYA: Restricting the right to be heard**

October 2022

**ARTICLE<sup>19</sup>**



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Cover: demonstration against police brutality, August 2020 (Photo: MUHURI)

# Contents



**04     Acronyms and abbreviations**

**05     Executive summary**

**06     Summary of recommendations**

**08     1. Introduction**

**08     The right to protest and freedom of assembly in Kenya**

**11     Kenya's police reforms**

**12     2. Legal framework governing the right to protest**

**12     Legal framework**

**15     Procedure for holding a protest**

**15     Limitations**

**17     3. Violations of the right to protest**

**17     Obstruction of the notification process**

**20     Obstruction of unregistered groups and spontaneous protests**

**21     Forceful disruption of protests**

**24     Female protesters: harassment and intimidation, including sexual assault**

**27     Injuries as a result of police actions**

**28     Police use of live ammunition**

**30     Accountability for police harms**

**30     Perceptions of differential treatment by the state**

**33     Deterrent effect of police violence and state intimidation**

**34     Arbitrary arrest, punitive bail, and vindictive prosecution**

**40     Harassment of online protesters**

**42     Stigmatisation and labelling of protests and protesters**

**46     4. Conclusion and recommendations**

**48     Recommendations**

**51     Annexe: Research methodology**

**53     Notes**

# Acronyms and abbreviations

<b>CIPK</b>	Council of Imams and Preachers of Kenya
<b>CSO</b>	Civil society organisation
<b>DCI</b>	Directorate of Criminal Investigations
<b>HRD</b>	Human rights defender
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>IMF</b>	International Monetary Fund
<b>IPOA</b>	Independent Policing Oversight Authority
<b>LGBTQI+</b>	Lesbian, gay, bisexual, transgender, questioning, and intersex
<b>MUHURI</b>	Muslims for Human Rights
<b>NGO</b>	Non-governmental organisation
<b>OCPD</b>	Officer Commanding Police Division
<b>OCS</b>	Officer Commanding Station

# Executive summary

Protests play an important part in the civil, political, economic, social, and cultural life of all societies. Protests can inspire positive social change, improve human rights protection, protect civic space, develop an engaged and informed citizenry, and strengthen democracy and participation. They enable people to express grievances, share opinions, expose governance flaws, and demand accountability and remedy from power holders. This is especially important where people's interests are poorly represented or marginalised. Yet governments around the world too often treat protests as an inconvenience to be controlled or a threat to be extinguished.

*Kenya: Restricting the right to be heard* is one of a series of research reports from our #FreeToProtest global campaign, which seeks to protect and advance people's right to protest, in line with ARTICLE 19's [Principles on the protection of human rights in protests](#). Kenya's 2010 Constitution, with its recognition and protection of the right to protest, has brought about a wave of change. Protest has acquired credibility and the intellectual power to assist citizens' dispute resolution with the state and business, including for human rights violations. Yet breaches of the right to protest persist in Kenya with state complicity. This report finds that despite Kenya's 2010 Constitution and ratification of international and regional

treaties that safeguard the right to protest, the state commonly infringes this right. The Kenyan authorities, at both national and county level, often use unnecessary or disproportionate force, including gender-based violence, as well as general obstruction and harassment, and apply archaic and restrictive laws, to discourage, prevent, or disperse protests.

The country's law enforcement agencies do not uphold their obligation to protect the right to protest but instead are frequently responsible for unlawful conduct, including violent repression and unlawful arrests, with limited accountability when violations occur. Social status and other overlapping identity factors affect the probability of the state and police either empowering or disempowering protesters. Negative media coverage has contributed to the stigmatisation and marginalisation of certain groups of protesters and reinforced unfavourable public perceptions. The Kenyan authorities act especially swiftly against both offline and online protests likely to embarrass the state or mobilise external pressure. Public ignorance of the legal framework impedes access to remedy and compensation when violations of the right to protest occur. The judiciary, despite recent reforms, also perpetuates the suppression of freedom of expression, assembly, and association by upholding charges against right holders.

## Summary of recommendations

ARTICLE 19 makes the following recommendations to ensure safeguarding of the right to protest in Kenya.

### To the Government of Kenya

#### Legal framework and implementation:

- Implement the 2010 Constitution and adhere to Kenya's international obligations regarding the right to protest.
  - Amend or repeal the Public Order Act to ensure that public order management upholds the right to protest, particularly provisions under Section 5 of the Act that still require mandatory notification without clarity on acknowledgment and criminalises spontaneous protests.
  - Ensure training for officers in policing protests.
  - The Independent Policing Oversight Authority (IPOA) and the Office of the Director of Public Prosecutions should investigate, discipline, and prosecute officers responsible for excessive and disproportionate use of force against protesters.
  - Create a safe and enabling environment for the right to protest.
- 

#### Accountability processes and mechanisms:

- Hold police officers personally and individually accountable for use of excessive or unnecessary force during protests.
- Suspend officers allegedly responsible for violations, pending investigation and prosecution.
- Ensure adequate resourcing and political support for accountability mechanisms, particularly the IPOA.
- The judiciary should uphold a progressive interpretation of the right to protest, drawing from the spirit and substance of the right in the Kenyan Constitution and in international and regional legal frameworks and guidelines.

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### **Policing of protests:**

- End practices of forcefully dispersing peaceful protesters and unjustified arrests.
- Avoid the use of excessive force in policing protests, issue clear orders accordingly, and punish officers who use unnecessary or excessive force.
- Protect and facilitate spontaneous as well as planned protests.
- Immediately cease the arrest and detention of individuals solely on the basis of their exercise of the right to freedom of assembly.
- Deprive no one of their liberty except in accordance with legally established procedures and international law.

### **To civil society organisations and protest organisers**

- Conduct civic education and awareness raising on the state's obligations under Article 37 of the Constitution, the right to protest, its place in the democratic process, and available claim mechanisms.
- Institute strategic public interest litigation on a constitutional interpretation of the right to protest to enforce the upholding of the constitutional right and enforcement of the law.
- Engage with the UN Human Rights Council's Universal Periodic Review (UPR) process, the African Commission on Human and Peoples' Rights, and other mechanisms to bring attention to the Kenyan Government's violations of the right to protest and failure to honour past commitments.
- Seek knowledge on redress pathways for survivors of violence at protests and disseminate the information to people subjected to police violence during protests.



# 1. Introduction

## The rights to protest and freedom of assembly in Kenya

The 1978–2002 regime of the late former President Daniel arap Moi treated protests as illegal under its one-party rule. However, protests occurred from the 1990s onwards when agitation for a more pluralistic democracy took hold. Although the Kenyan authorities often used extreme force against peaceful demonstrators at that time, poor and marginalised communities increasingly protested publicly to express grievances and agitate for rights and freedoms.

In the 1990s and 2000s, protest groups and civil society organisations (CSOs) used protests as a key advocacy and campaign tool for causes such as the rights of small-scale farmers, calling for an end to extrajudicial killings and political assassinations and for constitutional reforms. In 1997, the Moi regime, under pressure from a coalition of pro-reform political parties, faith-based organisations, and CSOs, agreed in Parliament to loosen some of the harsher restrictions on the freedom of association, assembly, and protest.

The regime partially repealed the infamous **Chiefs' Act**, which gifted local administrative chiefs unfettered powers to stop meetings. The regime also repealed sections of the Public Order Act, such as the requirement for organisers of protests or demonstrations to obtain permits instead of simply providing written notification to the police before holding an assembly. Despite these reforms, disruptions of public protests and private CSO meetings continued.



Kenya's President Mwai Kibaki displays the Oath of Due Execution during the promulgation of the New Constitution, Uhuru Park, Nairobi, 27 August 2010 (Photo: Reuters)

Kenya adopted a **new Constitution** in 2010 with a public referendum. Although processes of constitutional reform had long been under way, it was following the violent conflict surrounding the December 2007 elections that an expert committee was formed to draft this Constitution. Among its progressive provisions were a reduction in executive power, devolution of authority, and guarantees for the rights of women, minorities, and marginalised communities. Article 37 guarantees the right to peaceful protest and picketing. Critically, the Constitution outlaws any form of discrimination (Article 27) in the application of the law and outlines the lawful procedures for the limiting of any rights or freedoms (Article 24).

With this constitutional recognition and protection for the right to protest, in keeping with Kenya's ratification of international and regional treaties and their domestication in Acts of Parliament, the protest landscape in Kenya changed significantly. Middle-class and professional Kenyans have increasingly embraced protests, according them both credibility and the intellectual power necessary for negotiating settlements with the state and business, especially where human rights violations have occurred. Today, Kenyans use protests for a wide range of purposes, from pressuring duty bearers for accountability to educating the public, lifting the veil on opaque government processes, pursuing industrial disputes, and exposing the magnitude of public problems. Many Kenyans refer to protest using the Swahili phrase 'haki yetu' meaning 'our right'.

Despite all the progress, however, and while the 2010 Constitution is progressive and robust on human rights protection, these guarantees often do not translate into civic awareness around people's right to protest, into the Kenyan State's response to protests, or into tangible enjoyment of the right to protest on matters affecting people's lives.

**Discrimination against and stigmatisation of protest and protesters persist, with state complicity at both the national and the county level, and with the connivance of pliable media.**

Kenya's civic space continues to shrink, as the authorities reverse the momentum achieved following the enactment of the 2010 Constitution, including its Chapter Four (Bill of Rights) which is the bulwark against government excesses. This has occurred through both policy and practice, including the continued use of unnecessary or disproportionate force in policing protests.

Despite the state having a primary duty to respect, protect, promote, and fulfil human rights, including the right to protest, the Kenyan State's actions towards protest are often more consistent with the pre-2010 constitutional dispensation, which did not protect the right to protest. Legislation such as the Computer Misuse and Cybercrimes Act 2018 has added to the suppression of freedoms of expression and protest, contrary to the spirit and letter of the Constitution.

Kenya's law-enforcement agencies do not uphold their obligation to protect the right to protest and are frequently responsible for unlawful conduct in violation of their own **service codes** to obey the law and to serve impartially.<sup>1</sup> They act against both offline and online protests, especially if the subject matter is likely to embarrass the state or mobilise external pressure. And while the Kenyan judiciary has witnessed substantial reforms, it still suppresses the right to freedom of expression, assembly, and association through judgments, cash bails, and prolonged court cases.<sup>2</sup>

Social status and other intersectional identifiers such as gender, ethnicity, religion, disability, age, and sexual identity or orientation affect the probability of the state and police either empowering or disempowering individuals', communities', and groups' right to protest. For example, the authorities allowed largely middle-class protests in Gigiri, Nairobi, about George Floyd's murder in the US to continue uninterrupted.<sup>3</sup> However, the police and the public generally consider protesters who live in Nairobi's slums to be menaces, criminals, or hooligans. The authorities generally prevent protests by these demographics from taking place; and when such groups do protest, the police often violently disrupt or disperse them.

There is also discrimination against protests by unregistered groups. For example, in Mombasa, people who are not affiliated to any registered entity or organisation have had their right to organise or participate in protests or demonstrations denied.

There have been multiple incidents of law-enforcement agencies using unnecessary or disproportionate force on unarmed, peaceful protesters. Of the 48 respondents in this research involved in protests in the last two years, 42 had experienced some form of violence such as beatings with wooden sticks and batons, deployment of tear gas, or the discharge of live ammunition.



Gender-based harassment and violence against female protesters are frequent. For example, focus group participants in Mombasa reported that the police fondled one of their members in a protest demanding youth inclusion in job recruitment. In Nairobi County, three female interviewees reported experiencing different forms of sexual harassment and assault by the police during protests.<sup>4</sup> During the 2019 annual Saba Saba March for Our Lives protest,<sup>5</sup> demanding respect for the Constitution and an end to police brutality and youth unemployment among other issues, the police inappropriately lifted the clothes of a female protester during arrest. In 2019, the police sexually harassed a woman human rights defender (HRD) verbally in the police cells and patted another on her buttocks while asking why the protesters could not be 'nice' women, stay at home, and undertake 'women's chores'. In August 2020, during a 'Covid-19 millionaires' protest in Kisumu County,<sup>6</sup> the police cited women's traditional gender roles in warning families to 'tame' the women involved in protests.

Police arrest protesters in Mombasa during 'Covid-19 millionaires' protest, August 2020 (Photo: MUHURI)



Negative media coverage of protests has contributed to the public stigmatisation and marginalisation of protesters. Kenya's media have highlighted violence and the destruction of property during protests, although violent incidents have often involved infiltration of protests by state agents or police.<sup>7</sup>

There is limited accountability on the part of the state and its law-enforcement apparatus when violations against protesters occur. Complex and sometimes ineffective local claims mechanisms, coupled with public ignorance of the underlying legal framework, impede access to compensation in instances of violations of the right to protest.

## Kenya's police reforms

After Kenya's post-election violence of 2007–8, when the police were indicted for excessive use of force during public protests, President Mwai Kibaki appointed the National Task Force on Police Reforms (the Ransley Commission). The task force's recommendations led to the restructuring of the police by establishing in 2011 the National Police Service, with an internal affairs unit, and the Independent Policing Oversight Authority.

However, despite the restructuring and change of name, Kenya's police have continued to reflect a militarised approach with a centralised command-and-control administration and an over-reliance on rank authority, formal orders, rule following, and hierarchical decision-making. With little application of professional discretion, Kenya's police still practise 'paramilitary-style policing and intelligence gathering', often brutally, little changed from during the colonial era, especially with regard to public order, and often under direct political control.<sup>8</sup>

## 2. Legal framework governing the right to protest



Activists from the Social Justice Centres Working Group demonstrate against rising costs of living ahead of the general election, Nairobi, July 7, 2022 (Photo: REUTERS/Monicah Mwangi)

### Legal framework

In the last 20 years, Kenya has made impressive progress in strengthening its legislative and policy frameworks with regard to securing the protection of fundamental rights, including the right to protest. Enactment of the new Constitution in 2010 heralded the beginning of safeguarding these rights through legislative and policy developments.

**Article 37** of the Constitution guarantees that 'Every person has the right, peaceably and unarmed, to assemble, to demonstrate, to picket, and to present petitions to public authorities.' This means that any one person or group of people who operate within the parameters set by the Constitution are at liberty to exercise their right to protest. **Article 19 (3(a))** states

that the rights and fundamental freedoms in Kenya's Bill of Rights 'belong to each individual and are not granted by the State', thereby obliging the state as the duty bearer to facilitate, rather than limit or interfere with, the enjoyment of rights.

**Article 2** of the Constitution, which emphasises the Constitution's supremacy, affirms Kenya's commitment to the international legal order with regard to treaties, conventions, and protocols it has signed up to. Sub-article 2 (5) states that 'The general rules of international law shall form part of the law of Kenya', while sub-article 2 (6) affirms that 'Any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution.'

As a state party to the International Covenant on Civil and Political Rights (ICCPR), Kenya is bound under [Article 21](#) of the covenant, which 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.

According to [a member of the UN Human Rights Committee](#) who acted as rapporteur for the Committee's drafting of its [General Comment No. 37](#) on Article 21 of the ICCPR, a protest 'is a fundamental human right for individuals to join a peaceful assembly to express themselves, to celebrate, or to air grievances ... [I]t constitutes the very foundation of a democratic society, in which changes can be pursued through discussion and persuasion, rather than use of force.' The Committee's comment emphasises that governments have an obligation to respect and protect the right to protest as bound by the covenant. It also states that any

restrictions the authorities place on the right to protest must meet the requirements of legality, necessity, proportionality, precaution, and non-discrimination.

At the regional level, Kenya is a state party to the [African Charter on Human and Peoples' Rights](#) (ACHPR), whose Article 11 states: 'Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law, in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others.' Kenya is also a state party to the Protocol on the Establishment of an African Court on Human and Peoples' Rights, the mission of which is to ensure respect for compliance with African and international human rights instruments.

Besides Kenya's Constitution, which gives recognition to the aforementioned international frameworks, further domestic legislative and policy frameworks guide the conduct of the right to protest in Kenya. The [Public Order Act](#) of 1950, which many Kenyans consider a colonial relic, remains one of the most cited laws relating to the right to protest. Under [Part III](#) of the Act, which references public gatherings, Section 5 has provisions for the regulation of public meetings and processions; Section 6 relates to prohibition of offensive weapons at public meetings and processions; and Sections 8 and 9 contain provisions for curfew and restriction orders. This legislation is not fully consistent with the right to protest guaranteed under the Constitution, and some commentators have criticised it for perpetuating police brutality during the containment of protests.

Kenya has no law that requires any person to request permission to undertake or participate in a protest. The requirement is only to notify law-enforcement officers to enable security planning and route coordination between protest organisers and police. However, the state has abused this requirement to deny people their right to protest, with the police citing unfounded security, health, and intelligence considerations to reject notifications.<sup>9</sup> In 2014, the government secured passage through Parliament of the controversial omnibus **Security Laws (Amendment) Act**. This Act introduced archaic and punitive provisions into Kenya's security laws, including the Public Order Act, the Penal Code, the Criminal Procedure Code, the Evidence Act, the Prisons Act, and the National Intelligence Service Act. These amendments have assisted the government's heavy-handed tactics in dealing with protests.

In a **public memorandum** opposing the Public Order Act (Amendment) Bill 2019, which many saw as repressive and targeting protest organisers, Amnesty International Kenya said: 'These proposed amendments seek to impede our freedoms and liberties to express ourselves through public expression, protests, and petitioning authorities.'

The right to protest is ... a legitimate and necessary part of democracy ... It is a critical part of Kenya's National Values and Principles of Governance.'

Several other Kenyan laws are relevant to the right to protest. Among these are the **National Police Service Act**, which is the primary law on national policing and provides mandates for the country's various policing institutions. Section 24 of the Act enumerates the functions of the Kenya Police Service, while Sections 27 and 34 relate to the functions of the Administration Police Service and the Directorate of Criminal Investigations (DCI). Besides this Act, the **Kenya Police Service Standing Orders** provide a policy framework for policing protests.

Kenya's Independent Policing Oversight Authority Act created the Independent Policing Oversight Authority (IPOA), whose mandate is to investigate and act against police indiscipline and inaction in the course of police work. The Act enables victims of police action to report their cases to the IPOA for investigation and action.

A 2019 judicial decision supported the right to protest. In the case **Geoffrey Andare v. Attorney General**, brought by a blogger, the judge **found** that Section 29 of the Kenya Information Communication Act was unconstitutional. Section 29 prohibited the 'improper use of a licensed communications system' – that is, sending a message or material that is offensive, or sharing information known to be untrue for the purposes of annoying or inconveniencing someone. The judge ruled that the provision was too broad and vague, and infringed freedom of expression.



## Procedure for holding a protest

**Part III**, Section 5, of Kenya's Public Order Act provides the procedure individuals or groups should follow in planning a protest and the required response of law-enforcement officers. The process entails two steps. First, protest organisers present written notification to the area police station (as per the definition of 'regulating officer' in **Part I** of the Act) of their planned protest, at least three days but not more than 14 days before the planned date, with details of the date, time, and intended protest site or route and the name and physical address of the organiser(s). The organisers may request in writing that the police be present to 'ensure the maintenance of peace and order'.

Second, the police receive, sign, and stamp the notification if there are no clashing activities at the same site or on the same route, on the same day and at the same time, and if there are no security threats ('clear, present or imminent danger of a breach of the peace or public order' – subsection 5(8)(b)).

The primary purpose of this requirement is to enable the police to work with protest organisers on security planning and route coordination, especially during the protest. The tone of the Act is to ensure the right to protest is enjoyed to the fullest rather than to curtail protesters' exercise of rights and freedoms of expression, assembly, and association.

If the police have previously received notification of another protest on the same date and at the same time, and at

the same site or on the same route, they must notify the organisers in writing and can explore alternative timing; in this case, the organisers can submit an updated notification (subsections 5(4–6)). The Act does state that the police may prevent a protest from taking place if the organisers have not submitted notification or if 'there is clear, present or imminent danger of a breach of the peace or public order' (subsections 5(8(a)) and 5(8(b))). The ambiguity of this latter provision leaves room for (mis)interpretation.

The Act is silent on spontaneous or intermittent protests, and the process outlined here does not anticipate such protests. Kenya's law-enforcement agencies have interpreted the silence to mean that spontaneous and intermittent protests are illegal.

## Limitations

Article 37 of Kenya's 2010 Constitution provides for certain limitations on the right to protest. Protesters must exercise this right 'peaceably and unarmed'. The courts have upheld this requirement.

In the case of *Ferdinand Ndung'u Waititu v. Attorney General* (2016), the court affirmed that the right to protest is conditional. In delivering his judgment, Justice Joseph Onguto (High Court) held that 'the right to assemble, demonstrate, picket and petition as enshrined under Article 37 is not absolute' and 'may be limited by law'. He continued:

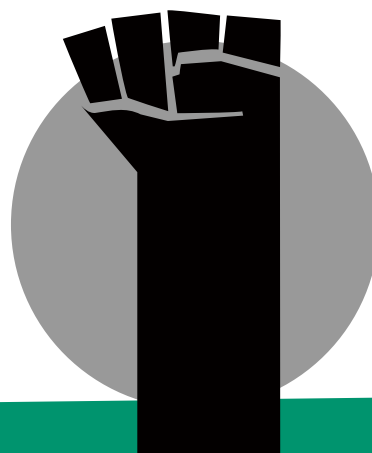
Civil society activists demonstrating against gender-based violence to mark International Women's Day in downtown Nairobi, March 8, 2022 (Photo: REUTERS/Monicah Mwangi)



“ Demonstrators, picketers and petition-presenters must do so ‘peaceably and unarmed’. Assemblies, picketing and demonstrations which are not peaceful are excluded from the protection of the Article. If they consist of violence to or intimidation of the public then the assembly or the demonstration ought to be stopped. Likewise, participants in assemblies, picketers and demonstrators must not be armed. Weapons as well as defensive or protective contraptions which breed or stimulate aggression ought not to be possessed by the demonstrators or picketers.

In the separate case of Boniface Mwangi’s petition to State House protesting against corruption in the public service, which police had refused to allow Mwangi to present, Justice Isaac Lenaola ruled in January 2017 that a person could petition Harambee House (the office of the President of Kenya) but not State House (the President’s official residence).<sup>10</sup> The ruling is problematic because it set a precedent on where people may and may not hold protests.

In another ruling of the High Court in 2019, the judge in the case of constitutional petition No. 269 (*Ngunjiri Wambugu v. Inspector General of Police*), directed the state to develop new laws and regulations to ensure peaceful assembly, including the creation of codes of conduct making protest organisers legally responsible for any damage or injuries occurring during protests. The judgment recommended that regulations include prescriptions for the demarcation of demonstration zones, responsibilities for clean-up costs, maximum numbers, and a range of other requirements, and appropriate penalties for infractions. The recommendations contained in this judgment hold the potential for the right to protest to be violated in multiple ways.



# 3. Violations of the right to protest

Kenya's legislative and policy framework largely protects and facilitates the right to protest. However, the state through its agencies repeatedly fails to ensure enjoyment of this right. Research for this report showed that the space for freedom of expression and the right to protest has continued to decline in Kenya in recent years. There has been a clawing back of some of the progress made through legislative acts and policy pronouncements, some of which the Kenyan High Court has adjudged to be **unconstitutional**.

## Obstruction of the notification process

The majority of interviewees and focus group participants (henceforth referred to collectively as 'respondents' – see [Annexe: Research methodology](#)) in five of the six target counties (Nairobi, Mombasa, Kisumu, Nakuru, Kilifi, and Kirinyaga) in this research reported that Kenya's National Police Service (NPS) is obstructive in the protest notification process.<sup>11</sup> Respondents stated that the police try to avoid receiving organisers' notifications of intended protests – a legal requirement that allows for security planning and route coordination between police and organisers – and described police behaviour as frustrating. A country police commander stated to the researcher that the police have discretion to reject a notification without offering explanation, and that this may be due to information that the police hold but should not share with the public.<sup>12</sup>

Four respondents in Kisumu County reported that their efforts to notify the police of an intended protest had met with police resistance intended to avoid or frustrate receipt of notification. For example, 'Eli' is an HRD based at a social justice centre who

has participated in more than 50 public protests and organised more than 30 of them.<sup>13</sup> He noted: 'In many instances, we've followed the law by visiting the police station to notify them. However, the police usually decline to receive these notifications, choosing to play hide-and-seek in order to avoid service [of the notification]. This is out of apparent fear of blame by their seniors.'<sup>14</sup>

'Fatuma', an HRD and founder member and community organiser at a social justice centre, has participated in and organised protests for more than six years, mainly against extrajudicial killings in slums of Nairobi. She said: 'During the Saba Saba March in 2020,<sup>15</sup> the police tried to suppress the protest. They refused to acknowledge the notification and said that, if we went ahead, it would be illegal and they would disrupt it. So we went to the OCS [Officer Commanding Station], OCPD [Officer Commanding Police Division], and higher offices until we were allowed.'<sup>16</sup>

Francis Sakwa is a seasoned HRD and community mobiliser in Mathare. He has participated in and organised more than 30 protests, both planned and spontaneous.



The police have arrested him more than 30 times, and he has undergone five court cases in Makadara and Milimani law courts over a period of ten years, some of which were on trumped-up charges. He has won four of the cases, with one still pending before the court at the time of writing. In May 2020, Francis had co-organised a protest in Kariobangi against evictions that the Nairobi City Water & Sewerage Company forced on low-income residents while claiming the land they lived on. The police declined to receive the notification. On the day of the protest, a huge contingent of heavily armed police camped at the location earlier than the intended time of the protest. Considering the pain the **Kariobangi evictees** were already going through in losing their homes, they decided to call off the protest.<sup>17</sup>

Forty-five of the 48 respondents who had been involved in protests in the past two years reported to our researchers that they had experienced frustration with police declining to receive notification of their protests, in most cases without any justifiable reason. In Kisumu, 'Jane' has experienced this frustration during the notification process more than ten times.<sup>18</sup> Out of the 24 individuals who had directly presented notifications to the police, only in the case of six people had the police accepted all their notifications.<sup>19</sup>

This failure by the Kenyan police, who are legally bound to receive notifications and facilitate protests, infringes on citizens' right to protest. In Nairobi, 39 of the 48 respondents reported that the police

were obstructive to receiving notifications, often sending people from one officer to another and oscillating between the Officer Commanding Station (OCS) and very senior county-level officers. This police behaviour breaches Part I of the Public Order Act, which requires notification acceptance by the 'regulating officer', defined as the 'officer-in-charge of the police station in the area in which a proposed public meeting is proposed to be held, or ... the police officer-in-charge of the police station in the area in which the procession is proposed to start and to end'.

In Mombasa, 36 of the 38 respondents reported police indifference and frustrating behaviour during the notification process or had been part of a protest whose notification the police had declined. 'Jacob' is a senior lawyer at a national human rights non-governmental organisation (NGO) in Kenya, who has represented numerous people arrested during protests. Once, out of frustration, he had pinned a notification letter on the noticeboard at a police station, and he told us that on other occasions protest organisers had had to sign affidavits as proof that they had notified the police.<sup>20</sup> Interviewees also cited instances of the police disowning their own signatures and official stamps acknowledging receipt of notification and subsequently showing up to disperse the protests in question.



'Fatuma' has been involved for more than 20 years in mobilising her community to demand accountability for extrajudicial killings in slum areas. The police have frustrated the local social justice centre on multiple occasions when the centre's staff have presented themselves at the police station and attempted to give notification of intended protests. On one occasion the police told them to go to the county police commander to present the notification.

'Fatuma' said:

**“ The biggest demonstration we had was in October 2020 against death squads at [a police station] led by one killer cop .... When we went to notify, the police refused to acknowledge our notification. At the front desk, they told us to go to the OCS, who in turn told us to go to the OCPD, [and] when we got there, the OCPD told us to go to their boss. We went and were finally allowed. We are not always allowed.”<sup>21</sup>**

'Fatuma's' colleague 'Mwangi', leader of a social justice centre, likewise told ARTICLE 19:

**“ My observation is that the right to protest is being violated for communities such as ours; the police are extremely hostile. From 2019, we started 'Walk for Our Lives' [protests against extrajudicial executions]. The police were hostile and frustrated us. Whenever we presented our notification for a demonstration, the police refused to accept and gave no reason for rejection. Instead, they referred us to higher authorities like the OCPD and others, yet the law requires the OCS to be the one to receive the notification.”<sup>22</sup>**

The experiences of people interviewed in the six counties were similar on the notification process. In addition, the police frequently appear to assume that the requirement of notification implies they have the authority to grant or deny permission for a public protest or demonstration.

An interview with a county police commander demonstrated a problematic understanding of the mandate of the police.<sup>23</sup> The county police commander – the most senior ranking officer on matters of public order management at county level, whose rank is next below the Deputy Inspector General of Police – asserted that, by law, the OCS is the responsible officer mandated to receive notifications of intended protests.<sup>24</sup> He stated that the law is clear and that the police follow it, and he denied that protest organisers have met with police indifference and frustrating behaviour when trying to notify the police of protests. However, his understanding of the law differed in some respects from Part III, Sections 4–6, of the Public Order Act, as described hereafter. This raises serious concerns, because this county commander oversees at least 23 police stations whose OCSs are his direct line reports.

During the same interview, the police commander emphasised that the Kenyan police are a disciplined service where taking orders is the prevailing practice. He asserted

that ‘The police do not have to give reasons for denial of “permission” to hold a protest to organisers, but will just disallow the protest in the best interest of the public.’

But this is not entirely consistent with the law and not in keeping with the spirit of the law to facilitate the right to protest. The Public Order Act provides that, when the police receive notification of a protest, if they have previously received notification of another protest on the same date and at the same time and location, they should notify the organisers of the additional protest that it cannot be held at that time and location and an amended notification may be submitted. The Act does state in subsection 5(8) that the police may prevent a protest from taking place if the organisers have not submitted notification or if there is ‘clear, present or imminent danger of a breach of the peace or public order’. The ambiguity of this latter provision leaves room for (mis) interpretation, potentially allowing the police to use a wide range of scenarios as a pretext to ban a protest, as the county commander’s comments indicate.

The prominent human rights, policing, and security specialist ‘Ochieng’ confirmed ARTICLE 19’s view when he noted that the Public Order Act is inconsistent with Kenya’s Constitution: ‘There is a lot of ambiguity in the current legislation. For example, the police can refuse your notification and not give you a reason.’<sup>25</sup>

The National Police Service’s continuing assumption of a mandate to approve or refuse protest notifications as well as its unequal treatment in the management of different protests (discussed in later sections) are in contravention of Article 37 of the Constitution.

## **Obstruction of unregistered groups and spontaneous protests**

‘Ahmed’, a Muslim scholar who is a member of the Council of Imams and Preachers of Kenya (CIPK), told ARTICLE 19 that unregistered groups face challenges in organising and participating in protests.<sup>26</sup> He said that the CIPK supported some unregistered groups that feared notifying the police of intended protests because the police do not allow such groups to organise protests.<sup>27</sup> In focus groups with youth and womens’ community organisations, participants said that it is challenging to hold a ‘lawful’ protest if you are not a registered group because the police insist on official registration. The sum effect is to curtail such groups’ rights to freedom of expression and assembly.

The county police commander asserted the same, emphatically maintaining that a group must be legally registered and have a physical and postal address for the police to approve their notification of an intended protest.<sup>28</sup> However, the applicable law on notification (Section 5 of the Public Order Act) does not restrict who may give notification of a protest. Any person or entity may do so. This means the police in the commander’s county, intentionally or otherwise, misunderstood the law and unlawfully denied unregistered entities their right to protest. Unfortunately, some people in civil society appear to share the perception that legal registration is a requirement of protest notification, possibly as a result of the police’s actions.

Further, the requirement to have a physical address restricts protesters from informal settlements, and others who cannot give a physical address, from being able to give notification of a protest. This again denies such people their right to exercise freedom of expression and assembly.

Kenya's police also use the notification regime to suppress spontaneous protests. ARTICLE 19's [blog](#) 'Bad laws in Kenya undermine the right to protest' notes:

“ By their very nature, spontaneous protests often occur in response to an incident, making it impossible to comply with the three-day notification rule. If a group of people feel the need to respond to an instance of violence or a tragedy that has resulted from negligence ... they simply don't have time to organise notifications. ... International human rights standards demand that spontaneous assemblies be exempt from prior-notification requirements.

For example, residents of Mikindani, an informal settlement to the west of Mombasa, have experienced a prolonged shortage of water over two decades.<sup>29</sup> On 11 August 2021, 221 women led a spontaneous peaceful protest on the Mombasa–Mariakani highway. The Mikindani community did not notify the police because the protest was spontaneous. The women-led protest included older people, pregnant women, people with disabilities, and women with babies, all concerned about their lack of water for many months. Despite the protest being visibly peaceful, the police responded with unnecessary force and violence, including tear gas, against the protesters (as discussed later in this report).

## Forceful disruption of protests

According to international law and standards, law-enforcement officials, should as far as possible apply non-violent means before resorting to the use of force, including firearms. International human rights standards are unequivocal that the use of force by the police and other security forces must be a last resort guided by the principles of legality, necessity, proportionality, and precaution.

State authorities should disperse an assembly only when this is strictly unavoidable and should first seek to isolate and separate violent participants from other protesters.<sup>30</sup> Authorities should consider crowd dispersal only 'where law enforcement officials have taken all possible reasonable measures to facilitate the assembly and protect participants from harm' and when 'violence is serious and widespread and represents an imminent threat to bodily safety or property'.<sup>31</sup> Firearms may be used only against an imminent threat either to protect life or to 'prevent life-threatening injuries',<sup>32</sup> and where no other option exists.



The police lead Vincent Tanui, a protester and one of the research respondents, to a waiting police lorry after his arrest in Nakuru town during a protest (Photo: MUHURI)

ARTICLE 19's report *Right to protest in Kenya* states:

“ The UN Basic Principles on the use of force also provide recommendations around policing unlawful protests. When an unlawful but peaceful protest is dispersed, police should avoid the use of force, or, when that is impossible, restrict it to the minimum. Firearms should never be used to disperse; even if protesters are violent, law-enforcement officials can only use firearms to disperse when strictly necessary to protect life. Firing into a protesting crowd is a violation of the right to life. In any case, the use of firearms should be regarded as potentially lethal in all circumstances. ... Tear gas may only be used to disperse a crowd when there is more generalised violence, due to its indiscriminate effects and high potential for harm.<sup>33</sup>

During this research, respondents reported multiple instances of violent dispersal of peaceful protests.<sup>34</sup> The main methods respondents said the police used in these incidents included beatings with batons or wooden sticks, firing of tear gas and water cannons, and firing live ammunition. Of the 48 respondents involved in protests in the last two years, 42 had experienced police beatings with batons or sticks, deployment of tear gas, or the discharge of live ammunition. Most of the injuries during protests that people reported came from beatings by the police.

Respondents also reported the police using physical intimidation and threats towards protest organisers. These instances included the stationing of security officers in places set for protests. Police deployed to disrupt protests included officers in civilian clothes, a favoured method of Kenya's security apparatus to demobilise and disperse

protests. The presence of plainclothes police both camouflages the officers and prevents protesters from being able to assess risks to their own safety from attack and arrest. It also makes violations committed by police harder to monitor and document and increases the difficulty of identifying the individual officers responsible.

The police had broken up most of the protests that respondents had attended in the past three years. Of the 48 respondents involved in this research, 25 had been beaten or manhandled by police during protests, 36 had been in a protest at least once that the police had violently dispersed, and 20 had been in multiple protests that the police had violently dispersed.

Of all of the participants in this research, the vast majority feared tear gas, injury, and arrest during protests. Respondents also feared running battles and indiscriminate violence or beatings, or that someone would be killed by the police. For example, in Nakuru County, all six people interviewed reported police hostility and brutality during protests. For example, Vincent Tanui, an HRD, noted:

“ Many times, the police are quick to use excessive force to disperse peaceful protesters. People are beaten up; clothes are torn; and they call protesters names such as wakora [Swahili for 'thugs'] and wajinga [Swahili for 'fools']. Anyone who has ever been arrested by Kenyan police knows how demeaning this process can be. You are treated worse than a criminal ... it is the price you have to pay. The right to protest as enshrined in the CoK 2010 [Article 37] does not seem to be respected by the authorities, as protesters are always met with brutality and unwarranted arrest.<sup>35</sup>

In Nairobi, Kisumu, and Mombasa, respondents reported that police attacked and beat anyone in sight indiscriminately during protests. Twenty-five respondents reported that the police had beaten, manhandled, or otherwise mistreated them during protests. Of these, only one had sought medical treatment, saying they had treated themselves with drugs bought over the counter. All said that the protests they had participated in had started peacefully; violence had ensued only when the police intervened. Most respondents considered that the police breach the peace because of the way they respond to protests.

Thirty-four of the 48 respondents interviewed in Nairobi County observed that the police often discharge tear gas and shoot indiscriminately during protests, thereby endangering the lives and health of not only protesters but also passers-by. 'Fatuma' said:

“ In the last two years we have faced many challenges with the police handling of protests. They use tear gas and batons to disrupt many of our protests. Some of us are arrested, and the bail terms are very high, and we can't afford it. In this year's July 7th (Saba Saba) protests we were tear-gassed, and some [people] got injured. There was heavy police presence, and they occupied our venue so that we could not gather.<sup>36</sup>

Francis Sakwa, who has been involved in and organised many protests, participated in the protest against forced evictions by the Nairobi City Water & Sewerage Company in Kariobangi in January 2021 and in the Saba Saba March in July 2021. He said the police had arrested him multiple times on trumped-up criminal charges,

including incitement to violence, creating a disturbance, participating in an illegal protest, and **cruelty to animals**. He believes that the police come prepared for violence: 'The manner in which they [the police] jump out of lorries, the way they come dressed and armed, and the number of officers is all meant to declare danger and intimidate.'<sup>37</sup>

Among specific identity groups of protesters, Kenya's lesbian, gay, bisexual, transgender, questioning and intersex (LGBTQI+) community has **faced** police and other violence during its protests. For instance, in May 2020, there were **media reports** of protests by LGBTQI+ refugees at the Kakuma refugee camp in northern Kenya. The refugees were demanding relocation to countries where their rights would be guaranteed. The police violently disrupted the protest. In 2018, during another protest by LGBTQI+ people in the Kakuma camp against rising cases of homophobic attacks, **'locals and fellow refugees' beat the protesters** with wooden sticks and iron bars.

Respondents who are members of a different group, the Nairobi Hawkers' Association, told the researchers how they had been savagely attacked by Nairobi County Council officers while protesting against the harassment and killing of hawkers by city inspectorate officers.

Some respondents reported police intimidated and threatened them even before protests took place. For example, before the Saba Saba demonstrations of 7 July 2021, the police called the organisers, 'Nicholas' and 'Mwangi', and warned them not to proceed, threatening that they would be profiled and posted on the **'Nairobi crime free society' Facebook page**, which is allegedly operated by police death squads. The police also visited a youth

group and threatened them, and a focus group participant informed us that after the sighting of a police vehicle outside a social justice centre in Nairobi, the centre installed CCTV at their premises.<sup>38</sup>

‘Nicholas’ said: ‘I have not had a good experience with the police because they don’t want us to protest. We are also victimised for playing a role in organising these protests, and we get calls from police asking us to stop the protest or they intimidate or troll us on social media using strange accounts.’<sup>39</sup>

A journalist at one of the local-language FM radio stations that airs in Kirinyaga County, covering mainly human rights, democracy, and governance matters, said the following about the police’s handling of protests:

“ It’s always violent. As a journalist, I have seen it first-hand. I have also suffered the effects of tear gas as I covered protests. Violent approaches to protesters involving beatings, threats, tear-gas canisters, and intimidations on demonstrators. All the protests I have covered started as peaceful protests. The demonstrators are never armed with any weapons. The police pounce on them with violence. Once I asked a police officer privately why they always swoop on demonstrators with violence and tear gas even though they are not armed or before the police know why they are protesting. He told me, “Lazima kwanza raia wajue kazi yetu ama watafikiria sisi ni nyanya zao” [“The citizens have to understand our work first, lest they think we are their grandmothers”].  
” It is colonial mentality.<sup>40</sup>

Respondents in all six counties said protests including demands for police or state accountability are more likely to be disrupted compared with protests on issues the authorities see as ‘non-threatening’, such as the environment, peace, or reproductive health. (See the later section ‘**Perceptions of differential treatment by the state**’.) The dispersal of protests on accountability issues places restrictions on the right to protest and seeks to silence calls for the authorities to take responsibility for human rights violations and related demands.

## **Female protesters: harassment and intimidation, including sexual assault**

Among the respondents half of those affected by police violence during protests (as well as more than half of those who reported being arrested during protests) were women – even though protests in Kenya tend to be dominated by men. Of the 25 respondents who reported the police had beaten, manhandled, or otherwise mistreated them, 13 were women. Twenty research participants reported that police or other state officials had directly or indirectly threatened them, and 11 of these were women.<sup>41</sup>

‘Furaha’ has been an HRD for more than ten years and has participated in several public protests in Nakuru. ‘Furaha’ said that, in all three protests she had participated in during the last two years, women were more affected than men and they encountered particular hostility on the part of state security officials and some members of the public: ‘It’s even more difficult for women who are caught between the fights that erupt between the youth and the police. The street protests involved violence such as beatings, tear gas, and rough arrests.’<sup>42</sup>

'Joan' was one of the women mobilisers of the August 2021 community protest in the Mikindani settlement in Mombasa. On learning that the President of Kenya was to visit Mombasa, early in the morning of 11 August 2021, Mikindani residents held a spontaneous **peaceful protest** during which women carried empty jerrycans and sang songs to expose the lack of water provision in their neighbourhood. This situation had caused the community to rely on private vendors, who charged between 20 and 100 Kenyan shillings (approximately USD 0.2–1.0)<sup>43</sup> for a 20-litre jerrycan of water. 'Joan' told us:

“ The officers split into teams; some of them took cover on top of the footbridge right in the middle of the highway. As we moved ahead, leaving them behind us, the first canister [of tear gas] was hurled at us without any warning. I ran for cover towards the village since I couldn't stand the choking smoke and the pain in my eyes. We were screaming and in total confusion because I have never experienced such a thing. To us as mothers, this was unfair because we had no issues with the officers; we were only carrying buckets and there was no violence. I can't tell why the police used tear gas because we hadn't provoked them; there was no verbal exchange between us.<sup>44</sup>

'Edward', referring to the same protest, said: 'This protest was not violent in any way. Nothing was destroyed. Protesting in Kenya is like committing murder. We must have challenged existing water cartels. This protest must have exposed someone's failure and beneficiaries of corruption.'<sup>45</sup>

Regarding specifically sexual assault, Faith Kasina, a community justice centre coordinator in Kayole, Nairobi County, reported: 'During arrests ... [s]ome of the women protesters like me were sexually harassed. The police touched our breast and genital areas while arresting us.'<sup>46</sup>

Other female respondents also recounted instances when the police sexually harassed and assaulted them during protests. For instance, in Mombasa, a women-only social justice centre held a protest that was invaded by police who touched organisers' breasts and buttocks. The police used sexist language against one of the organisers, referring to her repeatedly as the 'iron lady', apparently questioning her role in organising a protest in contrast to societal gender expectations of women.<sup>47</sup> In Nairobi, four female respondents told researchers the police had sexually harassed them during protests and when in custody.

**“This protest was not violent in any way. Nothing was destroyed. Protesting in Kenya is like committing murder.”**

Faith Kasina, from Nairobi, interviewed by The New Humanitarian, recounted a policeman's sexual assault during a protest:

“ [The police] came out to beat us and then I was like, “You can’t. You can’t touch me.” That’s when he touched my breast and told me, “You know what? We can do anything we want; we can do anything we want.” And then he started abusing me, calling me names, and then now they took me in [arrested her].<sup>48</sup>

Another female activist in Nairobi spoke of sexual harassment and assault:

“ I have also been sexually harassed when they touched my breasts. During the Unga Revolution protests<sup>49</sup> a policeman pulled my breasts and plucked my hair. Now there are some hairstyles I don’t wear because of the permanent damage. They do this deliberately. They told me, “Nyinyi wanawake hamfai kuwa hapa muki demonstrate, mukae nyumbani” [You women should not be on the streets to participate in demonstrations; stay at home].<sup>50</sup>

Female respondents said the police’s sexually targeted responses affected them before, during, and after protests and that police used gender-based violence as a weapon against female protesters. ‘Lydia’, a 29-year-old grassroots HRD with

an online activist presence for the last nine years, has been involved in planning four protests in the last three years. She told the research team the police had arrested her during protests and held her in custody twice. The first time, during the ‘Zero Corruption’ protest in April 2019, the police held her for five hours. The second occasion was the ‘Free Bobi Wine’ protest outside the Ugandan Embassy in January 2021, when the police detained her for 14 hours before releasing her without charge.<sup>51</sup>

During both arrests ‘Lydia’ experienced gender-based violence at the hands of the police while they violently dispersed the protests. At the Bobi Wine protest, the arresting male police officer handled her indecently until a female officer stopped him, but the abuse and mistreatment continued:

“ The police officer pulled me by my brassieres’ strap. I felt so invaded! He continued unbothered until a female officer told him to stop. She came, held my hand and walked me to the vehicle ... [Another] police officer touched my breasts, and when they pushed me in their truck, my menstrual cup opened and fell because of the force used, and I soiled myself. Lawyers are the ones who assisted me to get menstrual supplies. The police holding cells are dirty and not gender friendly at all. No privacy and no water! I wrapped my sweater around my waist until much later on when my friend brought me sanitary pads. Even then, I had no place to change.<sup>52</sup>

‘Sarah’, coordinator of a grassroots women’s organisation, corroborates that women face indiscriminate sexual and gender-based violence when they participate in public protests:

“ [W]omen protesters are targeted. I have been sexually harassed by male police officers, but if you stand up and they realise you know your rights, they step back. The worst case was in 2013 when I was sexually harassed during an arrest. The case was taken up by Frontline Defenders, but no action was taken on the culprits. There are other cases. One activist, [name withheld], was deliberately shot on both sides of her butts by rubber bullets during a peaceful protest. When protesters are arrested, female counterparts are touched inappropriately on the breasts, butts, and genitals. They [the police] try to strip and undress you.”<sup>53</sup>

## Injuries as a result of police actions

‘Lydia’, the online activist who has organised and participated in several protests in Nairobi, noted that police use of tear gas to disperse protesters has significantly affected her health, causing her asthma to return: ‘Permanent damage to my health has actually arisen as a result. For example, my asthma has returned, and I cannot protest where there will be tear gas. The cost of my health has gone up.’<sup>54</sup>

‘Ahmed’ told the research team that the police, when trying to disperse a protest, had hurled a tear-gas canister and harmed a visually impaired person who was begging along Digo Road in Mombasa.<sup>55</sup>

Faith Kasina observed:

“ I can say in the last few months the police have become more high-handed. They use batons and tear gas. This has caused suffering for many people. I have asthma, and the tear gas really affected me. We have documented cases of women miscarrying [because of this]. Other people become unconscious. So, the trend has been to use excessive force, especially in poor neighbourhoods. During arrests, some were manhandled and got broken limbs.”<sup>56</sup>

Halima Bakari is a 24-year-old human rights activist who works with Al Qamar Community Justice Centre in Nairobi. She participated in two Saba Saba protests in 2020 and 2021. During the 2021 Saba Saba protest, the protesters started their march at around 07:00 in Komarock, Nairobi. They mobilised the communities along their protest route, although the police had insisted that the organisers cancel the march due to Covid-19 regulations against public gatherings. When the police moved in to forcefully disperse the protesters, Halima was caught in the melee and stampeded over, dislocating both her knees. She recalled that, while the protesters were chanting and singing, the police had fired tear-gas canisters at them, and there had been pandemonium: ‘[A] woman was pushed, and I also fell on the ground. There was tear-gas smoke everywhere ... and I can remember I tried getting up in vain. That is when I realised that something was wrong with my legs.’<sup>57</sup>

A Kenyan activist (R) tries to guard herself from being beaten by police officers during a protest in Nairobi,



Two people provided first aid. When the police vehicles came back, Halima and others asked the police why they were using tear gas on people, to which a police officer reportedly replied: 'It's an order from above!' Halima and fellow protesters stated they had followed the law, but the police arrested seven people, including Halima. Despite her injury, the police kept Halima in custody without medical attention, despite the OCS assuring her that she would be taken to hospital. Her treatment was organised by Defenders Coalition, who also posted the detainees' bail.

Halima told ARTICLE 19:

“ We were taken to Kayole Police Station. The procedure was humiliating. We were bundled into a [Toyota] Probox car boot, and they didn't even seem to care that I couldn't walk and I had to be carried. ... I was kept in one of the corridors within the police station. This lasted from 7.55 a.m. to 7.45 p.m. without a care [for] my health condition.<sup>58</sup>

'Pauline', a nurse, participated in demonstrations during the health workers' strike in Kirinyaga County in 2019.<sup>59</sup> She recounted:

“ During the strike, we held several demonstrations. In one of the demonstrations to the Governor's office, we were treated to tear-gas explosions and being chased around the town by the police. Many of the protesters were injured as they ran from the charging police and billowing tear gas, which most of the protesters inhaled. The smoke is mildly toxic. I suffered a lot because I was pregnant.<sup>60</sup>

See the later section, '[Deterrent effect of police violence and state intimidation](#)'.

## Police use of live ammunition

Kenya's police use live ammunition during protests. Although our research respondents reported no fatalities in the last two years, they did report witnessing the use of live ammunition and injuries in all six counties. Nine of ARTICLE 19's respondents in the counties of Nairobi, Kirinyaga, and Kilifi had participated in or witnessed protests where the police had used live ammunition. Most of those injured had not gone to hospital or reported the injuries to the police for fear of further victimisation.

Reports of deaths during protests are common in Kenya. For example, a [report](#) by Human Rights Watch in 2019 on the 2017 general election stand-off stated that the Kenyan police 'have also killed protesters with impunity'. It recorded the deaths of more than 100 protesters in Nairobi and western Kenya.<sup>61</sup>

In 2021, the Kenyan media reported the use of live ammunition, resulting in injuries and fatalities, at a protest in Kahawa West, Nairobi County, where local residents were protesting against the demolition of their property. Police shot and killed at least one person and allegedly two people as they dispersed protesters with tear gas and bullets.

A focus group at a social justice centre showed the researchers a spent cartridge reportedly recovered from a nearby protest on 19 August 2021. Focus group participants told the research team that a spontaneous protest had occurred during the collection of the body of a young man the police had killed previously. Participants said that the police had opened fire with live ammunition to disperse protesters. No one

had been injured. Markings of the Kenya Ordnance Factories Corporation (KOFC) on the cartridge indicate it was government-issued ammunition; it is the sole supplier of the 7.62-mm calibre ammunition used by Kenya's police.

Francis Sakwa described his experience of police brutality and use of firearms during a peaceful protest against an unlawful eviction in 2020: 'The police unleashed brutality of unmatched degree; they lobbed tear gas at the crowds and shot live bullets in the air randomly. People scampered for safety. I have never seen such a scene. Later, people collected used cartridges and brought them to me. I advised them to take them to organisations working on police accountability.'<sup>62</sup>

In monitoring the Kenyan media's coverage of protests from January 2018 to July 2019, ARTICLE 19 recorded the reporting of 152 protests. During these protests, at least 21 protesters and/or bystanders were injured and seven killed, mostly when the police fired tear gas and/or live ammunition as they violently responded to protesters.<sup>63</sup>

'Geoffrey' works with Amnesty International Kenya and is involved in offering legal support to people charged with illegal assembly for their participation in protests. He described the prevailing trend in police handling of protests in Kenya in recent years as violent:

**“ The police use excessive force in quelling demonstrations. They also target the organisers and brand them, ultimately using threats levelled at the organisers. The protests are usually peaceful until the police disperse the protesters violently and arrest them. In most cases it is the police who use excessive force and brand the demonstrators as violent.**

**Demonstrations are potentially risky in Kenya as police are known to kill demonstrators and inflict injury. Some organisations and individuals will shy away because of this. For example, last year in Lessos, Nandi County, a police officer killed a man with a disability for not being masked. In the ensuing spontaneous demonstrations, two people were killed by police. Similar thing happened**

**” recently in Kianjokoma in Embu.<sup>64</sup>**

The county police commander interviewed insisted that police use of violence is justified. He stated that protesters are usually violent, arrogant, disrespectful, and sometimes demeaning towards police officers and therefore trigger the police's use of violence. Asked whether the police violently disrupt lawful protests in breach of people's constitutional rights based on 'orders from above', he responded in the affirmative: 'We are a disciplined service. Order from above is critical. The law and rights are not absolute. Aggrieved parties would need to prove how many ammunitions were used, and if proved, sue the Attorney General, Inspector General, and Deputy Inspector General of Police.'<sup>65</sup>

## Accountability for police harms

For people the police injure or subject to sexual assault during protests, and for the families and loved ones of people the police kill, there is little to no access to redress. The Kenyan State established the IPOA as an accountability mechanism for the conduct of the police service. However, it has not been a success. As civil society's *Joint Submission to the UN Universal Periodic Review* of Kenya in 2019 noted:

- “ A further continuing major challenge is the lack of access to justice and accountability for casualties and fatalities encountered during protests. Although the Independent Police Oversight Authority (IPOA) was established by an Act of Parliament in 2011 to investigate serious injuries and deaths caused by police action, since 2011 no case related to protests, whether relating to those killed or injured, has been conclusively investigated by IPOA. ... Such investigations must be prompt, independent, impartial and effective. All victims of human rights violations in protest should have a right to a remedy.<sup>66</sup>

Critically, the same police from whom survivors of police abuse and violence seek justice also control the legal redress process. 'Ochieng' commented:

- “ In a small number of cases, action has been taken. However, it is very hard to build a case against the police because they are in charge of many of the investigation processes. IPOA faces a difficult task, including lack of resources and information. The accountability system within the police is good on paper but not in practice.<sup>67</sup>

## Perceptions of differential treatment by the state

Numerous respondents observed that the Kenyan authorities permit protests and other gatherings to proceed uninterrupted if the subject matter does not target the political class or police or threaten political or law-enforcement agencies' interests. However, they suppress protests that challenge state, police, or political interests, including through threats to and intimidation of organisers, protesters, and their family and friends and through brutal dispersal by police or thugs hired by the political class, with the connivance of the police across the counties.<sup>68</sup>

Many respondents reported treatment that amounts to discrimination against certain groups of protesters depending not only on protesters' objectives or issues but also on their cultural identity, social class, or the wider public perception of them as groups or individuals.

For example, two interviewees – a member of the CIPK and 'Ibrahim', a respected older human rights activist – allege that protests organised by Muslims are more likely to receive discriminatory treatment and the protesters stigmatised and branded terrorists:

- “ We have been risking our lives by challenging the state. To be a Muslim and involved in protest in Mombasa is dangerous. Many peers wonder why I risk it, respected as I am. Someone told me on Facebook to be careful, that I was hitting at the government so hard. My response to that was that if I am killed for fighting for justice, it will be a noble cause.<sup>69</sup>

Focus group participants belonging to a youth advocacy group corroborated this perception of differential treatment of Muslim protesters.<sup>70</sup>

Activists from community social justice centres reported the police viciously attack them when they hold protests, whereas the police behave differently when the same people participate in protests organised by international organisations like Amnesty International and International Mission for Justice.<sup>71</sup> The social justice centre movement has found traction among low-income residents of resource-depressed settlements in towns and cities across the country, where access to media coverage to highlight their issues is diminished. According to 'Mwangi', an activist from one social justice centre:

“ The police treat poor or lower-class people differently. When we from informal settlements go to the police station to conduct notification, the police become hostile once they realise you are not as influential as others who are rich and powerful. When you say you are from an informal settlement, they immediately treat you casually and become hostile.”<sup>72</sup>

'Sarah' corroborated this: 'As much as the Constitution gives us the right to protest, this is not respected. The police are used to denying the right to protests. Sometimes the police refuse to accept our notifications, especially when they realise it is individuals or groups from informal settlements.'<sup>73</sup>

A member of a youth group in Mombasa stated that the police response at times depended on the status of the protesters. He recalled that the most violent police reactions he had experienced at protests that had started very peacefully were at the 'Okoa

Mombasa' protest against corruption during the pandemic and a 'Covid-19 millionaires' protest: 'The doctors were protesting in Mombasa at the same time and were not attacked, yet our protests were. Why was this, yet in the "Covid-19 millionaires" protests, we had duly notified the police?'

Faith Kasina from a social justice centre in Nairobi said: 'The police treat us like dangerous terrorists or criminals. Even when we are peaceful, they come heavily armed with guns, throw tear-gas canisters, and even use water cannons. The police have recently been used to oppress us.'<sup>74</sup>

'Joy', another Nairobi-based rights activist, reported:

“ [There] is profiling [of] people from informal settlements and in some cases ethnic Somalis. Any protests by ethnic Somalis are characterised as support for terrorists. Also, during the George Floyd protests in June 2020, activists in Mathare [a large slum settlement in the Nairobi area] were disrupted while similar protests by middle-class people in the Gigiri area were allowed to continue, and in fact the police escorted them.”<sup>75</sup>

Focus group respondents from social justice centres in Nairobi cited International Peace Day marches and one of the protests relating to the killing of George Floyd in the US in solidarity with the Black Lives Matter movement as examples of protests the authorities allowed to continue uninterrupted. Also in Nairobi, during the period of Covid-19 restrictions, political rallies flouted all the pandemic protocols, but the police did not disrupt them.

Besides protests involving ‘elite’ organisations like Amnesty International and International Justice Mission, the police permit public gatherings involving the church, middle-class groups, or politicians of a particular faction, according to respondents, provide them with security, and even occasionally join in.

A focus group participant in Nairobi noted that, on some ‘soft’ issues, ‘the police have no problem with us, especially if it involves well-known human rights organisations. We had the Ecological Justice March this year and the 16 Days of Activism Against GBV [gender-based violence] marches last year. In fact, the police provided escort and directed traffic.’<sup>76</sup>

Focus group participants from a youth group told the researchers that since 2012 they have participated in at least 11 protests and gatherings, some of which they organised and co-organised with others. Out of all these, only one was uninterrupted by police: the International Peace Day march. The group attributed this to the fact that such events are celebratory and do not demand accountability.

A commissioner with the Media Complaints Commission noted during an interview that the state allows protests that ‘sit well with’ the state to proceed, while it outlaws those that do not:

“ The State generally entertains protests that sit well with them, including the one by the Nairobi ‘business community’, believed widely to have been quickly scrambled from the proscribed Mungiki sect that terrorised residents in Nairobi and parts of central Kenya, as a warning to the opposition that their protests over the bungled 2017 presidential elections would be met with more violence.”<sup>77</sup>

University authorities have compelled students at some Kenyan universities to sign a declaration form at admission with an undertaking not to engage in any form of protest, even peaceful protests. Four university students interviewed from different universities reported this, and two lecturers from different universities in Nairobi (who asked to remain anonymous) corroborated the fact.

‘Richard’, a university student in Mombasa and a former student union official, noted: ‘The university administration has high stakes in student elections to ensure they don’t get vocal leaders, so they even sponsor candidates with a lot of money who often end up winning.’<sup>78</sup> At the same university, another student said student leaders risk being expelled for organising a protest even when it is a peaceful one.

A Kenyan activist (centre) tries to guard himself as police officers beat him and force him into their vehicle after arresting him; police chased after activists from different social justice centres based in informal settlements, who were marching in protest against police brutality and harassment in their communities on Saba Saba day (or Seven Seven), in Nairobi, Kenya, 7 July 2021 (Photo: Daniel Irungu/EPA-EFE/Shutterstock)



## Deterrent effect of police violence and state intimidation

Some respondents reported that there are groups who have refrained from street protests as a consequence of state intimidation and violence.<sup>79</sup> They said the violent nature of the law-enforcement response to protests has made them less enthusiastic about engaging in lawful protests. Others said they avoid protests completely for the same reason.

Respondents described how some victims of violent dispersal of protests bear long-lasting physical, psychological, social, and economic scars as a result. One focus group participant in Kirinyaga explained:

“ [There is] psychological torture especially in cases resulting in deaths. For example, after the recent Kianjokoma killings of two young brothers [in neighbouring Embu County], two more people were killed during the ensuing protests. For any protester, you wonder, why should I go to die? Even mothers will ask their children, “Why do you want to go to protest, and you see that is how your father died?” Even the children grow with fear of protests.<sup>80</sup>

In Mombasa, four respondents told researchers that it was too dangerous to protest and they would prefer to stay at home. ‘Robert’, a seasoned HRD, said members of the public fear going near his organisation’s offices lest they are mistaken for protesters and risk being arrested. ‘Ibrahim’ said in an interview he is questioned every day about why he is involved in protests, respected as he is.<sup>81</sup> Participants in a focus group in Old Town, Mombasa, said they experience challenges mobilising for protests because people consider protesting dangerous and fear the police attacking them.

Lucas Fondo, the head of Mombasa human rights NGO Local Empowerment for Good Governance (LENGGO), told researchers that protests have become unpopular locally due to the risk of being arrested.<sup>82</sup>

An interviewee with a disability noted that people with disabilities avoid staging or participating in protests because of their predisposition to danger when the police violently disperse protests. The interviewee noted that the nature of protests in Kenya requires physically able individuals who can outrun the police to safety when required. People with disabilities therefore refrain from or avoid demonstrations: ‘As people with disabilities, we fear demonstrations because of the way we see people being treated ... [W]e know there is nowhere to report because you cannot report to the state, and therefore we have nowhere to take our complaints.’<sup>83</sup>

Several frontline protesters and human rights and social justice activists, such as ‘Njoroge’, told ARTICLE 19 they have abandoned physical protest approaches to focus purely on public interest litigation and petitions to mitigate the risks and costs of protests and state repression.<sup>84</sup>

‘Mwangi’ talked about the Wahenga group of young activist artists. They had been very vocal in public protest campaigns against land grabbing but subsequently ceased their protest activism for fear of their safety and



security after the police had subjected them to intimidation and threats. 'Mwangi' said: 'This group Wahenga ... they used to hold protests against land grabbing. After some time, they were warned and threatened. Then they stopped holding protests ... The police instil fear and intimidate groups who hold public protests, making them stop.'<sup>85</sup>

Members of the LGBTQI+ community are also forced to self-censor from participating in protests due to the risk of violence from the wider community as well as from the police. According to a 2007 Pew study, 96% of Kenyans do not accept the LGBTQI+ community.<sup>86</sup> As noted earlier, the LGBTQI+ community are often subject to attacks and violence by the wider community and harassment by the police.

Public protests by LGBTQI+ community members risk exposing their identities and could result in their being targeted in their homes and communities, or at their schools or places of work. In an interview, an official of the National Gay and Lesbian Human Rights Commission observed: 'We prefer to use the legal process rather than engage in street protests which is a common strategy in other countries in the West.'



## **Arbitrary arrest, punitive bail, and vindictive prosecution**

### **Arbitrary arrest of protesters**

Of 48 respondents in this research who had participated in protests in the last two years, the police had arrested 17 in the context of those protests, detained 16 in custody, and subsequently charged 12 with one or more offences. All the 48 active protester respondents interviewed reported they had seen the police arresting other protesters or had assisted, through their work, protesters who had been arrested. Violence against protesters often accompanies arrests.<sup>87</sup>

In Nairobi County, most respondents who had engaged in protests noted that whenever they notified the police of a planned protest, they were sure the police would not only disrupt the protest but would follow disruption with arrests. This behaviour weighs them down since they are likely to miss out on economic opportunities while they are in police custody awaiting arraignment in court and processing of their case. The negative impacts of ongoing cases have also affected relationships with families and friends.

'Irene' is a human rights activist working for an independent body that monitors human rights violations, including torture. She is responsible for monitoring police responses to public protests and gatherings and said that in many cases the police arrest protesters with brutality and violence:

**“ The process of arrest is inhumane. They are beaten, kicked, slapped, and thrown into police vehicles like sacks. Their clothes are torn, including for women. Many protesters arrive at the police station with one shoe or none. They are also called demeaning names like pumbavu [stupid] and other obscene names. At the police station, they are called mahabusu [convicts/inmates] which is demeaning. It is like they are prisoners and have no rights.”<sup>88</sup>**

The coast-based organisation Muslims for Human Rights (MUHURI) and its officials seem to be a particular target for police arrest and prosecution in relation to their organisation of protests. In the last 12 months, the authorities have arrested and arraigned two MUHURI officials, 'Robert' and 'Ibrahim', several times during protests and have broken up their demonstrations. On 25 August 2021, police arrested both officials while using tear gas to disperse a protest against alleged corruption involving funds for Covid-19 containment supplies. 'Ibrahim' stated that because of Covid-19 protocols, protesters had lost the option to seek remedy through protest but added: 'Though with political rallies, it is business as usual.'<sup>89</sup>

Nairobi activist Francis Sakwa said police sometimes pre-empt the protesters' actions. On several occasions, he has been arrested at his doorstep, not even at the assembling venue. He considers the police have intensified their intelligence network at grassroots level.<sup>90</sup>

Several respondents reported allegations that arrested protesters had bribed their way out of custody. 'Utu', a member of the Nairobi Hawkers' Association, said that while people had been arrested at a protest he attended, those arrested bought their freedom by bribing the police: 'The demonstration was to condemn forced evictions and frequent fires in Gikomba market. Eight people were arrested, but no one was arraigned in court, as all they all paid off a bribe of 500 Kenya shillings [USD 5] to be released.'<sup>91</sup>

Three interviewees in Kirinyaga and Nakuru, one male and two females, said they had bribed the police to be released after arrest during a protest. There were similar claims of bribery of the police in Nairobi. A focus group participant in Kirinyaga said: 'The police see protests as a business activity ... to ask for bribes from those whom they arrest. A demonstration is a money windfall for them.' And another said:

**“ The police have their kangaroo courts ... [Y]ou pay the agreed amount, and you are released. If you have money in the M-PESA platform, they will take you to an M-PESA shop for you to withdraw.<sup>92</sup> They don't want you to send them money on their phones because that would be evidence against them.”<sup>93</sup>**

'Jacob', a senior human rights lawyer, has represented many people arrested during protests in the coastal region. He observed that the state is violating the right to protest as enshrined in the Constitution and that the Office of the Director of Public Prosecutions has abdicated its constitutional mandate. He described what the authorities subject protesters to on the coast during arrest, bail, and prosecution, which are the same issues that respondents in the coastal counties of Mombasa and Kilifi mentioned during this research. He noted:

“ The process of arrest and arraignment in court often involves ruthless beating and extremely violent arrests where at times protesters are hurled on top of the police lorries. At the police station, the police buy time in booking the arrested, often warranting them to spend the night in police custody. On the following day, they are arraigned in court, sometimes with incomplete paperwork, which means their cases might not be heard the same day, which could easily make them to be returned to the police station. When charged, sometimes the charge sheets do not corroborate with the reasons they were arrested for and have to be corrected through another process, often causing further delays. By the time they are presented to court, it might be too late to mobilise resources for bail and they are taken to remand.”<sup>94</sup>

Academic, feminist, and online rights activist 'Atieno' noted that the sporadic arrest of organisers and participants in protests, some of whom the police charge while others are released without charge, sends home the message that the government is using some of its 'finest' tools – violence, intimidation, emotional warfare, and blackmail – to wear down its critics.<sup>95</sup>

The authorities frequently do not charge arrested protesters; and even in cases where they do charge protesters, they may not prosecute. Cases often collapse due to lack of adequate evidence, questionable charges, or the police failing to attend court. Of the 17 respondents who told the researchers they had been arrested during protests, 12 had had their cases dropped for lack of evidence or because the police had not attended court. The police appear to use this method to intimidate protesters and silence their participation in future protests.

Where the authorities do charge protesters, respondents reported the use of trumped-up charges. These charges were similar in all six of the target counties and included illegal assembly, causing disharmony, causing breach of public peace, malicious damage, robbery, defying the law, creating disturbance, resisting arrest, incitement, obstruction, and breaching Covid-19 regulations.

### **Punitive cash bail**

The Kenyan authorities regularly impose excessive bail requirements on arrested protesters. Lawyer 'Jacob' told us: 'Sometimes the bails are too punitive; in that case, they [the protesters] remain at the remand until the required bail is raised.'<sup>96</sup>

'Geoffrey', who is involved in offering legal support to those charged with illegal assembly for their participation in protests, said: 'Before being charged, the police give police bond/bail. In most cases the amount of money is high and usually punitive. Since bond is given at the discretion of the OCS there is little that can be done at that time until the protesters are charged in court.'<sup>97</sup>

'Robert', an officer at MUHURI, has organised multiple protests and been a victim of police brutality on numerous occasions. He indicated that, while the offences police charge protesters with are often misdemeanours that should attract reasonable bail terms, bail requirements tend to be excessive. Of the 20 respondents who had been granted release on bail, only one was able to pay for themselves; the rest depended on NGOs, friends, and relatives – some of whom had to fundraise to meet the amounts required. Respondents in Nairobi, Nakuru, Kisumu, Kilifi, and Mombasa corroborated this information that the authorities charge protesters large bail amounts. Even when the amounts are modest, if many are arrested, the total sum becomes high.

Twelve respondents who are HRDs, community organisers, NGO employees, and online activists reported the police had imposed cash bail ranging from amounts of 3,000 Kenyan shillings (USD 30) to 40,000 Kenyan shillings (USD 400), and as much as 500,000 Kenyan shillings (USD 5,000) after their arrest during protests.

On 18 February 2021, 'Robert' and 'Ibrahim' were arrested during protests against the introduction of the mobile payment system M-PESA by the Kenya Ferry Services (a parastatal entity) at the Likoni Channel in Mombasa. A private telephony company operates the M-PESA money transfer service. As there are other companies that offer mobile money services, this development would mean access to the ferry was limited only to those who use M-PESA. The police arrested 'Robert' and 'Ibrahim' and charged them with causing public disturbance and set them cash bail of 20,000 Kenyan shillings (USD 200) each.<sup>98</sup>

On 4 March 2021, 'Robert' and six others were arrested in a protest against the state of local healthcare provision and charged with the offence of unlawful assembly. They were released on a cash bond of, again, 20,000 Kenyan shillings (USD 200) each.<sup>99</sup> The prosecution alleged that the group of about 100 people were gathered illegally, since the local OCPD had declined the notification they had produced. After their trial, they were all acquitted of the charge in November 2021.<sup>100</sup> Protesters across the six counties often rely on human rights and solidarity organisations to bail them out when arrested. Among the organisations that have assisted arrested protesters with bail payments are HAKI Africa, Defenders Coalition, IMLU (Independent Medical Legal Unit), and Feminists Global.<sup>101</sup> In the case of arrests during a 'Covid-19 millionaires' protest, the bail was raised by Defenders Coalition.

Protesters from poorer communities experience particular challenges in raising cash bail. For example, matatu (public transport minibus) drivers who protested against fast-rising fuel prices in September 2020 ended up being remanded in custody as the families were unable to raise their bail.

At least 56 respondents in Mombasa, Kilifi, and Nairobi counties mentioned that the courts imposed large cash bail amounts and fines. They considered that the courts' tactics intimidated the public from speaking out. In some cases, the amount might be reduced depending on whether the accused had the ability to challenge the bail terms or not. In 2021 in Kilifi County, for example, ten HRDs protesting against land grabbing and forced evictions of local people were

arrested for incitement and given cash bail of 500,000 Kenyan shillings (USD 5,000) each. When they appealed against the sum, the court reduced the amount to 15,000 Kenyan shillings (USD 150).

In 2021, online activist Edwin Mutemi Wa Kiama was **arrested and released on cash bail of 500,000 (USD 5,000)** pending further investigation of possible offences under the Computer Misuse and Cybercrimes Act for involvement in a public protest against a **new International Monetary Fund (IMF) loan facility** for the Kenyan Government. The large bail amount was described by human rights organisations as extremely punitive and ignoring human rights protection.

Mombasa interviewee Lucas Fondo was one of the 'Covid-19 Mombasa Six' protesters convicted after a 'Covid-19 millionaires' protest. All protesters received cash bail of 20,000 Kenyan shillings (USD 200) each. The court subsequently found the protesters guilty and sentenced them to six months' probation, which required each of them to report to the probation office monthly for six months. Lucas said: 'We are not the criminals! We acted on public interest, but the courts have turned tables, made it personal – us versus the court – and penalised us through cash bail, prolong[ed] court cases and conviction.'<sup>102</sup>

### Vindictive prosecution

Respondents who had been charged with offences reported court processes were complex, tedious, costly, and inconveniencing.<sup>103</sup> Concerns that respondents raised include delayed determination of cases and too many court appearances (known as 'mentions' in Kenya's legal system), which drain people of their resources and wear them down emotionally.

Many respondents considered that keeping protesters tied up with court cases is intentionally punitive and denies accused people liberty to travel.

People awaiting resolution of their court cases are also at risk of not being able to acquire certification for good conduct once the law-enforcement agencies have obtained their fingerprints – and such certification can be critical for accessing an employment or business opportunity. Among respondents whose cases had gone to court for trial, most reported the courts had eventually dismissed their cases after prolonged court attendance.

Lawyer 'Jacob' commented:

“ The prosecution is another nightmare. The process is dragged, sometimes for years, with regular mentions due to reasons ranging from investigation officers, or magistrates' absenteeism and overwhelmed court calendars. Most [cases] end up dismissed in the long run. There are cases that are transferred to courts far away and require that people attend. [Failure] to attend may lead to revocation of cash bails. A few people with multiple cases in different courts have had their court appearance dates coinciding. Such end up attending one matter, hence revocation of their cash bail for failure to appear in the other matters. Some people have been ordered by court to appear regularly to certain state institutions such as the DCI

” [Directorate of Criminal Investigations].<sup>104</sup>

Mathare activist Francis Sakwa has had five active court cases prosecuted concurrently, some of which were in the system for ten years. He was acquitted in two cases, while two others were dismissed following the police's failure to appear in court. One case, in which he was charged with cruelty to animals, is awaiting completion at time of writing. He told ARTICLE 19:

“ For several years, I have had numerous cases running concurrently in various courts in Nairobi. This has been too costly for me in terms of court appearances. In a way, these have also impacted my person, in the sense that when you are charged with a criminal offence when you were only participating in a protest, both your image and career are ruined since being criminally charged means you're a criminal. ...

During the prosecution of these cases, I had to ask for leave days to appear in court, sometimes up to seven times a month. This did not augur well with my boss. Every time we appeared in court and reporters took photos, the matter would be on national news, and guess who would see the news first? The chief executive officer and human resource officer at my workplace. For corporates, image is everything. Gradually, I started getting profiled and mistrusted for being an activist. As an IT specialist, I work mainly with corporates. I handle data, some from government and corporate organisations. Therefore, they have a ... fear that I could expose some sensitive information. Due to this stigma and profiling,

” I opted to resign from a lucrative job.<sup>105</sup>

Another respondent stated: 'They [protesters] are being prosecuted, but the cases take too long. The prosecution keeps on asking for adjournment and thus dragging the cases. It appears this is the intention of the police and prosecution, to keep you tied up with court cases as a way of punishing you.'<sup>106</sup>

Community justice centre leader 'Nicholas', who has had multiple cases such as these filed in court, said: 'The court process had taken up so much of my time. These cases take about four years. I have not been convicted in any of the cases. However, the whole process has drained me. That is the whole purpose: to tire you out and keep you in and out of court.'<sup>107</sup>

A number of respondents emphasised that the charges against protesters are the main focus for the courts, rather than the courts pronouncing on the substantive issues around rights and the safeguarding of those rights, including the right to protest. In most of these cases, respondents reported, the judiciary failed to interrogate the actual circumstances leading to the arrests of the protesters. These prosecutions on trumped-up charges not only perpetuate but also promote the notion that protests are illegal.

'Nicholas' and three others complained to the Kenya National Commission on Human Rights, citing the Cabinet Secretary for the Ministry of Interior and Coordination of National Government and the Inspector General of Police, and filed a constitutional petition in the Constitutional and Human Rights Division of the High Court of Kenya against the state for wrongful prosecution.<sup>108</sup>

'Nicholas' and his fellow petitioners challenged the constitutionality of the cash bail of 200,000 Kenyan shillings (USD 2,000) or bond of 500,000 Kenyan shillings (USD 5,000) that the magistrates' court had imposed as harsh and excessive. They also challenged the legality of the police stopping a peaceful demonstration that had complied with legal requirements and the entire process of arrest, detention, charge, arraignment, and taking of the plea. They also pointed out that the charges were framed in an unconstitutional manner and the provisions the petitioners had been charged with were unconstitutional. The four won the case and were awarded cash compensation. This award is yet to be honoured.

'Nicholas' said: 'In my case, I was awarded 250,000 Kenyan shillings [USD 2,500] against the state, yet I have not been paid to date. The government always claims they do not have the funds.'<sup>109</sup>

## Harassment of online protesters

Kenyan individuals and groups often use online protest to air grievances. Protesting online offers relative safety in view of the multiple methods the state has used to disrupt and repress people's right and ability to meet physically; discuss issues that affect their communities, such as the Public Order Act, the Covid-19 protocols, and excessive police force; and protest.

However, the government is increasingly adopting methods to suppress the growth of online protest as an alternative. Social media influencers and bloggers have been arrested and charged with offences such as misuse of electronic gadgets. Cyberbullying and trolling by state agents are becoming common and dangerous for online activists.<sup>110</sup>

According to 'Atieno': 'The State ... **hires** bloggers and influencers who are paid to cast aspersions, threats, and insults to discredit online protesters. Others have been blackmailed to drop their agitation and engage in other ventures that are not a threat to the status quo.'<sup>111</sup>

'Atieno' was referring to an **investigation** by the Mozilla Foundation, which found that people were being paid between USD 10 and USD 15 a day to participate in coordinated disinformation campaigns, including against Kenya's judiciary (at the same time as the High Court was reviewing the government's constitutional review process), journalists, and civil society activists. The research identified at least 11 different disinformation campaigns involving more than 23,000 tweets.

'Joy' is a Nairobi-based HRD, blogger, podcaster, and online activist. She uses online platforms to call out political leaders on various matters of accountability. She told ARTICLE 19:

“ There is the aspect of trolling and cyberbullying from state-sponsored bloggers. One day you can be going on with your life, then boom; you realise you are trending. This is because an aspect of your private life has been exposed by these bloggers. These bloggers have a wide following, so anything they post can become viral. It is easy for them to spin a narrative about you that may be false. They either **attack you or [attack] people close to you.**<sup>112</sup>

'Atieno' told ARTICLE 19 that previously she had engaged in forms of physical protest on various issues, including land rights. However, she believes the state increasingly adopts hostile methods to quell and disrupt public protests. Consequently, the virtual space has provided the platform to vent in relative physical safety. She said:

“ **Kenyans fear to engage in protests because of the government's heavy-handed response to protests, unlike in other countries where the right to protest is respected and governments facilitate the enjoyment of that right. The force used is so traumatic, and even those who do not participate in the protests, but find themselves within the spaces in which protests take place, are not spared either so as to instil apathy and despondency against protests and their organisers. As a result, most Kenyans have resorted to online protests and activism where they use hashtags to ventilate.**<sup>113</sup>

Online protesters have also been arrested and charged under cybercrime laws, such as in the widely publicised case in April 2021 of online activist Edwin Mutemi Wa Kiama's **arrest and charge** under the Computer Misuse and Cybercrimes Act. As noted previously, he had been involved in a campaign to protest against a new **IMF loan facility** for the Kenyan Government. The campaign was under the banner **#IMFStopLoaningKenya**. Directorate of Criminal Investigations (DCI) officers violently broke into Edwin Mutemi's house, arrested him at night, and arraigned him in court the next day. His bail conditions were a punitive 500,000 Kenyan shillings (USD 5,000), and

he was required to appear in person at the DCI's office daily for 14 days. His electronic equipment and phones were confiscated.<sup>114</sup> The case was later withdrawn.

'Josephine' is a respected independent education and curriculum development specialist. She has consistently protested against Kenya's poor management of the national education curriculum, including the new 'competency-based curriculum' system, which she says the government introduced in a hurry without requisite public participation. Because of this, she left her role as a senior member of staff at a government agency to work with an international NGO focused on education whose model involves collaboration with the government, senior Kenya Institute of Curriculum Development officials, and the Ministry of Education.

The authorities, who were uncomfortable with 'Josephine's' vocal protest in the media, allegedly intervened with the NGO's leadership in an attempt to silence her and threatened to break the NGO's ties with the ministry – a critical ally in its education programming.

According to 'Josephine', use of social media has expanded virtual protest movements. She noted that the state understands the power of social media and is actively engaging to suppress this growth. In her view, threats and intimidation have emerged as the state's preferred tools against online protesters who antagonise the government, and the authorities also sponsor misinformation by attributing falsified views or fake actions to protesters to confuse people or make people lose faith in experts.<sup>115</sup>

## Stigmatisation and labelling of protests and protesters

In Kenya, both the government and the police have repeatedly used stigmatising language to label protesters as a tactic to diminish the legitimacy of protests and protesters, to reduce public support for protesters and public engagement with protest issues, and to justify suppression of protests and arrests.<sup>116</sup> Law-enforcement agencies' labelling of protests and protesters is a long-term occurrence in Kenya and remains a serious threat to the country's protest movements.

Respondents in Kisumu said the threat of labelling has marginalised activists and delegitimised their work.<sup>117</sup> And multiple respondents reported that protesters who are part of the social justice centre movement are frequently labelled criminals.<sup>118</sup> As noted earlier, the social justice centre movement is a key actor among low-income urban communities across the country that lack access to media coverage for their issues. Perhaps because of this, the state security apparatus finds it easier to target and profile them with limited scrutiny and to exert violent force to disrupt their protests.



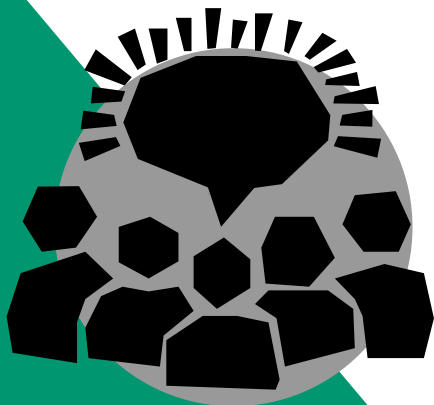
'Julius' specialises in peace and conflict resolution and is a seasoned HRD, protest organiser, and trainer in non-violent direct action. According to him, the State's favourite label for protesters is to reference the dreaded **Mungiki sect**.<sup>119</sup> He told researchers:

**“ The end game for the state is to ensure that there is enough incitement of the public against the protesters so that, when the state strikes violently, the protesters are left on their own without public support. Curiously, the state seldom uses this method with regards to protesters who are well known and enjoy the support of civil society high-fliers as well as the diplomatic corps. For these, the state consistently labels them as opportunists and sell-outs to imperialists/colonisers who use money given by foreigners to destabilise their own country for their selfish gain or enrichment.”**<sup>120</sup>

Respondents in Kirinyaga County similarly reported the use of criminalising language against protesters. Boda boda operators are a case in point. These motorcycle riders, who provide public transport services using motorcycles, frequently experience police harassment and extortion. One boda boda operator interviewee said the police often harass them based on Covid-19 protocols. For example, police would say a boda boda rider was not wearing their mask correctly, and on many occasions riders have been arrested for no reason. According to this interviewee, whenever the police arrest a boda boda operator they demand a bribe of between 3,000 and 10,000 Kenyan shillings (USD 30 and 100).

Boda boda operators in Kirinyaga staged several protests in 2020 against this persistent police harassment and extortion in Kagio town and its environs. They called for the police to release all their confiscated motorbikes unconditionally. Boda boda operators told ARTICLE 19 the police repeatedly call them wakora (Swahili for ‘thugs’). The police use this to justify denying them space to air their grievances openly and, when they opt to protest, to justify the use of violent force to disperse their protests. (Respondents also said that this has become the common police response to any protests by youth in the county.) The police also accuse the boda boda operators of having biker gangs, without proof and despite the motorcyclists having a well-structured leadership.<sup>121</sup> This is meant to invalidate their claims about police harassment.

A Nairobi-based activist who did not wish to be identified said they had changed their approach to human rights issues since protests were not respected by either duty bearers or the general public.



The nurses, laboratory technicians, and doctors who participated in the 2019 strike in Kirinyaga County (mentioned earlier in this report) faced unrelenting labelling by the Governor of Kirinyaga County, Anne Waiguru. Governor Waiguru accused them of being ‘uncaring’ and ‘politically motivated’ by her rivals to participate in the strike. One respondent commented:

**“ She [Kirinyaga Governor Waiguru] was trying to portray us as being irresponsible and as murderers, despite the fact that the strike was triggered by unsanitary conditions in the hospitals, which [were] occasioned by her sacking of all hospital cleaners. Such accusations and labelling were also meant to dehumanise the health workers and their protest in the eyes of the community. Based on these reasons, she continues to allege that they [hospital cleaners] are “strangers” and should not be paid their dues or be reinstated, despite the fact that they followed the right legal channels and are still providing their services to the county health department.”<sup>122</sup>**

‘Omar’, a doctor and medical union branch official, discussed a walk-out that doctors at the coast were conducting. This was due to the failure of the county government to implement collective bargaining agreements regarding improvements to facilities, training, salary increases, increasing the number of doctors, and doctors’ safety and security, and to the county’s failure to pay medical workers’ salaries for 14 months, among other issues.

Because of this, 'Omar' said, 'The government has run a smear campaign against health workers for "abandoning" patients and causing deaths, and uses threats of dismissal. The media has propagated the propaganda, and the public has been persuaded. It is so stigmatising, yet it is the government's fault. This perception threatens the right to protest.'<sup>123</sup> According to 'Atieno', when the wider community buys into this labelling and caricaturing, it can isolate human rights activists. 'Atieno', who had supported the #LipaKamaTender doctors' strike in 2016,<sup>124</sup> which had involved mainly younger doctors, said older and more senior doctors stigmatised the doctors' protests as demeaning the medical profession.<sup>125</sup>

## Stigmatisation and labelling of women protesters

Female protesters are particularly at risk of stigmatisation and labelling. As discussed earlier, law-enforcement agencies have targeted female protesters using tactics such as fear and intimidation, body shaming, sexual assault, sexist comments, physical attacks, and branding them as 'arrogant' or 'noisy'. In Nairobi, participants in focus group discussions in Mathare and Kayole reported that the police label women who participate in and/or organise protests as 'spouses or lovers of criminals'.<sup>126</sup>

Respondents told ARTICLE 19 that, after one Saba Saba March for Our Lives protest, some female protesters involved were profiled on the previously mentioned 'Nairobi crime free society' Facebook page. This Facebook page is believed to be run by a 'Hessy Wa Dandora', alleged to be one of a group of police responsible for extrajudicial executions of alleged criminals who are dubbed 'killer cops'.<sup>127</sup>

'Tabitha', an HRD affiliated to an NGO in Kisumu, said:

“ In Kisumu, law-enforcement agencies' interaction with women who organise and participate in protests take[s] an interesting dimension. The police's main tool is premised on emotionally weakening and blackmailing the women protest organisers by contacting their relatives and friends to persuade them to abandon the cause if they 'want their families and friends to be safe'.<sup>128</sup>

In rural counties, social norms continue to be significant in influencing expectations of gender roles in relation to protests, including requiring women not to engage in 'antagonistic' behaviour that does not befit their 'space' in the community. This can lead to state actors, as well as members of the public, ridiculing and condemning women for 'acting like men'. 'Atieno' commented: '[P]eople here, including the police, believe that protests are men's forte, and women should not get involved since they are not made for protests. This characterisation can break the spirit; it is not a coincidence that people [women] have mental health issues.'<sup>129</sup>



Civil society activists demonstrating against gender-based violence to mark International Women's Day in downtown Nairobi, March 8, 2022 (Photo: REUTERS/Monicah Mwangi)

**“[P]eople here, including the police, believe that protests are men’s forte, and women should not get involved since they are not made for protests. This characterisation can break the spirit; it is not a coincidence that people [women] have mental health issues.”**

## 4. Conclusion and recommendations

The 2010 Constitution of Kenya guarantees the right to protest. However, in practice, this right is often restricted.

The advent of the new Constitution in 2010 heralded a proliferation of localised, community-led, and spontaneous protests in Kenya embracing issues of economic, social, and cultural rights. This presents a striking contrast to the period between 1990 and the late 2000s, when most protests were on civil and political rights and led by national movements and national actors. Many of the current protests focus on socioeconomic rights and human rights abuses. The main actors in these protests are usually low-income, disenfranchised, marginalised, or minority groups who are particularly vulnerable to violation of their rights. These communities and protesters have little political power and influence, and their asymmetrical relations with the state make them prone to rights violations in general, and more so if they engage in protests.

This research highlighted patterns of obstruction, harassment, forceful and violent disruption, arbitrary arrest and detention, stigmatisation, and identity-based and socioeconomic discrimination on the part of the Kenyan State and its agents towards protests and protesters. Officials' responses include obstruction in the notification process; violent dispersal; excessive or unnecessary use of force; sexual violence; unlawful arrest; intimidatory and punitive detention, bail, and prosecution processes and arrangements; and use of demeaning and criminalising language to describe protesters. These methods

are most prevalent against protests that threaten the interests of the political class or the police and tend to intersect with the socioeconomic status of the protesters.

There is wide consensus that the Kenyan police are more likely to act against protests organised by individuals and groups from low-income and under-resourced neighbourhoods or from small unknown groups, rather than by well-to-do or influential people and groups. Particularly at risk of state repression and violence are protesters from informal (slum) settlements, Muslims, members of the LGBTQI+ community, and other minorities. By contrast, more middle-class protesters, such as the medical practitioners' body on the coast, told researchers their protest barely attracted police violence – despite attracting critical official attention – either because they did not have public meetings or because of their social status.

Smaller groups and residents of poor neighbourhoods have been advised to partner with larger and more recognised organisations for their protests to safeguard themselves from police violence.

The police have repeatedly demonstrated an erroneous understanding that they are mandated to give 'permission' for a protest rather than have an obligation to receive notifications and facilitate and ensure the security of protests. The standard police response to protest is violence, and women in particular face gender-based violence and harassment.

Protesters from low-income neighbourhoods and demographics, including members of the social justice centre movement, are frequently profiled as criminals or labelled with stigmatising language to discredit them in the eyes of the public, to detract attention from their reasons to protest, and apparently to justify the police's use of heavy-handed tactics against them. The police use of stigmatising language to profile protesters, diminish their public support, and justify violence and arrests is particularly directed against women, residents of informal settlements, and activists working on police brutality and killings.

Unlike protests that do not demand accountability or appear to threaten the interests of politicians or law-enforcement agencies, protests on economic and social justice issues are at high risk of police violence, arrests, prosecutions, and other breaches of rights.

Kenya's judicial system has been complicit in the repression of protests through punitive bail conditions and entertaining cases even where it is clear the prosecution is deliberately delaying the cases. Cases brought against protesters are usually misdemeanours, but magistrates' courts often take a harsh view. Cases against protesters are often dragged out, with multiple delayed hearings, police failing to attend hearings, and other issues.

Recourse to the apparently relative safety of online protest has also resulted in state harassment and arrest, including through the use of the Computer Misuse and Cybercrimes Act and, in some cases, confiscation of protesters' equipment. But the authorities also target online protests in a different way. This mostly involves the use of 'trolls' to engage

in concerted personal attacks against protesters, such as by posting potentially embarrassing and discrediting information or misinformation. This type of harassment mostly targets female protesters.

In Kenya, there is a high level of impunity for state agents' violations of the right to protest. Throughout the research, there were no instances where the authorities took administrative or criminal action against police or other public officials suspected of involvement in violations of the right to protest or other rights. The IPOA lacks resources, political will, and cooperation on the part of the National Police Service to hold the police accountable for their actions. None of the protesters interviewed in this research had confidence in the IPOA as an effective mechanism for police accountability.

Police violence and other forms of state intimidation have had a deterrent effect, and many individuals and groups have ceased to organise or participate in protests for social change for such reasons, including as a result of the tedious and punitive judicial processes instituted against protesters. Regrettably, this appears to be very much in line with the intentions of many of Kenya's current power holders and duty bearers.



## Recommendations

To ensure that the right to protest is respected and protected in Kenya, ARTICLE 19 makes the following recommendations.

### To the Government of Kenya

#### Legal framework and implementation:

- Implement the 2010 Constitution and adhere to Kenya's international obligations regarding the right to protest.
- Amend or repeal the Public Order Act to ensure that public order management upholds the right to protest, particularly provisions under Section 5 of the Act that still require mandatory notification without clarity on acknowledgement, and criminalise spontaneous protests.
- Review the provisions of Chapter IX of the Penal Code on unlawful assembly, riots, and other offences against public tranquillity, particularly those that give security officers far-reaching discretionary powers – which may be abused – to issue a proclamation on protesters to disperse, failing which protesters face life imprisonment under Sections 81, 82, and 83.
- In relation to online protest, review the Computer Misuse Cybercrimes Act 2018, parts of which (such as Sections 22 and 23) have been used to harass journalists and HRDs for online publications or opinions expressed on online platforms. The Act is currently the subject of a case awaiting hearing and determination by the Court of Appeal after the High Court upheld its constitutionality.
- Ensure full training of all police officers involved in the policing of protests in rights-based public order management, crowd control, de-escalation strategies, handling spontaneous protests, and lawful use of force, including lethal force, in line with the East African Community Standard Operating Procedures on Public Order Management, [\*African Commission Guidelines for the Policing of Assemblies\*](#), [\*UN Code of Conduct for Law Enforcement Officials\*](#), and [\*UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials\*](#).
- Ensure prompt, thorough, and impartial investigation of any allegations of excessive use of force by law-enforcement agents in the course of protests, ensure results of investigations are made public without delay, and ensure suspected perpetrators are brought to justice in fair trials.

- Ensure the police service issues clear orders to officers that any use of force must be strictly necessary and proportionate to a real and imminent threat, and that use of unnecessary or disproportionate force will be punished.
- The Independent Policing Oversight Authority (IPOA) and the Office of the Director of Public Prosecutions should investigate, discipline, and prosecute officers responsible for excessive and disproportionate use of force against protesters.
- Create a safe and enabling environment for all people to exercise their right to protest.
- Refrain from issuing statements or speeches that stigmatise and criminalise protesters and protests.

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### **Accountability processes and mechanisms:**

- Hold police officers personally and individually accountable and responsible for use of excessive or unnecessary force during protests.
- Suspend officers allegedly responsible for violations pending investigation and prosecution.
- Ensure adequate resourcing and political support for accountability mechanisms, particularly the IPOA.
- Ensure adequate resourcing and political will to support the work of accountability mechanisms, particularly the IPOA. Build the IPOA's capacity to monitor police behaviour and use of force during protests and to investigate complaints against police conduct .
- Establish a unit within the IPOA (in the Directorate of Inspections, Research, and Monitoring) that focuses specifically on monitoring, documenting, and reporting on police conduct before, during, and after protests, and fast-track the investigation of police misconduct during protests.
- Ensure victims of police brutality during protests have access to reparations.
- The judiciary should uphold a progressive interpretation of the right to protest, drawing from the spirit and substance of the right in the Kenyan Constitution and in international and regional legal frameworks and guidelines.

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### Policing of protests:

- Immediately end practices of forcefully dispersing peaceful protesters and unjustified arrests. Operations to disperse protesters must only take place when strictly necessary and should follow all relevant international standards, including the [UN Human Rights Guidance on Less-Lethal Weapons in Law Enforcement](#).
- Avoid the use of excessive force in policing protests, issue clear orders accordingly, and punish officers who use unnecessary or excessive force.
- Ensure the protection and facilitation of spontaneous protests, as well as planned protests.
- Immediately cease the arrest and detention of individuals solely on the basis of their exercise of the right to freedom of assembly.
- Deprive no one of their liberty except in accordance with legally established procedures and international law, including that all persons taken into custody are given prompt access to a lawyer and all necessary medical treatment.

### To civil society organisations and protest organisers

- Conduct civic education and awareness raising on the state's obligations under Article 37 of the Constitution, the right to protest, its place in the democratic process, and available claim mechanisms.
- Institute strategic public interest litigation on a constitutional interpretation of the right to protest to enforce upholding of the constitutional right and enforcement of the law.
- Engage with the UN Human Rights Council's Universal Periodic Review (UPR) process, the African Commission on Human and Peoples' Rights, and other mechanisms to bring attention to the Kenyan Government's violations of the right to protest and failure to honour past commitments, and engage with shadow reporting mechanisms on the status of the government's compliance with its human right obligations.
- Seek knowledge on redress pathways for survivors of violence at protests and disseminate the information to people subjected to police violence during protests.



# 5. Annexe: Research methodology

This report is based on research conducted in Kenya between September and December 2021 comprising fieldwork data collection, a media and literature review, and data analysis. The research objective was to assess Kenyan authorities' discrimination against and exclusion of particular groups with regard to the right to protest. The research sought to establish the extent to which the state applies legal frameworks and complies with its obligation to promote, respect, protect, and fulfil the right to protest for various groups.

International law does not define the term 'protest' despite its frequent use in legal and non-legal settings. ARTICLE 19 defines protest as 'the individual or collective expression of oppositional, dissenting, reactive or responsive views, values, or interests' and as the individual and/or collective exercise of existing and universally recognised human rights, in particular the right to freedom of expression, the right to freedom of peaceful assembly and association, the right to take part in the conduct of political affairs, the right to strike (in the context of labour relations), the right to take part or participate in cultural life, and the rights to life, privacy, liberty and security of a person, and freedom from discrimination'.<sup>130</sup>

ARTICLE 19's scoping research reviewed media coverage and other reports to establish the concentration and occurrence of protests and demonstrations in Kenya and the dynamics around them. As a result, the research focused on six counties – Nairobi, Mombasa, Kisumu, Nakuru, Kilifi, and

Kirinyaga – while considering the legislative and policy framework, the behaviour of state authorities in response to protests, and the impact of discrimination and exclusion on protesters and protests. The research scope included instances of police action curtailing the right to protest; use of legislation to violate rights to freedom of assembly, association, and protest; instances of discrimination or exclusion in application of the law for certain groups; stigmatisation of protests and protesters; and the impact of stigma on individuals and families.

The research considered particular groups that have been subject to discriminatory application of the law regarding the right to protest between 2017 and 2021. These groups included social justice activists and other groups concerned about extrajudicial killings in the coastal region (Mombasa, Kilifi), Nairobi, and Kisumu; doctors and nurses' unions in Nairobi, Mombasa, and Kirinyaga; online activists; tea farmers in Kirinyaga; and small-scale traders and hawkers' associations in Nairobi, Kirinyaga, and Nakuru.

ARTICLE 19 contracted a team of researchers to undertake an assessment of obstruction, intimidation, repression, stigmatisation, and discrimination against protesters in the six counties.

The methodology included 94 informant interviews, 8 focus group discussions with a total of 58 participants, and media analysis. The research team employed a participatory approach whereby respondents (including both individual interviewees and focus group participants) shared their experiences in relation to protests, including regarding violent dispersal. Forty-eight respondents had participated in a protest in the last two years.

Researchers sought respondents in the six counties from groups that have in the recent past experienced or witnessed discriminatory behaviour or discriminatory application of the law on the part of state authorities regarding the right to protest, as well as other relevant actors. Local human rights groups and networks and focal point people enabled selection through referrals. Interviews and focus groups took place only with those who had given their informed consent. Total numbers participating in interviews and focus groups per county were: Nairobi, 48; Mombasa, 38; Kilifi, 15; Kirinyaga, 27; Nakuru, 6; and Kisumu, 18. This resulted in a total sample size of 152 respondents, comprising 61 females and 91 males.

Among the respondents were victims and witnesses of violent disruption of protests, their family members, protest organisers, security and human rights specialists, media practitioners, religious leaders, university students and lecturers, state enforcement agency and IPOA personnel, and members of civil society groups (including activists from community social justice centres, medical union members, and young informal traders). The study interviewed five online activists and reviewed relevant social media hashtags. The research team wrote to seek appointments with four police officers from different departments and ranks, of whom two agreed to speak to the team but only one honoured the commitment.

The researchers have given all protesters and others pseudonyms to protect their identities, or otherwise withheld their identities, except where they have given ARTICLE 19 explicit consent to use their names.

# References

- <sup>1</sup> National Police Service standing orders provide guidelines on how police officers should conduct themselves while undertaking policing work.
- <sup>2</sup> See, for example, The Star, '[Three activists sentenced for protesting Covid-19 fund theft](#)', 21 February 2022, and ARTICLE 19, '[Kenya: Court judgment threatens free expression of protesters](#)', 18 February 2022.
- <sup>3</sup> Middle-class Kenyans held a protest march at the US Embassy in Nairobi in solidarity with the Black Lives Matter protests in the US following the killing of George Floyd. Gigiri is a high-end neighbourhood that hosts the UN Headquarters in Nairobi and most foreign embassies.
- <sup>4</sup> Interview(s), (names and month(s) unrecorded) 2021.
- <sup>5</sup> The annual Saba Saba ('Seven Seven') March for Our Lives protest covers a range of social and economic grievances and commemorates the first Saba Saba March on 7 July 1990 when Kenyans took to the streets to demand free elections and an end to the rule of President Daniel arap Moi.
- <sup>6</sup> A protest against alleged massive-scale corruption and misuse of public funds intended to tackle the Covid-19 pandemic.
- <sup>7</sup> For example, after a group known as the 'Nairobi Business Community' attacked protesters against the election results in 2017, the former Nairobi Governor Mike Sonko, who had fallen out with the government, [revealed](#) in 2020 that this group had comprised violent state agents whom he and other leaders of the ruling party had mobilised.
- <sup>8</sup> Duncan Onyango and Dr Petronila Otuya, 'Police perceptions, attitude and preparedness in managing public assemblies', in Mutuma Ruteere and Patrick Mutahi (eds), [Policing Protests in Kenya](#), Centre for Human Rights and Policy Studies (CHRIPS), 2019.
- <sup>9</sup> The misuse of public order legislation is not restricted to Kenya alone. See, for example, ARTICLE 19's research in Thailand and Tunisia, to be published across 2022 (details available on [our website](#)).
- <sup>10</sup> The Nation, '[Activist Boniface Mwangi sues police for rejecting demo to State House request](#)', 7 December 2015, updated 2 July 2020.
- <sup>11</sup> As previously noted, the misuse of public order legislation is not restricted to Kenya alone. See, for example, ARTICLE 19's research in Thailand and Tunisia, to be published across 2022 (details available on [our website](#)).
- <sup>12</sup> Interview with county police commander, December 2021.
- <sup>13</sup> We have given all protesters and others pseudonyms to protect their identities, or otherwise withheld their identities, except where they have given ARTICLE 19 explicit consent to use their names. We have also anonymised workplaces where necessary.
- <sup>14</sup> Interview with 'Eli', September 2021.
- <sup>15</sup> Saba Saba March: see endnote 5.
- <sup>16</sup> Interview with 'Fatuma', (month unrecorded) 2021.
- <sup>17</sup> Interview with Francis Sakwa, (month unrecorded) 2021.
- <sup>18</sup> Interview with 'Jane', (month unrecorded) 2021.
- <sup>19</sup> Two of the six were male and four female.
- <sup>20</sup> Interview with 'Jacob', September 2021.
- <sup>21</sup> Interview with 'Fatuma', September 2021.
- <sup>22</sup> Interview with 'Mwangi', September 2021.
- <sup>23</sup> Interview with county police commander, December 2021.
- <sup>24</sup> The OCS is the designated 'regulating officer' under the Public Order Act.
- <sup>25</sup> Interview with 'Ochieng', (month unrecorded) 2021.
- <sup>26</sup> Interview with 'Ahmed', September 2021. As previously noted, the misuse of public order legislation is not restricted to Kenya alone. See, for example, ARTICLE 19's research in Thailand and Tunisia, to be published across 2022 (details available on [our website](#)).
- <sup>27</sup> Interview with 'Ahmed', September 2021.
- <sup>28</sup> Kenya has varied laws for the registration of organisations and groups, including the Public Benefits Organisation Act.

- <sup>29</sup> Interview with 'Edward', September 2021. The water shortage has persisted since early 2000. Initially the supply was rationed, allowing the community access to water about twice a week. The situation worsened in the mid-2000s, and in 2017 the water supply stopped entirely, with the community entirely dependent on the nearby Mazeras cement company for supply.
- <sup>30</sup> UN Human Rights Council, *Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies: Note by the Secretariat*, February 2016, HRC 31/66, para. 61.
- <sup>31</sup> HRC 31/66, para. 61.
- <sup>32</sup> HRC 31/66, para. 59.
- <sup>33</sup> ARTICLE 19, *Right to protest in Kenya*, 2019.
- <sup>34</sup> Instances of excessive use of force are not restricted to Kenya alone. See, for example, ARTICLE 19's research in Thailand, Brazil, and Mexico, to be published across 2022 (details available on [our website](#)).
- <sup>35</sup> Interviews with Vincent Tanui, September and December 2021.
- <sup>36</sup> Interview with 'Fatuma', September 2021.
- <sup>37</sup> Interviews with Francis Sakwa, September and December 2021.
- <sup>38</sup> Focus group participant, September 2021.
- <sup>39</sup> Interview with 'Nicholas', September 2021.
- <sup>40</sup> Interview with FM radio journalist, September 2021.
- <sup>41</sup> Harassment, intimidation, arrests, and detention of both male and female protesters are not restricted to Kenya alone. See, for example, ARTICLE 19's research in Poland, Tunisia, Brazil, Mexico, and Thailand, to be published across 2022 (details available on [our website](#)).
- <sup>42</sup> Interview with 'Furaha', September 2021.
- <sup>43</sup> All conversions of Kenyan shillings to USD in this report are indicative approximations.
- <sup>44</sup> Interview with 'Joan', October 2021.
- <sup>45</sup> Interview with 'Edward', September 2021.
- <sup>46</sup> Interview with Faith Kasina, September 2021.
- <sup>47</sup> Focus group discussion, September 2021.
- <sup>48</sup> The New Humanitarian, '[Mothers, sisters, wives: Kenyan women lead the fight against police violence](#)', 3 September 2020.
- <sup>49</sup> The 'Unga protests' (unga is Swahili for 'maize flour') were about the price of food and other basic commodities.
- <sup>50</sup> Interview with 'Agnes', October 2021.
- <sup>51</sup> Bobi Wine is a Ugandan opposition politician who was placed under house arrest in January 2021 at the time of the Ugandan presidential elections, in which he was a candidate. The protests in Kenya were against Wine's arrest, police excesses, and the 'securitisation' of the elections. See Nairobi News, '[Four Kenyan activists arrested in protests over Uganda elections – PHOTOS](#)', 13 January 2021, and HAKI Africa Nairobi, '[Arrest of Hussein Khalid, Beatrice Waithera and Ojoro Odhiambo](#)', [YouTube], 16 February 2021.
- <sup>52</sup> Interview with 'Lydia', September 2021.
- <sup>53</sup> Interview with 'Sarah', September 2021.
- <sup>54</sup> Interview with 'Lydia', September 2021.
- <sup>55</sup> Interview with 'Ahmed', September 2021.
- <sup>56</sup> Interview with Faith Kasina, September 2021.
- <sup>57</sup> Interview with Halima Bakari, (month unrecorded) 2021.
- <sup>58</sup> Interview with Halima Bakari, (month unrecorded) 2021.
- <sup>59</sup> Nurses, laboratory technicians, and doctors went on strike and protested against unsanitary hospital conditions and shortages of staff, equipment, and supplies.
- <sup>60</sup> Interview with 'Pauline', September 2021.
- <sup>61</sup> Human Rights Watch, '[Kenya fails to honor human rights promises to UN](#)', 25 July 2019.
- <sup>62</sup> Interviews with Francis Sakwa, December 2021.
- <sup>63</sup> ARTICLE 19, *Right to protest in Kenya*, 2019.
- <sup>64</sup> Interview with 'Geoffrey', October 2021. See KTN News Kenya's [report on the Kianjokoma killings](#).
- <sup>65</sup> Interview with county police commander, December 2021.
- <sup>66</sup> CIVICUS, ARTICLE 19 Eastern Africa, National Coalition of Human Rights Defenders – Kenya, and Kenya Human Rights Commission, *[KENYA Joint Submission to the UN Universal Periodic Review, 35th Session of the UPR Working Group](#)*, 18 July 2019.
- <sup>67</sup> Interview with 'Ochieng', (month unrecorded) 2021.

- <sup>68</sup> Perceptions of differential treatment by the state are not restricted to Kenya alone. See, for example, ARTICLE 19's research in Poland, Thailand, Tunisia, and Mexico, to be published across 2022 (details available on [our website](#)).
- <sup>69</sup> Interview with 'Ibrahim', September 2021.
- <sup>70</sup> Focus group participants, (month unrecorded) 2021.
- <sup>71</sup> Interview with 'Geoffrey', October 2021.
- <sup>72</sup> Interview with 'Mwangi', September 2021.
- <sup>73</sup> Interview with 'Sarah', September 2021.
- <sup>74</sup> Interview with Faith Kasina, September 2021.
- <sup>75</sup> Interview with 'Joy', September 2021.
- <sup>76</sup> Kayole focus group participant, September 2021.
- <sup>77</sup> Interview with Commissioner Henry Maina, December 2021.
- <sup>78</sup> Focus group participant, (month unrecorded) 2021.
- <sup>79</sup> The chilling effect of restrictions is not restricted to Kenya alone. See, for example, ARTICLE 19's research in Poland, Thailand, and Brazil, to be published across 2022 (details available on [our website](#)).
- <sup>80</sup> Focus group participant, (month unrecorded) 2021.
- <sup>81</sup> Interview with 'Ibrahim', September 2021.
- <sup>82</sup> Interview with Lucas Fondo, October 2021.
- <sup>83</sup> Interview, September 2021.
- <sup>84</sup> Interview with 'Njoroge', (month unrecorded) 2021. Public interest litigation is the use of the law to advance human rights and equality, including the cause of minority or disadvantaged groups or individuals, and to raise issues of broad public concern.
- <sup>85</sup> Interview with 'Mwangi', September 2021.
- <sup>86</sup> Pew Global Attitudes Project study cited in Shape History, '[Fighting for rights without taking to the streets: The battle for LGBTI rights in Kenya](#)', 7 September 2019.
- <sup>87</sup> As previously noted, harassment, intimidation, arrests, and detention of protesters are not restricted to Kenya alone. See, for example, ARTICLE 19's research in Poland, Tunisia, Brazil, Mexico, and Thailand, to be published across 2022 (details available on [our website](#)).
- <sup>88</sup> Interview with 'Irene', (month unrecorded) 2021.
- <sup>89</sup> Interview with 'Ibrahim', September 2021.
- <sup>90</sup> Interviews with Francis Sakwa, September and December 2021.
- <sup>91</sup> Interview with 'Utu', September 2021.
- <sup>92</sup> M-PESA is a money transfer system in Kenya (and other countries) using mobile phones, with people withdrawing money via M-PESA agents in shops and kiosks.
- <sup>93</sup> Kirinyaga focus group participants, September 2021.
- <sup>94</sup> Interview with 'Jacob', September 2021.
- <sup>95</sup> Interview with 'Atieno', October 2021.
- <sup>96</sup> Interview with 'Jacob', September 2021.
- <sup>97</sup> Interview with 'Geoffrey', October 2021.
- <sup>98</sup> Interview with 'Ibrahim', September 2021.
- <sup>99</sup> Interview with 'Robert', September 2021.
- <sup>100</sup> Interview with 'Robert', September 2021.
- <sup>101</sup> Interview with online activist Edwin Mutemi Wa Kiama, September 2021.
- <sup>102</sup> Interview with Lucas Fondo, October 2021.
- <sup>103</sup> Prosecution of protesters is not restricted to Kenya alone. See, for example, ARTICLE 19's research in Thailand and Poland, to be published across 2022 (details available on [our website](#)).
- <sup>104</sup> Interview with 'Jacob', September 2021.
- <sup>105</sup> Interviews with Francis Sakwa, September and December 2021.
- <sup>106</sup> Interview with 'Mwangi', September 2021.
- <sup>107</sup> Interview with 'Nicholas', September 2021.
- <sup>108</sup> Constitutional petition [No. 323 of 2014](#); criminal case No. 251 of 2014.
- <sup>109</sup> Interview with 'Nicholas', September 2021.
- <sup>110</sup> As previously noted, harassment, intimidation, arrests, and detention of online and/or offline protesters are not restricted to Kenya alone. See, for example, ARTICLE 19's research in Poland, Tunisia, Brazil, Mexico, and Thailand, to be published across 2022 (details available on [our website](#)).
- <sup>111</sup> Interview with 'Atieno', October 2021.
- <sup>112</sup> Interview with 'Joy', September 2021.
- <sup>113</sup> Interview with 'Atieno', October 2021.
- <sup>114</sup> Business Daily, '[Anti-IMF loan crusader Mutemi Kiama freed on bail](#)', 8 April 2021.
- <sup>115</sup> Interview with 'Josephine', (month unrecorded) 2021.

- <sup>116</sup> Stigmatising narratives are not restricted to Kenya alone. See, for example, ARTICLE 19's research in Brazil, Poland, Tunisia, Thailand, Mexico and the US, to be published across 2022 (details available on [our website](#)).
- <sup>117</sup> Focus group discussion, September 2021.
- <sup>118</sup> There are at least 27 social justice centres around the country, intended as spaces where communities can gather, talk about the human rights violations their community faces, organise, collaborate, and campaign for change. Social justice centres campaign and protest on a range of human rights issues, particularly police brutality.
- <sup>119</sup> The Mungiki are a religious and cultural group associated with a reign of terror in parts of Kenya's Central and Rift Valley regions, whose activities include murder, extortion, forced female genital mutilation, and other violent crimes. The government outlawed the sect in 2002.
- <sup>120</sup> Interview with 'Julius', September 2021.
- <sup>121</sup> Interview with 'Michael', September 2021.
- <sup>122</sup> Interview with 'Grace', September 2021.
- <sup>123</sup> Interview with 'Omar', (month unrecorded) 2021.
- <sup>124</sup> The #LipaKamaTender doctors' strike in 2016 involved doctors' unions calling for implementation of a collective bargaining agreement signed in 2013. The hashtag slogan referred to a call for the government to pay health workers' salaries in the same way it paid out fraudulent health tenders.
- <sup>125</sup> Interview with 'Atieno', October 2021.
- <sup>126</sup> Focus group discussion with women HRDs, September 2021.
- <sup>127</sup> See, for example, Nairobi News, '[Hessy wa Dandora issues warning to Outering road muggers](#)', 1 March 2021.
- <sup>128</sup> Interview with 'Tabitha', October 2021.
- <sup>129</sup> Interview with 'Atieno', October 2021.
- <sup>130</sup> ARTICLE 19, [Right to protest in Kenya](#), 2019, p. 8.



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