



Monitoring Report on Police Conduct during Public Protests and Gatherings

A Focus on the Anti-IEBC Demonstrations (April – June 2016)



Independent Policing
Oversight Authority

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February 2017



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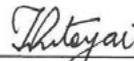
A Focus on the Anti-IEBC Demonstrations (April - June 2016)

December 2016

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LIST OF ACRONYMS AND ABBREVIATIONS

APS	Administration Police Service
CORD	Coalition for Reforms and Democracy
GSU	General Service Unit
IEBC	Independent Electoral and Boundaries Commission
IPOA	Independent Policing Oversight Authority
KAPU	Kenya Airport Police Unit
KPS	Kenya Police Service
MCA	Member of County Assembly
NPS	National Police Service
NPSC	National Police Service Commission
RBPU	Rural Border Patrol Unit
RDU	Rapid Deployment Unit
SGB	Security of Government Building

FOREWORD

The Independent Policing Oversight Authority (IPOA) is established to provide oversight, on behalf of the public, in the work of the National Police Service (NPS) and to ensure accountability, impartiality and respect for human rights in policing. Section 6 (c) of the Independent Policing Oversight Authority Act No. 35 of 2011, mandates the Authority to monitor and investigate policing operations affecting members of the public. In case of this Report, the policing operations pertain to public order management prior, during and after public assemblies, demonstrations, picketing and presentation of petitions.

Between April and June 2016, IPOA monitored the police operations relating to the public protests and gatherings; also known as 'anti-IEBC (Independent Electoral and Boundaries' Commission) demonstrations'. Since they began, five (5) demonstrations were held in the entire country; mostly on Monday's and later Monday's and Thursday's.

The Authority has in the past highlighted areas of concern in the way policing is conducted and especially during public order management. It is the Authority's position that public order management should be done in a professional manner, as enshrined in Constitution under Article 37, thus every person has the right, peaceably and unarmed, to assemble, to demonstrate, to picket, and to present petitions to public authorities. This is a right that determines the quality of policing and police professionalism; now and in the future.

Article 38 of the Constitution allows pursuit of legitimate political interests and therefore, the National Police Service cannot interfere with such interests. This however is subject to the parties concerned doing so within the confines of the law; by only notification and not whether any police officer can decline or accept such notification. Indeed, action or inaction by the Service, when such notification is issued, in itself would amount to dereliction of duty.

In policing public protests and gatherings, IPOA expects the Inspector General to ensure discipline amongst the officers that he commands if we are to have a professional National Police Service. Equally, action should be taken against offending members of the Service if they break the law.

It is IPOA's expectation that the National Police Service will act strictly in compliance with the Constitution, other written laws or regulations particularly the National Police Service Act and their Service Standing Orders, and that the use of lethal force should be avoided and if required, be exercised only to the extent that is necessary, ensuring that its minimum, reasonable and proportional to the resistance being faced.

In conclusion, this Report provides candid and frank observations and recommendations, which depicts that the police, in general and in specific circumstances, violated the laws they swore to protect. The recommendations provided should be implemented to ensure realisation of Article 244 of the Constitution.



Macharia Njeru

Chairperson
Independent Policing Oversight Authority



EXECUTIVE SUMMARY

This report is based on the anti- IEBEC demonstrations that were organised by the Coalition for Reforms and Democracy (CORD), between April and June 2016, to have the former IEBEC disbanded. Since the beginning of the demonstrations in April 25th to 6th June, five demonstrations on every Monday across the county were held. IPOA monitored the police conduct during these five demonstrations.

The main objective of the monitoring was to “monitor and investigate policing operations affecting members of the public” in accordance with Section 6(c) of the IPOA Act. The monitoring was done to ensure compliance with national, regional and international policing norms.

The Authority applied various methodologies while doing the monitoring. These included doing interviews with various general members of the public who suffered under the hands of the police, members of the NPS who were caught between their superiors’ orders and the lawbreakers, and also, IPOA interviewed the public whose property was destroyed. The Authority also partnered with various State and non-State actors in various counties during the monitoring of police conduct or misconduct, to corroborate the information that was gathered. Further, the Authority was able to document through video, photography and hand-written reports, with use of media reports being highly considered.

The key findings were that high levels of police brutality, notoriety, harassment and use of excessive force particularly in Nairobi, Migori, Kisumu, Siaya and Homa Bay Counties was observed. 88 people sustained various forms of injuries raising from minor injuries to serious injuries and arrested persons were detained more than 24 hours and their right to a fair trial was not respected.

Of great concern to the Authority was the use of excessive force on innocent children, women, the disabled and other special interest groups who became victims of police injuries and brutality.

According to Kenya Private Sector Alliance (KEPSA) report¹, each business within the Nairobi Central Business District (CBD) lost at least Kshs. 48,304 per day every time there was a public protest.

Based on these findings, the Authority in line with Article 244 of the Constitution, makes the following recommendations;

1. The National Police Service should urgently establish a comprehensive training on public order management with reference to other international standards as comparatively expressed in Part 7 of this report. This training could seek for external assistance from USA, Sweden and UK, countries that are already involved in the Police Reform Program under the Ministry of Interior and Coordination of National Government. A compulsory section aimed at preparing officers for the psychological challenges and demands required in policing public protests should be introduced beyond the generalized police training.
2. Under the changed policing context, Public Order Management should be made mandatory to all police officers. The abrupt pulling of officers from different units such as General Service Unit (GSU), Security of Government Building (SGB), Kenya Airport Police Unit (KAPU), Rural Border Patrol Unit (RBPU), Rapid Deployment Unit (RDU) among others

¹ http://www.the-star.co.ke/news/2016/08/02/sh48000-revenue-lost-per-business-daily-during-anti-iebc-demos-kep-sa_c1396804 accessed on 25th August 2016

without proper briefing and training waters down effective and efficient command, control, communication and coordination. Further, contemporary public order management is a skill and all officers involved in it should have common understanding, with commonality of purpose.

3. The National Police Service should proactively be engaging with the conveners / organizers of public protests and gatherings, and come up with written agreements to reduce tensions while ensuring public order policing. These proactive engagements should among others agree on the timings and the routes to take. Further joint conferences with the organizers to assure the public of their security and safety, and enhance community policing in the country.
4. The National Police Service should enhance intelligence gathering around public order management to map out the criminal elements who might infringe on freedom of assembly, demonstrations and picketing. This should be done with the conveners / organizers of the public protests having their field marshals as well, to promote and protect security of all actors.
5. During the public order management, assigned officers should have prominently displayed means of identification including visible name tags, number of the officer, even on their helmets. This would be in conformity with Rule No. 10 of Part A of the Sixth Schedule to the NPS Act, 2011 and would ensure accountability of individual officers.
6. Use of force in the service should be graduated as envisaged under the Sixth Schedule to the NPS Act. First, there should be proclamation with audible loud speakers, which should be graduated to use of physical force; then mechanical force with police being literally a few meters in front of the crowd. Use of coercive and deadly force during public order management should be avoided at all costs, and when used, it should be only to immobilize the victim but not to kill. No loss of life should be encouraged under public order management environment.
7. The National Police Service should abide by Article 239 of the Constitution while performing their functions and exercising their powers. The Service should not act in a partisan manner, further any interest of a political party or cause, or prejudice a political interest of political cause that is legitimate under the Constitution. The Service should remain impartial at all times while carrying out its functions.
8. Use of modern policing skills such as information technology and videography should be encouraged, with tracking of the errant members of the public for later arrests.
9. The police should also ensure availability of medical aid at stand by, with all necessary equipment, to give first aid to those injured during public order management.
10. The communication by policy makers and the ministry of interior prior, during and after public protests and gatherings should be to enhance the rights of Kenyans as enshrined in the constitution and not to curtail them. Public awareness should be enhanced by the Ministry for change of culture, behavior and attitudes of both the police and members of the public.
11. A policy on public order management, with clear guidelines and procedures for policing of public protests and gatherings must be developed, understood and implemented by all officers. The guidelines and procedures should allow local commanders to take creative initiative when new situation arises, while in adherence to the lines of command and control.

1.0 BACKGROUND: RATIONALE AND OBJECTIVES OF THE MONITORING EXERCISE

1.1 IPOA's Mandate

The Independent Policing Oversight Authority Act, No. 35 of 2011, (the IPOA Constitutive Act) requires the Authority to hold the police accountable to the public in the discharge and performance of their functions. This law requires the Authority to give effect to the provisions of Article 244 of the Constitution, which obligates the National Police Service to:

- a). Strive for the highest standards of professionalism and discipline among its members;
- b). Prevent corruption, promote and practice transparency and accountability;
- c). Comply with constitutional standards of human rights and fundamental freedoms;
- d). Train staff to the highest possible standards of competence and integrity and to respect human rights and fundamental freedoms and dignity; and,
- e). Foster and promote relationships with the broader society.

1.2 Objectives and Rationale of Monitoring

The monitoring was aimed at observing and documenting how the police carry out public order management with a focus on public protests and gatherings. Using both national, regional and international norms on how police should conduct themselves during public protests and gatherings, IPOA isolated the Main Objective of the monitoring as: "to monitor and investigate policing operations affecting members of the public" in accordance with the constitutive IPOA Act.

Thereafter, the Specific Objectives were: to ensure that police adhere to the rule of law, professionalism and discipline as per their constitutive Act; to closely monitor the availability and utility of tools and equipment's on public protests; to identify possible misconduct of police officers when managing public order; to investigate where cases of police misconduct were cited; and finally, to recommend to the NPS, or any other State organ on how to manage public order, using national, regional and international norms, of which Kenya's democratic State and its police in general, should adhere to.

From the foregoing, the Authority's monitoring team sought to objectively monitor, document and give recommendations based on the observations of the monitoring in order to realize IPOA's motto: *guarding public interest in policing*.

2.0 METHODOLOGY OF THE MONITORING EXERCISE

Monitoring, as a mandate area of the Authority, is described as: the close observation of a situation so as to determine what further action needs to be taken. In policing context, it is the close observation of systemic policing issues. In this report, the ongoing theme among the police as a whole is the management of public order, or policing of assemblies, protests and gatherings, which has been an ongoing theme in Kenya for a period of time. The main intention is to point out misconduct, open investigations and also hold individual police officers to account for criminal or disciplinary misconduct, and thereof make relevant recommendations to the Service and various State organs.

This Report documents the monitoring exercise carried out by the Authority in the eight weeks of the public protests and gatherings famously referred to as "anti-IEBC demonstrations," which took place in various Counties in the Republic of Kenya. The demonstrations begun on 25th April and ended on 6th June, 2016.

Over this period, the IPOA monitored, with use of a developed tool, the police conduct by physically observing and documenting police conduct or misconduct, particularly how they managed the protests or gatherings in compliance with both national, regional and international norms.

The Authority was able to interview various general members of the public who suffered under the hands of the police; members of the NPS who were caught between their superiors' orders and the hooliganism witnessed, and also, IPOA interviewed the public whose property was destroyed. The Authority also partnered with various State and non-State actors in various counties during the monitoring of police conduct or misconduct.

During the monitoring, the Authority was able to document (through video, photography, and hand-written reports or interviews) high levels of police brutality, notoriety, harassment and excessive use of force particularly in Nairobi, Migori, Kisumu, Siaya and Homabay Counties. Several cases of arbitrary arrests and rounding-up of youth in Mombasa, Nairobi and Kisumu Counties also took place.

The information gathered was analyzed to inform the findings and due to limited reach across the country, the Authority made use of the media (print and audio) to enrich the content of the report, by analyzing the flow of the information as was reported from various parts of the country.

3.0 THE PROTESTS

From 25th April 2016 to 6th June 2016, the Coalition for Reform and Democracy (CORD), leaders and their supporters called for a series of demonstrations against the Independent Electoral and Boundaries Commission (IEBC) across the country. CORD and its supporters sought to have the IEBC disbanded, through public protests, on grounds that it had failed in its mandate of overseeing free, fair, credible and transparent elections. The Commission, it was said, "cannot manage a transparent election²" and "had no trust residue, and the national consensus was that it can't be trusted to oversee credible elections³". While CORD took this position, those opposed to its disbandment stated that "the Constitution ought to be followed in the disbandment of the Commission⁴".

In this period, April to June 2016, a series of five demonstrations were held on April 25th, May 9th, 16th, 23rd and June 6th 2016 across the county, and one Cord rally on 1st June in Nairobi. On these occasions, supporters led by their leaders' and also CORD party officials took to the streets bearing twigs and chanting anti-IEBC slogans as they marched in the streets, to have IEBC disbanded.

In these demonstrations, police officers were deployed to disperse the crowds resulting in confrontations between the police and the demonstrators. This resulted in excessive use of force on demonstrators, serious injuries and deaths under the hands of the NPS officers and occasionally, prison warders.

2 <http://www.nation.co.ke/news/Cord-declares-no-election-without-reformed-IEBC/1056-3132518-df30cb/index.html> accessed on 5th September 2016

3 <http://www.standardmedia.co.ke/article/2000199792/four-presidential-candidates-say-iebc-has-lost-credibility-should-be-disbanded> accessed on 5th September 2016

4 http://www.the-star.co.ke/news/2016/05/19/follow-the-law-in-disbanding-iebc-protests-will-not-help-uhuru-tells_c1354402 accessed on 5th September 2016



People caught up in the demonstrations (Courtesy www.dailymail.co.uk)

Conversely, police officers were also injured by demonstrators who wielded crude weapons and stones, to repulse members of the NPS. These demonstrators also affected the maintenance of law and order, particularly by some elements being involved in hooliganism, outright theft and all manner of ills against other persons, who were not involved in the public protests or gatherings.

4.0 POLICING NORMS AND STANDARDS

Before embarking on the major findings of this Report, there is need from the onset to highlight some of the policing norms used all over the world, meaning there are international standards some of which are part of the domestic laws. Notably, the right to assemble peacefully applies to all individuals and groups, unregistered associations, legal entities and corporate bodies without any form of discrimination. The right to freedom of peaceful assembly is included in all the major international human rights instruments including Article 20 of the Universal Declaration of Human Rights (1948); Article 21 of the International Covenant on Civil and Political Rights (1966); Article 15 of the UN Convention on the Rights of the Child (1989). This means that states have an obligation not to interfere or restrict people's rights, but to take the necessary actions to respect, protect and facilitate people's rights.

The African Continent is at the stage of developing Principles and Operational Standards for Policing Assemblies by Law Enforcement Officials, but even without the ratification of these standards, there still exist African Regional Standards contained in, and also derived from the African Charter on Human and Peoples' Rights (ACHPR).

The regulations derived from the ACHPR include Resolutions such as: Resolution 281 on the Right to Peaceful Demonstrations, adopted at 55th Session of the African Commission on Human and Peoples' Rights (ACmHPR) of 2014; Resolution 306 on Police and Human Rights in Africa of 2015; and finally, an early Resolution 69 on Police Reform, Accountability and Civilian Police Oversight in Africa of 2004. These and many other Resolutions bind Kenya.

At the national or domestic level, Kenya is committed to the above standards through Article 2(6) of the Constitution where any ratification of the above instruments means they are part

and parcel of Kenyan laws under the Constitution. Further, there are the National Police Service, the National Police Service Commission Act (with amendments) and the Independent Policing Oversight Authority Act that enrich policing norms in Kenya.

The above laws and their annexed schedules, the attendant regulations, subsidiary legislation and also the yet-to-be completed Service Standing Orders among others provide how the National Police Service should operate, including during public order management. The subsections below briefly capture the letter and spirit of these policing norms.

4.1 International Standards

At the global level, there are guidelines that govern how law enforcement officials (read, police) should act, behave or respond when it comes to public order management, especially during policing assemblies. First is the United Nations Code of Conduct for Law Enforcement Officials, which is an important set of principles for accountable policing.

Besides setting out general standards of behaviour for police officials, it specifies in Article 8 that any violation of the Code shall be reported to the superior authorities and, if necessary, to other “[...] appropriate authorities or organs vested with reviewing or remedial power⁵.” In the Kenyan context, such other appropriate authorities include the IPOA as an external oversight by civilians, and the Internal Affairs Unit, as an internal oversight by police themselves.

Second, the United Nations Basic Principles for Law Enforcement Officials calls for the government and of course the police officers, even in Kenya, to exercise a lot of restraint when using force and firearms when undertaking their mandate. Indeed, in Principle 4, it is outright clear that police, “in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.”

That is, use of excessive force, pain-starkly as it is defined, refers to: “the use of force greater than that which a reasonable and prudent law enforcement officer would use under the circumstances⁶.” Whether force is reasonable or necessary or excessive is measured by what a reasonable and prudent law enforcement officer would use under the circumstances. Further, there is a reiteration of the need for caution when it comes to use of force and firearms. The UN Principles read:

“...whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall: a) exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved; b) minimize damage and injury, and respect and preserve human life; c) ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment; d) ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.”⁷

Throughout this guideline, caution is urged when use of force has to be employed. Thus, in any case an injury or a death is caused by the use of force and firearms by law enforcement officials, the police shall report the incident promptly to their superiors, in accordance with Principle 22. Within our domestic laws, as seen below, this Principle 22, is contained in the

⁵ Amnesty International, *Dutch Section, POLICE OVERSIGHT, Police and Human Rights Programme, Short Paper Series No. 2, January 2015*

⁶ <http://definitions.uslegal.com/e/excessive-force/> accessed June 20, 2016

⁷ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/UseOfForceAndFirearms.aspx>, in Principle 5, accessed June 29, 2016

Sixth Schedule of the National Police Service Act, and further also provided that the superiors (Officers' Commanding Stations – OCSs) shall promptly report the matter to IPOA⁸.

Specifically, when it comes to policing assemblies, the subject matter of this Report, whether lawful or unlawful (and indeed the Principles address unlawful assemblies), the government of Kenya and its police service are urged, in very strong terms, to adhere to international standards, most of which are also regional and national standards or norms.

These include: a) the assertion of the right of every person to participate in assemblies as guaranteed in the various international covenants and declarations, which Kenya is signatory to; b) in dispersing assemblies, especially where they are unlawful, but non-violent, police should avoid the use of force, and where used, to the minimum extent necessary; and finally, c) where public assemblies turn violent, police shall avoid use of force unless to the extent minimum and necessary, but cautioned is urged that firearms (which are a form of lethal force), shall not be used. Firearms are only permissible only when:

...in self-defense or defense of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives."⁹

To summarize the need for observing this right to assemble, the UN Special Procedures mechanism on this right, identified in 2015, that: "...[the right to] assembly plays a facilitating role in respect of other rights. In many instances, public protest has been the vehicle through which a wide range of human rights have gained entry into the global human rights project. Protest is a tool primarily used by opposition and minority groups."¹⁰ In so doing, they are able to express their point in the platform that can be accessed and therefore the caution given is that it should not be regulated in favour of those in political power at any given point in time.

In conclusion, international standards are summarized by the Peelian Principles which prohibit police use of force. They provide that policing can never be done without consent of the public; that they (police) too are part of the public; that they cannot act as the judge, jury and the executioner; and also, that police are rated by how they are involved in crime detection and prevention not how they deal with suspected criminals, among other principles. In a nutshell, these international principles have become part and parcel of Kenyan laws, through Article 2 (5 and 6) of the Constitution of Kenya.

4.2 Regional Standards

The African Continent has plenty of democratic principles, which many States signed and have continued to ratify after the post-colonial period. They are not spectacularly different from the international norms, but only to the extent of application within the African States, which seem democratic on paper as the practice leaves a lot to be desired.

As alluded to above, the ACHPR (the Charter) has recognized the right to assemble among

⁸ Pursuant to Section 5 Part B of the Sixth Schedule as read with Section 1 Part C of the Sixth Schedule of the NPS Act, 2011

⁹ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/UseOfForceAndFirearms.aspx>, in Principle 9, accessed June 29, 2016

¹⁰ Christof Heyns, 2011, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, <http://www.icnl.org/research/resources/assembly/Report>, accessed July 07, 2016. Paragraph 31, P 7

many other democratic freedoms and universal human rights, which entered into force 30 years ago after ratification by the requisite State Parties. Specifically, the Charter provides that: "...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 freedom of others."¹¹

There is need to understand or acknowledge that rights cannot be limited by police action or inaction. Rights can only be limited by law, whereby in Kenya, national security definition includes protection of human rights and fundamental freedoms. For any limitation on rights such as freedom to assemble, there must be a law or judicial review, which should determine how police or government could purport to "stop demonstrations in Kenya", as was seen recently in June 2016, clawing back the constitutional gains. It is crystal clear that a right "shall not be limited except by law, and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom."¹²

On policing assemblies, the ACmHPR (the Commission) is currently working on the Principles and Operational Standards for Policing Assemblies by Law Enforcement Officials in Africa, which shall enhance the realization of this important right in the context of African policing.¹³ There are a number of Resolutions passed within the mandate of the Commission, and of particular emphasis, is Resolution on the Right to Peaceful Demonstrations, No. 281 of May 2014.

The Commission, having considered the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, exercised their mandate and adopted Resolution 281 of the Commission, which among others, provides for protection of peaceful protesters regardless of their political affiliation or any other; refrain from disproportionate use of force and/or firearms against the demonstrators; and also, refrain from conducting arbitrary arrests and detention of demonstrators.¹⁴ Noteworthy of mention is that this Report, in documenting Kenyan police operations of May 2016, (two years after adoption of the Resolution), police were in total violation of the same with impunity.

To demonstrate using a case study of the Republic of South Africa during the former apartheid system of governance and policing, particularly their role in public order management during freedom protests, it is documented by their former Commission on Truth and Reconciliation, that:

"...the creation of a specialized riot control function within South Africa's policing agencies was essentially a reaction to the disorder and political unrest associated with resistance to apartheid... Since the nature of their task was inherently public, the police units tasked with riot control played a prominent role as front line 'enforcers' of apartheid policies, and were viewed with a mixture of fear and loathing by the communities in which they served. The units were para-military in nature (by way of training, operational understanding and culture), and brutal in the enforcement of bans on political protest. They operated within a policy paradigm that accepted and supported the lethal use of force. This, combined with

¹¹ [http://www.achpr.org/instruments/achpr/Article 11](http://www.achpr.org/instruments/achpr/Article%2011), accessed July 07, 2016

¹² Constitution of Kenya, Article 24(1), on limitation of rights and fundamental freedoms, <http://kenyalaw.org/kl/index.php?id=398>, accessed July 10, 2016.

¹³ African Commission on Human and Peoples' Rights, *Policing Assemblies in Africa: Principles and Operational Standards for the Policing of Assemblies by Law Enforcement Officials in Africa, ZERO DRAFT, 28 June 2016. These Principles, done by APCOF, are for discussion and possible adoption in an Ordinary Session slated for October 2016.*

¹⁴ <http://www.achpr.org/sessions/55th/resolutions/281/>, accessed July 10, 2016.

the authorities' complete intolerance of protest action, meant that they frequently used maximum force."¹⁵

The above paragraph seems to define what is the National Police Service, and in particular, the General Service Unit (GSU) and some members of the Administrative Police Service (APS), who through their nature of training and their approach to public order management, has predisposed negative culture and attitude towards the public, as seen below in this Report. This would require urgent redress.

From the foregoing, it is imperative to briefly outline the national standards, most of which are borrowed from the Constitution of Kenya and the international and regional standards on policing, of which the State is party to.

4.3 National Standards

It is evident that whatever international or regional standards that exist, Kenyan police are obligated to underscore and respect, but are in utter disregard. Kenya is failing in meeting the regional and international obligations.

Therefore, despite domesticating these norms into Kenya's Constitution, subsequent legislation and attendant schedules, and subsidiary legislation or regulations among others, both the Kenya Police Service (KPS) and Administration Police Service (APS) are wanting in terms of how they respect and protect freedom of assembly, which our national standard points out that: "... every person has the right, peaceably and unarmed, to assemble, to demonstrate, to picket, and to present petitions to public authorities."¹⁶ Thereafter, the Constitution provides under Article 24 for limitation of those rights based on what was alluded to above, but also factors that include:

"a) the nature of the right or fundamental freedom; b) the importance of the purpose of the limitation; c) the nature and extent of the limitation; d) the need to ensure that the enjoyment of rights and fundamental freedoms by any individual does not prejudice the rights and fundamental freedoms of others; and e), the relation between the limitation and its purpose and whether there are less restrictive means to achieve the purpose."¹⁷

It is against this legal principles of non-limitation of fundamental freedoms and human rights that the not-so-new set of laws were enacted to bring for a fresh and independent police service, where the constitutional Articles 244, 245, and 246 were to be made operational through the work of the IPOA, the independence of the National Police Service, and especially the office of the Inspector General, and the NPSC respectively.

The laws that created this three new entities provide a legal framework that if followed in letter and spirit, then the police transformation process should have begun in 2012. That transformation, according to IPOA never started, and if it did at all, it was nipped in the bud in the year 2014, through many attempts or successful amendments of the same laws (save for the IPOA Act), no to mention the introduction of draconian laws such as the Security Laws (Amendment) Act of December 2014. Beyond the 'hardware' issues of law and lack of modern equipment and tools, not to mention police welfare, the 'software' issues of attitudes, behaviour, culture and

¹⁵ Janine Rauch and David Storey, *The Policing of Public Gatherings and Demonstrations in South Africa 1960-1994*, Paper commissioned by The Commission on Truth and Reconciliation (TRC) Research Department, May 1998.

¹⁶ Constitution of Kenya, Article 37, on assembly, demonstration, picketing and petition

¹⁷ Ibid, Article 24, on limitation of rights and fundamental freedoms

response of police to public order policing, and their knee-jerk reactions when accountability is demanded, are urgently needed.

Nonetheless, even with the amendments, some solid rules and principles were left intact, since the Constitution has never been amended. Further, amendments to some of the very principles in the subsequent legislation have been declared unconstitutional, particularly the Security Laws (Amendment) Act¹⁸.

This being a Monitoring Report, police were held to account on the basis of the Constitution (especially the Bill of Rights from Article 19 to 59) and subsequent legislation where necessary. Some of these Constitutional principles that still apply and have been used to hold police accountable, from a national (read Constitutional) standards, include:

- (1) Article 26: A person shall not be deprived of life intentionally, except to the extent authorized by this Constitution or other written law.
- (2) Article 28: Every person has inherent dignity and the right to have that dignity respected and protected.
- (3) Article 29: Every person has the right to freedom and security of the person, which includes the right not to be: subjected to any form of violence from either public or private sources; subjected to torture in any manner, whether physical or psychological; and treated or punished in a cruel, inhuman or degrading manner.
- (4) Article 36: Every person has the right to freedom of association, which includes the right to form, join or participate in the activities of an association of any kind.
- (5) Article 37: Every person has the right, peaceably and unarmed, to assemble, to demonstrate, to picket and to present petitions to public authorities.
- (6) Article 38: Every citizen is free to make political choices which includes the right to campaign for a political party or cause.
- (7) Article 49: Every arrested person has the right to be informed of the reason for that arrest, to communicate with an advocate or family of that arrest, not to be compelled to make a confession, or admission that could be used as evidence against them, and also to be brought before a court within 24 hours of that arrest.
- (8) Article 239: In performing their functions and exercising their powers, the national security organs [including the police] and every member of the national security shall not a) act in a partisan manner, b) further any interest of a political party or cause, or c) prejudice a political interest of political cause that is legitimate under the Constitution.
- (9) Article 244: police should strive for the highest standards of professionalism and discipline among its members; prevent corruption, promote and practice transparency and accountability; comply with constitutional standards of human rights and fundamental freedoms; train staff to the highest possible standards of competence and integrity and to respect human rights and fundamental freedoms and dignity; and, foster and promote relationships with the broader society.
- (10) Article 245: No person may give a direction to the Inspector-General with respect to: the investigation of any particular offence or offenses or the enforcement of the law against any particular person(s).

Generally, with regard to the National Police Service Act, this law prohibits most of what police engaged in, during the public protests and gatherings documented in this Report, by violating provisions of their constitutive Act, including Schedules on Use of Force, Use of Firearms, offenses against discipline among other acts of commission or omission. Therefore, using these [18 http://www.nation.co.ke/news/politics/Security-laws-illegal-declares-High-Court/1064-2633342-jw2qp1/index.html](http://www.nation.co.ke/news/politics/Security-laws-illegal-declares-High-Court/1064-2633342-jw2qp1/index.html), accessed 5th September 2016

national standards, and also the regional and international norms above, the police in Kenya failed woefully as depicted hereunder.

5.0 MAJOR FINDINGS

5.1 Deaths and Serious Injuries

Deaths and serious injuries are violations to the right to life and also right to integrity and security of the person, not to mention right to inherent dignity and protection of the same. Beginning with deaths, four (4) persons lost their life during the anti-IEBC demonstrations as was recorded by the Authority. On 23rd May, Japheth Owiti and Fredrick Ojwang' died as a result police shooting during the demonstrations in Kisumu County. Similarly, on 23rd May, two (2) young people were fatally shot in Siaya County during the demonstrations, and they included Austin Omuombo and Churchill Odhiambo Ododa. Other organisations¹⁹ recorded at least 5 people who died and 60 wounded by gunfire as police tried to obstruct protests.

Consequently, IPOA went ahead and instituted investigations into the deaths with a view of establishing culpability (or lack thereof) of the police officers responsible for these fatal shootings. Insofar as the international, regional and national standards, police committed killings, which were still suspect, and hence the investigations.

To the Authority, these remain alleged executions since the police cannot, without independent investigations, confirm whether they were saving their own lives or lives of others. Further to be investigated is indeed whether the police made any verbal warnings (audible proclamations) before they were about to use firearms or even whether there were grounds for not giving those warnings in the first place. Part A of the Sixth Schedule to the NPS Act, 2011 requires that

“a police officer shall always attempt to use non-violent means first and force may only be employed when non-violent means are ineffective or without any promise of achieving the intended result”.²⁰

Other standards, such as using non-lethal means, which could have been deployed by the officers, have not yet been confirmed. The investigations were still ongoing as this Report was being developed in September 2016, to ascertain whether Part B of the Sixth Schedule to the NPS Act, 2011 was complied with.

On the second, but related aspect of bodily injuries, many as a result of gunshot wounds, the numbers were dumbfounding. Given that police went ahead to use firearms, other than other non-lethal weapons, the number of young people who sustained serious injuries were in their scores. In Homabay County, four (4) women sustained gunshot wounds during the 23rd May demonstrations while in Kisumu's for example Japheth Owiti and David Onyango sustained gunshot wounds²¹. In Nairobi, Shaban Abdulahi sustained gunshot wounds. On 6th June, in Kisumu County alone, 24 people sustained gunshot injuries!

¹⁹ <https://www.hrw.org/news/2016/06/20/kenya-police-killings-during-protests> accessed on 5th September 2016
²⁰ Part A of the Sixth Schedule to the NPS Act, 2011 on Conditions as to the Use of Force.

²¹ See more details from other human rights organisation <https://www.hrw.org/news/2016/06/20/kenya-police-killings-during-protests> accessed on 5th September 2016



AP officer captured severely beating and kicking a helpless demonstrator (Courtesy www.dailymail.co.uk)

Conversely, during the demonstrations particularly in Kisumu and Siaya Counties, several police officers were injured during the demonstrations. Protesters threw stones and other crude weapons at the officers. It was observed that protesters would demonstrate while armed with crude weapons including stone-throwing slings, stones, Molotov cocktails and clubs among others. On 23rd May demonstrations, it is alleged that 28 police officers in Siaya and Kisumu were said to have been injured when they confronted the demonstrators. On 6th June demonstrations, two (2) officers were injured in Kisumu.

In general, regarding bodily injuries, which also have impact of psychological set up of those affected, IPOA initiated investigations into these cases, and with priority being given to those cases whose evidence was easier to collect, with a view of holding police to account. Second, bodily injuries also have possibility of making victims succumb to those injuries. IPOA was, and still is, in liaison with hospitals and other medical facilities where victims were taken with a view to ensure that, where the victims succumb or succumbed to those injuries, accountability is ensured. In case of the victims succumbing to injuries, the nature of the investigations would change from bodily injuries to investigating death. These investigations were ongoing as this report was being developed in September 2016.

5.2 Abuse of firearms

The Sixth Schedule to the NPS Act clearly stipulate conditions under which force may be applied by police officer. Non-violent means shall first be employed and when this fails, a police officer can use force but only in proportion to the objective to be achieved, the seriousness of the offence, and the resistance of the person against whom it is used, and only to the extent

necessary while adhering to the provisions of the law and the Service Standing Orders. These demonstrations saw police use excessive force, abuse of firearms and aimless shootings by police officers.

The case of Jeremy Otieno Adongo, aged 6, who was shot in the back while at their house in Kasule, Manyatta estate, was the most disturbing²². Jeremy was hit by "stray bullet"²³ during anti-IEBC demos on Monday, June 6, 2016. Further six protesters were shot by police during demonstrations in Kisumu Town and underwent surgery to remove bullets²⁴.

The Sixth Schedule to the NPS Act states "Firearms may only be used when less extreme means are inadequate and for saving or protecting the life of the officer or other person; and in self-defense or in defense of other person against imminent threat of life or serious injury". The direction-less shootings by police officers, even to children such as Jeremy, are pointers that training on use of firearms in the training colleges are unsatisfactory and officers need continuous refresher courses, especially those being deployed on public order management issues, not the paramilitary tactics that have been historically witnessed.

5.3 Intelligence gathering and analysis

During the monitoring of the police conduct during anti-IEBC protests and gathering, it was observed that police officers had already developed a negative attitude against the demonstrators'. This minimized interactions with the organizers of the anti-IEBC demonstrations. Information gathering and analyzing is a skill which police officers should have to enhance proper public order management.

With already formed opinion influenced by negative attitude, police officers ended up disrespecting Articles 36 and 37 of the Constitution on freedom of association and of assembly, demonstrations and picketing. Due to minimal levels of information gathering and analysis around the anti-IEBC demonstrations to inform the police actions, mapping out the criminal elements within the demonstrators was not possible. Police have a duty to take reasonable steps to protect those who want to exercise their rights peacefully. This applies where there is a threat of disruption or disorder from others.

Further, it was quite evident that anyone who was seen around the Anti-IEBC demonstrations was mistaken to be a protester and could not be allowed to freely assemble. This is despite the constitutional provision that every person has the right to freedom of association, which includes the right to form, join or participate in the activities of an association of any kind and that a person shall not be compelled to join an association of any kind.

These rights were violated even to those who were running businesses around the IEBC offices but due to the partisan nature on policing in the country, informed by poor intelligence gathering, it was only the opposition that was largely seen as violators of the rights of others. This partisan approach negates the whole essence of freedom of association and assembly as postulated by the constitution.

22 http://www.the-star.co.ke/news/2016/06/06/six-year-old-boy-shot-by-police-in-kisumu-protests_c1364168 accessed on 5th September 2016

23 A stray bullet is a bullet that, after being fired from a gun, hits an unintended target. Such a shooting accident may occur during crossfire or celebratory gunfire https://en.wikipedia.org/wiki/Stray_bullet. The case here is whether there was crossfire between the child and the officers or it was a case of celebration by the officers.

24 <http://www.nation.co.ke/news/Doctors-remove-bullets-from-six-hurt-in-anti-IEBC-protest/1056-3237120-sjuvctz/index.html> accessed 5th September 2016

For informed public order management, police officers should change their perceptions, behaviours and attitude towards those planning for protests and gatherings. Police officers should be free to engage and interact with the planners and the organizers of public protests, even with the organisers having their field marshals as well, to ensure adequate security arrangements. This would guarantee security of all actors, with adequate information and its analysis to inform actions to be undertaken in case of any eventuality.

5.4 Identification of police officers

During the monitoring, it was observed that police officers involved were not identifiable. Undoubtedly, the anti- IEBC demonstrations had been marred with tension between the National Police Service and the protesters. In the first four demonstrations in the months of April and May, the NPS insisted that the anti-IEBC protests were illegal and hence endeavored to disperse the crowd and prevent the demonstrators enjoying their constitutional rights. The continuous demonstrations saw the police increase their presence and spread in Nairobi in order to prevent the demonstrations from happening.

Many of the officers who were deployed to manage the protests and gatherings could not be identified. They did not have prominently displayed means of identification including visible name tags, officer's service number, even on their helmets. This was against Rule No. 10 of Part A of the Sixth Schedule to the NPS Act, 2011 which requires that "A Police officer in uniform shall at all times affix a name tag or identifiable Service number in a clearly visible part of the uniform". This is meant to enhance accountability of individual officers and reduce police misconduct during public order management. More so, being readily and prominently identifiable is a serious show of professionalism which the Service should embrace to endear to the public.

In modern policing that enhances discipline and professionalism, police officers should set the policing style and tone at the start of an operation with clarity of their identity as police officers while being aware of the potential positive impact this could have on public perceptions. This professional approach can only be possible if police remain impartial, fair, approachable, accessible and legally compliant.

5.5 Communication, coordination, control and command

As public officers, police are bound by Article 232 of the Constitution thus they should exercise high standards of professional ethics; be efficient, effective and ensure economic use of resources; be responsive, prompt, effective, impartial and ensure equitable provision of services; involve the people in the process of policing and policy matters and also be accountable and transparent in provision of public services.

During the monitoring of the anti-IEBC demonstrations, the police acted unprofessionally largely due to poor communication and coordination. Cases of police brutality that were witnessed in several demonstrations including on 16th & 23rd May 2016 and 6th of June 2016 in Nairobi, Kisumu, Migori and Homa-Bay could attest to this. Officers were seen brutally beating up demonstrators as was captured in a clip during the May 23rd demonstrations where an AP officer was captured severely beating and kicking a demonstrator who was helpless on the ground²⁵.

The quick pulling and deployment of officers from different units such as General Service Unit(GSU), Security of Government Building (SGB), Kenya Airport Police Unit (KAPU), Rural

²⁵ <https://www.youtube.com/watch?v=43iBrvzyW-Y> accessed on 5th September 2016

Border Patrol Unit (RBPU), Rapid Deployment Unit (RDU) among others without proper briefing and training, waters down the effective and efficient command, control, communication and coordination. It should be noted that proper public order management is a communication, coordination and command skill which involves use of public engagement and dialogue skills, with establishment and maintenance of links with communities, groups and partners to build trust and confidence. Any messaging around public order management should therefore be well planned, unambiguous, clear and coordinated.

Poor communication and coordination, combined with politically inclined utterances from key policy makers, inhibits the professionalization of the police service. These makes the police to be seen as unprofessional, inefficient, ineffective, unresponsive, partial and with excessive display of quantity mightiness rather than quality prowess. Through its policing operations, the Service should be proactive in establishing a sense of trust in others, developing a sense of new identity in society, and helping the next generation prepare for the future.

For professionalization of the service to happen, the police service units to be involved in public order management should have commonality of purpose through proper communication and coordination, with training, use of drills and debriefing of the officers involved. This should be taken seriously in the service, with enhanced training sessions on public order management. Public order commanders must be trained, accredited and operationally competent. The Service should consider use of specialist advice on this area, and the command structure should be appropriate and resilient to meet the requirements of public order operations. Throughout its policing operations, the Service should be proactive in establishing a sense of trust in the public, developing a sense of new identity in society, and helping the next generation prepare for the future.

5.6 Rights of Arrested Persons

During the monitoring, several arrests were made. On 16th May 2016 during the protests, 16 people were arrested and moved to Central Police Station, Nairobi during the demonstrations. They were later charged in a Court OB 105/16/5/2016. On 23rd May 2016, 9 protesters were arrested and charged in Milimani Law Courts for taking part in an unlawful assembly, they were released on bond of Kshs. 10,000 each.

On 23rd May 2016, 3 protesters arrested were arrested in Kakamega and later released on Kshs. 100,000 fine. Also in Mombasa, 12 protesters were arrested while in Nakuru County, 12 protesters were arrested on 6th June 2016, 11 took plea and 1 never took plea.

The Authority was not able to reach all those who were arrested on these various dates but those who were reached and interviewed stated that they were not informed promptly of the reason for their arrest, which was contrary to Article 49 of the Constitution.

5.7 Partisanship and Directives to Police by Ministry

Over the years, police have been accused of being biased, which eventually led to the loss of trust and confidence by the public, on their role and independence, while maintaining law and order. As was evident during the demonstrations, between April and June 2016, the police had not changed.



The police allowed some political parties to demonstrate and embargoed others. (Courtesy www.the-star.co.ke)

When for example, some political parties and their allies notify police and the latter decline receipt of that notification, or when the police out-rightly ban political demonstrations, under the guise that the national security would be threatened, while also accepting other notifications, it is a clear and evident disservice under the Constitution, and a total violation of the same. It shows a partisan approach to policing.

Article 239 (3) of the Constitution of Kenya provides that in performing their functions and exercising their powers, the national security organs and every member of the national security organs "...shall not act in a partisan manner; further any interest of a political party or cause; or prejudice a political interest or political cause that is legitimate under this Constitution". Article 239 (1) defines clearly the national security organs which include the Kenya Defence Forces; the National Intelligence Service; and the National Police Service.

Further, it is important to note that police officers work under immense pressure with undue influence even from policy makers who are supposed to ensure that the law is followed and adhered to. During the anti-IEBC demonstrations, various official government statements were issued²⁶. The Cabinet Secretary for Interior Hon. Joseph Nkaisery was quoted saying "the protesters did not comply with the law and had caused loss of lives and destruction of properties";²⁷ that the Ministry had enough teargas at his disposal and that the police had just acquired new equipment to deal with protesters²⁸.

While making some of these statements, the Cabinet Secretary was for instance flanked by the Inspector General of Police, the Attorney General, and other officials²⁹. These are some of the remarks which suggest that public demonstrations are illegal yet they are guaranteed under Article 37 of the Constitution. The remarks are also an indication of subjectivity, and interfere with police work.

²⁶ <https://www.youtube.com/watch?v=EcQ13D2YQig> and <https://www.youtube.com/watch?v=ecaC5XUbCIA> accessed on 5th September 2016

²⁷ <http://www.standardmedia.co.ke/article/2000204389/stalemate-persists-as-state-bans-anti-iebc-protests> accessed on 5th September 2016

²⁸ <http://www.standardmedia.co.ke/article/2000202179/cs-john-nkaisery-directive-comes-to-pass> accessed on 7th September 2016

²⁹ <https://www.youtube.com/watch?v=EcQ13D2YQig> and <https://www.youtube.com/watch?v=ecaC5XUbCIA> accessed on 5th September 2016

Indeed, it worth noting that during the anti-IEBC demonstrations, statements were made that police officers would not stop using force to keep protesters away from Independent Electoral and Boundaries Commission (IEBC) offices. The Nairobi County Commander, Mr. Japheth Koome said "stern action would be taken against those who plan to take part in Monday's' demonstrations, adding that officers engaged to suppress riot or protect persons or property during the protest are justified in using any degree of force, depending on the circumstances"³⁰. With these kind of comments from policy makers and police leadership, police officers get psyched to use any means to ensure loyalty to the policy makers rather than delivering quality services to Kenyans as disciplined and professional officers.

Thus, such comments go against the independence of the police as envisaged under Article 239(3) and 244 of the Constitution, and they influence some of the brutal actions taken by police officers. To ensure accountability, professionalism and discipline amongst the police officers, policy makers and NPS leadership should let the service work under their established channels of communication, coordination, control and command.

5.8 Medical Aid and Police Operations

During the demonstrations especially in most parts of Nairobi County, the Authority did not see any police medical aid van(s). It is essential that the health, safety and welfare of police officers and well as that of the members of the public should be taken with the seriousness deserved. Public order management operations call for on-site strategic, tactical and operational guidance and advice, including provision of medical aid to assist both the police officers and well as members of the public.

The operations saw police officers stopping Public Service Vehicles (PSVs) along major routes to the City, for their usual stop and search, with even use of police aerial surveillance and mobile patrols. However key areas related to medical aid, including first aid kits would be critical for offering first aid in case of any fatality, either to the officers or any member of the public.

This is critical because during the protests, several police officers were said to have been injured, especially in Nyanza, during the demonstrations by protesters. Protesters were observed coming to the demonstrations while armed with crude weapons including slings, stones, petrol, and clubs among others. It was reported that on the 23rd May demonstrations, 28 police officers were said to have been injured while controlling the demonstrators in Siaya and Kisumu³¹ (see appendix 2). 11 of these officers injured in Kisumu, Migori, Kisii, Homabay and Siaya, were airlifted to Nairobi for treatment and the police spokesman said "...the service offered no apologies for how police responded to the rioters, instead, they warned, any attempts to attack a police officer, would be met with the necessary force". This is despite the fact that the police had to deal with the perception that this could be a public relations exercise³².

It is the Authority's considered opinion that if medical aid was availed in all public order management areas, quick response to the injured would see enhanced quality policing in the county. Article 26(1) of the Constitution, on right to life, should have that deeper meaning, to all officers and also members of the public. It is time life was highly valued and to the Authority, no life should be lost around policing issues.

30 <http://nairobinews.nation.co.ke/news/police-use-lethal-force-anti-iebc-protesters/> accessed 5th September 2106

31 <https://www.youtube.com/watch?v=A1kwiVbSNnM> accessed on 6th September 2016

32 Ibid

6.0 OTHER RELEVANT OBSERVATIONS TO STRENGTHEN POLICING

The sections below show other relevant observations by the IPOA on police preparedness and deployment, tooling and equipping and other police concerns that would enhance public order management in accordance with frameworks of the law and modern policing.

6.1 Police Preparedness and Deployment

As was noted in Section 5.5 above, on 25th April 2016, 250 police officers were deployed from the National Police Service (Kenya Police Service and Administration Police Service), drawn from various divisions within in County. The operations were poorly coordinated and supervised by Senior Superintendent of Police (SSP) Wanjama as the Operations Commander/ OCPD Central. However, the physical operational order was not availed to inform the noted gaps due non-cooperation from County Commander, Mr. Japheth Koome. Information obtained through interview with the officers in Nairobi County showed that there was no prior briefing or training.

The operations for 16th May 2016 in Nairobi had 300 police officers from the National Police Service (Kenya Police Service and Administration Police Service) from various divisions in Nairobi County. The operation was poorly coordinated and supervised by the Central OCPD with officers being deployed to all entries to Anniversary Towers and the surrounding streets within the Central Business District. The physical documentation of the operations orders were also not availed due non-cooperation from County Commander, with interviews also being done with the officers deployed. Operations in Migori, Siaya, Kisumu and Homa Bay were not monitored although information was availed to the Authority³³.



Deployed APS officers. (Courtesy www.kenya-today.com)

From interactions with the police officers it was evident that prior briefing was lacking in all the protests monitored. Further, the paramilitary nature of training for the APS, who were largely deployed to manage the protests, was a large constraint to professional approach to public

³³ For details see Appendix 3

order management. The lack of cooperation from the County Commander meant that many issues could not be confirmed or corroborated, for enhancement of modern policing including deployment concerns, orders and plans; training and facilitation of the officers.

While this is the case, the police should also anticipate spontaneous public protests. These kind of protests do not provide the luxury of planning and sometimes call for immediate reaction. Such situations call for sound judgement and correct assessment of the situation. The Service should facilitate the development of contingency plans up to police station level, providing minimum guidance to respond should such public protests manifest. The standards around deployment of police officers should therefore be informed by intelligence gathered and analyzed for proper public order management. This should also inform the kind of training required.

6.2 Police Tooling and Equipment

It was observed that heavy police equipment including water cannons were deployed for purposes of crowd control. However, upon interviews with the police officers, it clearly emerged that the officers were not well equipped for the demonstrations that were happening. On anti-riot equipment and gears, officers alleged that there had inadequate issue of crowd control equipment's including non-lethal weapons, tear gas, batons, rubber bullets and riot guns.

The Officer Commanding Police Division (OCPD) Central shared with the monitors that per each Division in Nairobi, they had an average of one or two riot guns. In his Division, he had only two riot guns. The officers lacked important protective gears including the back plate, the chest plate, thigh groin protector, leg guard, knee pad, arm guard, calf protector, and anti-riot helmets amongst others.



Water canons in use during the demonstrations (Courtesy www.dailymail.co.uk)

Indeed, this is the reason why most of the police officers would easily be injured during crowd control. Of particular interest, the KPS officers complained that they were not well-kitted

compared to their counterparts in APS. In addition the officers alleged that the material used to make the new issue of the shield and the riot helmet was fragile compared to the old model which was made of tougher material.

Further, the use of information technology such as videography to track any errant members of the public for later arrests has not been effectively utilized in Kenya. This is a law enforcement skill which is being tried globally with minimal use of force and the NPS should rise to this occasion as well.

The tooling and equipping of the service still remains a matter of concern. However, attention should be turned to quality of policing (with a focus on change of attitude and behaviour) rather than quantity of purchased of equipment. Given the approaches police used on the demonstrators, fostering and promoting good relationships with the broader society still remains a mirage largely due to negative policing culture and attitude.

6.3 Police Actions or Inactions: Destruction of Property

The demonstrations were somewhat characterized by criminal acts by some of the protesters. Roads were barricaded with stones, burnt tires, torched vehicles, destroyed properties, stole and assaulted persons. On June 6th demonstrations in Kisumu, the demos kicked off as early as 5 am and was characterized by barricading of roads with stones, burning tires and chanting of anti-IEBC slogans by the protesters while marching towards the IEBC Offices in Milimani, Kisumu.

The demonstrators were seen armed with crude weapons including stones and slings, petrol, clubs among others. Confrontation with the police ensued and as the crowd was being dispersed, the demonstrations suddenly turned violent, irate protesters turned to destroying property including Naivas Supermarket within Kisumu CBD, Tumaini Supermarket in Kondele village, Safaricom branded mobile shop, Dunga Auto and Spare parts shop, Jomo Kenyatta Highway Roundabout barriers, private motor cycles, police vehicles, Yattin Supermarket, Water pipes for Kisumu Water and Sewerage Company among others. In Nairobi, a matatu belonging to one Ms. Agnes Macharia and prime city transporters Sacco was burnt during the protests.

Under the circumstances, police did their best to protect what could have been massive destructions of property. However, because of their inactions in some areas and in the midst of the chaos, business owners in Kisumu used own initiatives to try and protect their properties from the irate crowds. Some, illegally and unfortunately, hired vigilante groups to protect their properties and this led to two people sustaining serious injuries from panga cuts that were being used by the vigilantes to protect the Tumaini Supermarket.

In a study that was done by Kenya Private Sector Alliance (KEPSA) in partnership with TIFA research, businesses in Nairobi experienced higher revenue losses.³⁴ The most affected were from banking and financial sectors that lost an average of Sh166,727 per day while each business within the Nairobi Central Business District (CBD) lost at least Kshs. 48, 304 every time there were anti-IEBC protests which took place in May and June.

³⁴ See <https://www.capitalfm.co.ke/business/2016/08/much-anti-iebc-demos-cost-nairobi-businesses/>



A supermarket destroyed by demonstrators in Kisumu (Courtesy www.nairobiwire.com)

While the National Police Service is legally mandated to protect property and life of all Kenyans, it is worth noting that for these destructions to have happened, it indicts the police in terms of their approaches to people-centred-policing, the quality of policing and how members of the public perceive policing work in view of their roles and responsibilities. This calls for attitude and behavioral change towards policing by both the police and members of the public.

6.4 Officers' long hours

During the demonstrations, officers were required to be at work very early in the morning (as early as 0400hrs) and the demonstrations at times extended till evening. Some of the officers claimed that they had worked at night duties and had again been deployed to contain the protests.

Section 46(2) of the NPS Act on rights of police officers states working hours of police officers shall be reasonable and where excessive overtime is required police officers shall be compensated with commensurate periods of rest, and they shall be allowed a minimum time of rest during and in between shifts. The allegations that were made by the officers should therefore be looked into to comply with this legal provision.

6.5 Policy on public order management

During the monitoring period, it was noted that there were those who were out to loot from businesses and therefore were not there to exercise their rights. This abuse of the constitutional rights led to violation of others' people's rights. With no proper policing policy around policing and public order management, where management of right to assembly, demonstration, picketing, or presentation petitions to public authorities' fall, the demonstrations and those organizing them, together with the police, fall victims. The Service should take keen interest to ensure that a policy is developed to guide public order management with respect to the rights of everyone, including businesses. The policy should focus on preparedness, engagements and role of communities, planning, identifications, intelligence gathering, and training even with external assistance, deployment, response among other areas.

7.0 COMPARATIVE APPROACHES ON PUBLIC ORDER MANAGEMENT

To enhance knowledge around public order management in Kenya, the NPS should benchmark and seek external assistance from other countries on policing around public order management. Some of the countries to benchmark with, and those which have had an advanced systems on public order management could be USA, Sweden and United Kingdom, among others already involved in the Police Reform Program, under the Ministry of Interior and Coordination of National Government.

In the United Kingdom for instance, the Metropolitan Police Service has an extensive and deep public order training, which prepares the officers on any eventualities. Public Order is more defined and can range from a visible presence, to intervention, to resolve violent disorder at public order events, including sports³⁵. The officers are afforded a view that is invaluable at crowded venues, and can spot possible potentially violent confrontations or crush situations. They are trained to alleviate the problem with crowd management tactics³⁶. On what they call Mounted Officer(s), one officer can be as effective as a dozen officers on foot.

On the training around public order management, all officers on the ground (those not in a command role), undergo three levels of Public Order Training. Level 3 is given to all police officers, covering peaceful protest and cordon work. Level 2 includes facilitating peaceful protest, managing hostile crowds, dealing with violent people, shield tactics and other different scenarios and Level 1, the most specialist training, regularly offers officers with the most challenging front line work, with fitness test being mandatory³⁷.

Further, under the College of Policing, there is a whole team comprising of specialist personnel with professional knowledge and experience across public order and public safety policing. These specialists support those involved in public order and public safety policing through the development of public order professional practices. This could include the maintenance and development of public order learning that could inform the content on National Policing Training Curriculum. They also provide support services to public order policing including written guidance and advice; tactical and strategic advice; support through telephone guidance; organizational learning, debriefing services and sharing of good practice around policing. The National Police Service can borrow a leaf from the Metropolitan Police Service in the UK.

In South Africa, there is a policy and guidelines on policing of public protests, gatherings and major events³⁸. The objectives of this policy and guidelines are to promote ideal crowd control and management capacity within the police in order to secure public trust and maintenance of safety during public gatherings. It is also meant to provide a framework and facilitate the development of appropriate guidelines by the South African Police Service (SAPS) on the use of force in relation to crowd control and management that adheres to international accepted standards; to establish the principle of intervention in controlling public protest in order to proportionate the means of force that can be applied by the police; and to facilitate the introduction of appropriate training initiatives which must, amongst others, address the principle...of...“first...responder”... guide SAPS operational planning and response, resource

³⁵ <http://content.met.police.uk/Article/Demonstrations-and-Public-Order/1400007129835/1400007129835> accessed on 6th September 2016

³⁶ *Ibid*

³⁷ <http://content.met.police.uk/PublicOrderPolicingandTraining.pdf> accessed on 5th September 2016

³⁸ http://www.policesecretariat.gov.za/downloads/policies/policing_public_protests_2013.pdf accessed on 5th September 2016

deployment and physical execution. Such a broad policy and guidelines on policing of public protests, gatherings and major events should be emulated to inform policing public gatherings and protests in Kenya, while at the same time improving these through lessons learnt.

8.0 CONCLUSION

From the monitoring of public protests and gatherings, especially on the anti-IEBC protests, it was evident that Article 244 of the Constitution is far from being realized. The culture, attitude and behaviour of policing has not changed. These software issues of the police and policing demands concerted attention from within and without the Service.

During the monitoring, it was noted that policy makers, including comments by the NPS leadership, have a lot of influence on how police conduct themselves on the ground. A lot of refrain by the policy makers and NPS leaders would see the police exercising due diligence in their operations, ensuring communication, command and control is well understood within the ranks, with independence and accountability. This is the journey the service needs towards eventual professionalism and discipline in the service as expected by Kenyans.

There are so many lessons to learn from other countries and as IPOA, attention now focuses on how police will be prepared, trained, equipped and coordinated to deal with the magnitude policing issues around public gatherings and protests, and especially in the lead to the 2017 general elections and beyond. Proper communication and sensitization will be required to ensure police conduct themselves as required by the law, and IPOA will be doing this with all Kenyans who exercise their rights responsibly.

Based on rule of law as advanced in this report, the Authority will be monitoring the police conduct and misconduct to advance the calls for an independent, professional, accountable and disciplined police service at all levels. These would be guided and informed by the recommendations the Authority has made in this report, as well as earlier ones made to the Service.

9.0 RECOMMENDATIONS TO THE POLICE AND OTHER STATE ORGANS

- 9.1 The National Police Service should urgently establish a comprehensive training on public order management with reference to other international standards as comparatively expressed in Part 7 of this report. This training could seek for external assistance from USA, Sweden and UK, countries that are already involved in the Police Reform Program under the Ministry of Interior and Coordination of National Government. This training should be inculcated in the training curriculum using modern methods and best practices from other countries. The training on this area should take into consideration psychological, social and cognitive skills, where establishing a sense of trust in the public, developing a sense of identity in society, and helping the next generation prepare for the future, should be taken seriously in the service.
- 9.2 Under the changed policing context, Public Order Management should be made mandatory to all police officers. The abrupt pulling of officers from different units such as General Service Unit (GSU), Security of Government Building (SGB), Kenya Airport Police Unit (KAPU), Rural Border Patrol Unit (RBPU), Rapid Deployment Unit (RDU) among others, that has been witnessed, without proper briefing and training, waters down effective and efficient command, control, communication and coordination.

Further, contemporary public order management is a skill and all officers involved in it should have common understanding, with commonality of purpose.

- 9.3 The National Police Service should proactively be engaging with the conveners / organizers of public protests and gatherings, and come up with written agreements to reduce tensions while ensuring public order policing. These proactive engagements should among others agree on the timings and the routes to take. Further joint conferences with the organizers to assure the public of their security and safety as they rightly assemble, demonstrate, picket, or even present petitions to public authorities, would go a long way towards promoting community policing in the country. The freedom of assembly, demonstrations, picketing, or even presentation of petitions to public authorities must be constitutionally guaranteed and not seen as a favour.
- 9.4 The National Police Service should ensure intelligence gathering leads their policing around public order management to map out the criminal elements who might infringe on freedom of assembly, demonstrations and picketing. This should be done with the conveners / organizers of the public protests having their field marshals as well, and with adequate security arrangements being put in place, to promote and protect security of all actors.
- 9.5 While a clear chain of command in the management of public gatherings and protests should be ensured for accountability purposes. Guidelines and procedures for the policing of public protests and gatherings must be clearly developed, understood and implemented by all officers involved. The guidelines and procedures should allow local commanders to take initiative when a new situation arises. However, taking of such initiative must be done by the commanders while in adherence to the lines of command and control.
- 9.6 During the public order management, assigned officers should have prominently displayed means of identification including visible name tags, number of the officer, even on their helmets. Rule 10 of Part A of the Sixth Schedule to the NPS Act, 2011 requires that "A Police officer in uniform shall at all times affix a name tag or identifiable Service number in a clearly visible part of the uniform". This is meant to enhance accountability of individual officers while at the same time ensuring professionalism and discipline in line with Article 244 of the Constitution.
- 9.7 Use of force in the service should be graduated as envisaged under the Sixth Schedule to the NPS Act. First, there should be proclamation with audible loud speakers, which should be graduated to use of physical force being applied such as wrestling to the ground, using wrist locks or arm locks, striking with the hands or feet, or other similar methods of hand-to-hand confrontation, with use of latest best practices. This can then be graduated to mechanical force where use of some devices or substances, other than a firearm, to overcome a subject's resistance are tried. Some of these could be use of a baton or other object, canine physical contact with a subject, or chemical or natural agent spraying, where police should be literally a few meters in front of the crowd. Use of coercive and deadly force during public order management should be avoided at all costs, and when used, it should be only to immobilize the victim and not to kill. No loss of life should be encouraged under public order management environment.
- 9.8 The National Police Service should abide by Article 239 of the Constitution while performing their functions and exercising their powers. The Service should not act in a partisan manner, further any interest of a political party or cause, or prejudice a political interest of political cause that is legitimate under the Constitution. The Service should remain impartial in carrying out its functions.
- 9.9 Use of modern policing skills such as information technology and videography should

be encouraged, with tracking of the errant members of the public for later arrests. This is a law enforcement skill with use of modern technology and the NPS should raise to the occasion as well.

- 9.10 The police should also ensure availability of medical aid at stand by, with all necessary equipment, to give first aid to those injured during public order management and in case of unlikely event. The minimum equipment for any public order management should include body armour and helmets; shields; batons; water cannons; communication and video equipment; mobile operational centers among other key ones.
- 9.11 The communication by policy makers and the ministry of interior prior, during and after public protests and gatherings should be to enhance the rights as enshrined in the constitution and not to curtail them. The Minister of Interior should not encourage rights violations but should come up with an initiative to educate the public on how to conduct themselves during protests and gatherings without abusing the police as well. Public awareness should be enhanced through such an initiative for change of culture, behavior and attitudes.
- 9.12 A policy on public order management, where management of right to assembly, demonstration, picketing, or presentation petitions to public authorities' falls, should be developed.

10.0 APPENDICES

APPENDIX 1: Summary of the Dead and Seriously Injured in the Entire Anti-IEBC Protests

DATE	COUNTY	DEATH	INJURY
25/4/2016	NAIROBI	0	1
16 th May 2016	NAIROBI	0	1
23 rd May 2016	NAIROBI	0	1
	SIAYA	2	28
	HOMABAY	Records not available	4
	KISUMU	1	2
	MIGORI		7
6 th June 2016	KISUMU	1	44

APPENDIX 2: Police Officers who were injured

Date	County	Officers injured	Remarks/ information source
25/4/2016	NAIROBI	1	Incident booked at Central Police Station OB. 67/25/4/2016. Officer was treated at KNH where he was treated and discharged. Officer was treated at Nairobi City Clinic, treated and discharged. Incident report CRI/4/3/18 to Ops Center Vigilance House
	MIGORI		Not monitored
	SIAYA		Not monitored
	KISUMU		Not monitored
	HOMABAY		Not monitored
16/5/2016	NAIROBI		No records available for injuries
	MIGORI		Not monitored
	SIAYA		Not monitored
	KISUMU		Not monitored
	HOMABAY		Not monitored
23/5/2016	NAIROBI		No injury records available
	MIGORI		Not monitored
	SIAYA	28	Incident booked at Siaya Police station vide OB 38/23/5/2016. In the Occurrence Book above, it is indicated the officers were initially attended by Red Cross paramedics in Siaya and discharged in good condition. The incident is also mentioned in a recorded statement by a Police Officer. According to the Statement, on the 24th of May 2016, 11 AP officers were brought to Nairobi and admitted in Nairobi West Hospital.
	KISUMU		Not monitored
	HOMABAY		Captured in the investigations report
6/6/2016	NAIROBI		
	MIGORI		Not monitored
	SIAYA		Not monitored
	KISUMU		Names received by monitoring officers after interviewing police officers in Kisumu.
	HOMABAY		Not monitored
	HOMABAY		Not monitored

APPENDIX 3: Details on Operational Orders

Date	County	Availability of Operational Orders	Nature/summary details of the operations orders	Remarks
25/4/2016	NAIROBI	No	250 police officers were deployed from the National Police Service (Kenya Police Service and Administration Police Service), drawn from various divisions within in Nairobi. Operation was properly coordinated and supervised.	Physical documentation of the orders not availed due to non-cooperation from County Commander. Information obtained through interview with the Operation Commander
	MIGORI			Not monitored
	SIAYA			Not monitored
	KISUMU			Not monitored
	HOMABAY			Not monitored
	HOMABAY			Not monitored
16/5/2016	NAIROBI		300 police officers from the National Police Service (Kenya Police Service and Administration Police Service various divisions in Nairobi. Operation was properly coordinated and supervised.	Physical documentation of the orders not availed due to non-cooperation from County Commander. Information obtained through interview with the Operation Commander.
	MIGORI			Not monitored
	SIAYA			Not monitored
	KISUMU			Not monitored
	HOMABAY			Not monitored
	HOMABAY			Not monitored
23/5/2016	NAIROBI			No information was vailed to the monitors by the Operation Commander.
	MIGORI			Not monitored
	SIAYA			Not monitored
	KISUMU			Not monitored
	HOMABAY			Not monitored
	HOMABAY			Not monitored

Date	County	Availability of Operational Orders	Nature/summary details of the operations orders	Remarks
6/6/2016	NAIROBI			No information was vailed to the monitors by the Operation Commander.
	MIGORI			Not monitored
	SIAYA			Not monitored
	KISUMU	Yes	Operation orders availed	Deployment was done in 7 sectors. No more details were given.
	HOMABAY			Not monitored
	HOMABAY			Not monitored



MINISTRY OF HEALTH
KISUMU EAST DISTRICT HOSPITAL
13 JUN 2016
P. O. Box 1818 - 40100 KISUMU

Our ref: IPOA MEMO I&M VOL 1/28/2016

10th June 2016

THE MEDICAL SUPERINTENDENT
KISUMU COUNTY HOSPITAL,
KISUMU

REF: INDEPENDENT INVESTIGATION INTO THE SHOOTING INCIDENCES DURING ANTI-IEBC DEMONSTRATIONS ON THE 6th DAY OF JUNE 2016

The independent Policing Oversight Authority is a state Agency established under the independent Policing Oversight Authority Act No. 35 of 2011. The objectives of the Authority are to hold the Police accountable to the public in performance of their functions, give effect to the Article 244 of the constitution and ensure independent Oversight of Complaints involving the Police.

Pursuant to the Authority's investigative functions the Authority has commenced investigations into the shooting incidences during the Anti-IEBC demonstrations on the 6th day of June 2016.

Section 7(1) (a) as read with section 31(1) of the IPOA Act accords the Authority power to gather any information it considers necessary by any such lawful means as it may deem appropriate including requisition of reports, records, documents and information from any source; interviewing and taking statements from any person, group or members of organizations or institutions at its discretion; summoning any person to meet with its staff or to attend any of its sessions or hearings, and to compel the attendance of any person who fails to respond to its summons.

In this quest the Authority requests you to avail the following in relation to the above case:

- i. Medical records relating to Gunshot injuries sustained during the Anti-IEBC demonstrations conducted on the 6th day of June 2016.
- ii. Medical records relating to deaths culminating from Gunshot injuries sustained during the Anti-IEBC demonstrations conducted on the 6th day of June 2016.
- iii. Any other medical records you deem relevant to IPOA's investigative functions in relation to this subject.

If you inquire clarification please, do not hesitate to contact us on 0739933820/0723856363.

Yours Sincerely,

Noah Isaka Otieno Onyango

FOR: CHIEF EXECUTIVE OFFICER

Our ref: IPOA MEMO I&M VOL 1/28/2016

10th June 2016

THE MEDICAL SUPERINTENDENT

JARAMOGI OGINGA ODINGA TEACHING AND REFERRAL HOSPITAL

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Yours Sincerely,

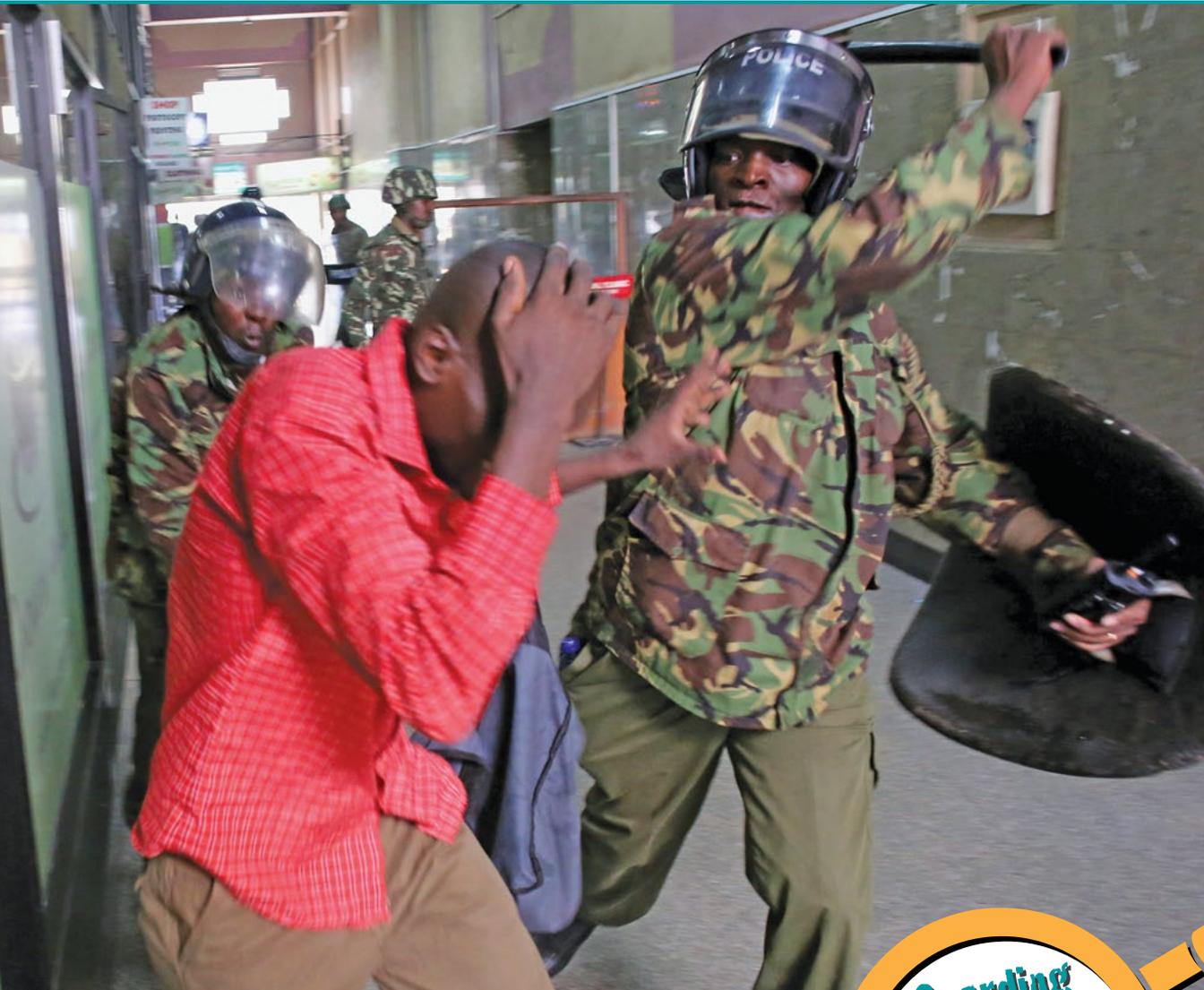
Nesh Isah Otieno Onyango

FOR: CHIEF EXECUTIVE OFFICER

Received
MEDICAL SUPERINTENDENT
JARAMOGI OGINGA ODINGA TEACHING
& REFERRAL HOSPITAL (JOTRH)
P. O. Box 849 - 40100, KISUMU.

10th JUNE, 2016

People caught up in the demonstrations (Courtesy www.businessinsider.sg)



**Guarding
Public
Interest in
Policing**