



MONITORING REPORT ON POLICING OF THE PROTESTS HELD IN VARIOUS COUNTIES

DIVERSE DATES IN JUNE, JULY & AUGUST 2024

**Waweza
kuandikisha
lalamishi lako dhidi
ya utendakazi wa
polisi kwa IPOA
bila malipo kwa
kupiga nambari
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* Huduma hii inapatikana kuanzia saa mbili asubuhi hadi saa kumi na moja jioni Jumatatu hadi Ijumaa.



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14th AUGUST, 2024

1.1 Introduction

The Independent Policing Oversight Authority (IPOA) is established pursuant to Cap 86 of the Laws of Kenya, to provide for civilian oversight over the work of the Police. The objectives of the Authority, are:

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

Under Sections 6 (c and k) of the Independent Policing Oversight Authority Act, the Authority is required to monitor and investigate policing operations affecting members of the public; and to make recommendations to the National Police Service (NPS) or any other State organ.

In line with these provisions, IPOA monitored the policing of:

- i. Anti-Finance Bill 2024/2025 protests on 18th, 19th, 20th, 21st, 24th, 25th, 27th, 30th, June 2024;
- ii. Anti-government protests held on 2nd, 7th, 16th 18th, 23rd July, 2024 and 8th August 2024; and.
- iii. Journalists' protests on 19th July 2024.

The protests were held in various parts of the country including Nairobi, Kajiado, Mombasa, Kwale, Meru, Nyeri, Nakuru, Eldoret, Kakamega, Migori, Kiambu, Homa Bay and Kisumu. This report outlines the findings and offers recommendations aimed at improving the policing of assemblies in Kenya. The report covers pre, during and post monitoring activities.

1.2 Background to the Protests

The Chairperson of the National Assembly Departmental Committee on Finance published the Finance Bill 2024/2025 on 13th May 2024. The Bill proposed various changes to the Income Tax Act (ITA), the VAT Act, 2013 (VAT Act), Excise Duty Act, Tax Procedures Act, 2015 (TPA), and the Miscellaneous Fees and Levies Act among other non-tax statutes. The proposed Bill was widely discussed by Kenyans through various channels, key among them social media. Kenyans on social media expressed their dissatisfaction alleging that the bill contained punitive taxes.

They subsequently ran a social media campaign to petition members of Parliament to reject the proposed bill. The campaign highlighted areas that were considered punitive and oppressive hence issuance of threats to hold protests unless the Government rescinded its intention to publish the bill.

The proposed Finance Bill was tabled before Parliament on 18th June, 2024 for debate. In reaction, Kenyans turned to social media and run campaigns dubbed '#Reject Finance Bill 2024' and 'Occupy Parliament' to compel the members of Parliament to reject the proposed Finance Bill.

On 18th June, 2024, some Kenyans turned up at Parliament Buildings as from 0900 hours to protest against the bill. At the same time, the President invited Kenya Kwanza Members of

Parliament to Statehouse to deliberate the contentious issues contained in the Bill. After the meeting, the President and his team announced that they had removed some of the proposed bill's contentious provisions signifying that the government had listened to Kenyan's concerns. However, this did not placate Kenyans. Following the tabling of the proposed finance bill, people continued to agitate for the Government to withdraw it in its entirety. Subsequent protests occurred across various parts of the country as illustrated below.

No.	Date	County
1	18/06/2024	Nairobi
2	19/06/2024	Mombasa
3	20/06/2024	Nairobi, Nyeri, Meru, Nakuru, Uasin Gishu, Kakamega and Kisumu
4	21/06/2024	Kwale
5	24/06/2024	Lamu
6	25/06/2024	Nairobi, Nyeri, Meru, Nakuru, Uasin Gishu, Kakamega, Kiambu and Kisumu
7	27/06/2024	Nairobi, Nyeri, Meru, Nakuru, Uasin Gishu, Kakamega, Migori, Kajiado, Homa Bay and Kisumu
8	30/06/2024	Nairobi- Uhuru Park
9	02/07/2024	Nairobi, Mombasa, Nyeri, Meru, Nakuru, Machakos, Uasin Gishu, Kakamega, Kajiado, Migori and Kisumu
10	07/07/2024	Nairobi
11	16/07/2024	Nairobi, Mombasa, Nyeri, Meru, Nakuru, Machakos, Uasin Gishu, Kakamega, Kajiado, and Kisumu
12	18/07/2024	Nairobi, Mombasa, Nyeri, Meru, Nakuru, Machakos, Uasin Gishu, Kakamega, Kajiado, and Kisumu
13	19/07/2024	Nairobi, Mombasa, Eldoret and Nakuru
14	23/07/2024	Nairobi, Mombasa, Nyeri, Meru, Nakuru, Machakos, Uasin Gishu, Kakamega, Kajiado, and Kisumu
15	08/08/2024	Nairobi, Kajiado, Nyeri and Meru

Table 1: Areas where demonstrations occurred and monitored

The Police being among the mandated State duty bearers charged to protect and promote the full enjoyment of human rights, mobilized themselves to police the protests. Similarly, the Authority as required by its mandate, monitored the policing of these operations. This report summarizes the observations made by the Authority during its monitoring operation.

1.3 Legal framework on policing of assemblies, protests and demonstrations

The management of public order in Kenya is anchored in various statutes including international statutes that Kenya is party to. International, regional and national laws provide for the right to peaceful assembly and obligate police to ensure public safety and the protection of the lives and property of citizens during protests. Article 21 of the International Covenant on Civil and Political Rights recognises the right of peaceful assembly and stipulates that 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, the protection of public health or morals or the protection of the rights and freedoms of others. Article 1 of the United Nations Human Rights Code of Conduct for Law Enforcement Officials provides that law enforcement officials shall at all times fulfill the duty imposed upon them by law, by serving the community and by protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession. Article 2 of this code expects that in the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons. Article 3 of the code directs that law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.

Article 11 of the African Charter on Human and Peoples' Rights provides that every individual shall have the right to freely assemble 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, health, ethics and rights and freedom of others. The African Commission on Human and Peoples' Rights Code of Conduct for Law Enforcement Officials reiterates what the UN code of Conduct for law enforcement officials stipulates.

Article 37 of the Constitution of Kenya on the Bill of Rights grants every person who is peaceful and unarmed the right to assemble, demonstrate, picket and to present petitions to public authorities. Article 24 of the Constitution sets the conditions to be met for any limitations on this right; namely that it can only be limited by law and then only to the extent that the limitation is justifiable and reasonable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors.

Article 244 of the constitution speaks in general terms and specifically requires the NPS to strive for the highest standards of professionalism and discipline among its members; prevent corruption and promote and practice transparency and accountability; comply with constitutional standards of human rights and fundamental freedoms; to train its staff to the highest possible standards of competence, integrity, respect for human rights, fundamental freedoms and dignity; and foster and promote relationships with the broader society.

To manage the exercise of rights under Article 37, Kenya has developed various Acts including the Public Order Act, 2012 (Cap 56 Laws of Kenya), the Penal Code (Cap 63 Laws of Kenya), the National Police Service Act and the National Police Service Standing Orders. The National Police Service Act Section 24 mandates the NPS to provide assistance to the Public when in need; maintain law and order; preserve peace; and protect life and property.

Be that as it may, it is important to take note and make reference to the locus classicus Republic of Kenya in the High Court of Kenya at Nairobi, Constitutional and Human Rights Division (Coram: A.C. Mrima, J.) Constitutional Petition No. 379 of 2017 where the Petitioners; Katiba Institute and Africa Centre for Open Governance (AFRICOG) filed a petition against the Attorney General and the Inspector General of Police as the Respondents together with Independent Policing and Oversight Authority, International Justice Mission, Kenya Human Rights Commission and Kenya National Commission on Human Rights cited as interested parties whereby in a nutshell the Court limited the use of firearms to only two provisions; to save life and self-defense pursuant to the Sixth Schedule Part B (Clause 1a and b).

To do its work, the NPS is authorised to use force in accordance with its sixth schedule. In execution of this work the NPS is well guided by the Service Standing Orders and other applicable laws. For public order management, the process to be followed is described under Chapter 58 of SSO 2017. This chapter emphasizes the obligation of the Service in promotion of Human Rights.

The Public Order Act provides the steps to be followed by organisers of assemblies/protests/demonstrations and puts forward the prohibited actions. The most relevant section of the Public Order Act is Part III section 5 and especially clause 2 and 8. Clause 2 requires anyone intending to hold any kind of gathering to notify the area Officer Commanding Station 3 days prior while clause 8 directs that an officer above the rank of the Inspector can stop a right to assemble/picket and demonstrate if the organisers did not notify the Police and at the same time there is a clear, present or imminent danger of breach of peace or Public order. In such instance, the gathering is termed unlawful and the Penal Code sets in to punish anyone who continues to take part in the prohibited assembly.

The Police are also allowed to use justifiable and reasonable force to maintain peace and order. Section 78 of the Penal Code defines unlawful assemblies and riots. An unlawful assembly is a situation where three or more persons assemble with intent to commit an offence; or when such an assembly has the potential to cause fear to neighbouring persons that the persons assembled will breach the peace; or when such an assembly will provoke others to breach the peace. Further, an assembly becomes a riot when the unlawful assembly begins to execute the purpose for which it assembled by flouting the peace and terrifying the public after an assembly becomes riotous. Section 81 of the Penal Code (reading a proclamation to disperse) and 82 further stipulates the procedures to be followed to address the riot. Section 82 directs the Police to do all things necessary to disperse the riot which includes necessary force.

1.4 Objectives of the Monitoring

The monitoring was aimed at:

- i. Observing and documenting the policing of Anti-Finance Bill 2024/2025 protest as guided by national, regional and international norms on policing of assemblies, demonstrations and protests.
- ii. Ensuring that policing of the assemblies adhered to the rule of law, professionalism and discipline as per provisions of Article 244 of the Constitution and NPS Act, 2011.
- iii. Observing the status of Police Officers' welfare while policing protests by the Service including:
 - a. Tooling and equipment provided by the NPS to police the protest.
 - b. Provision of meals and water to the Police Officers.
 - c. Compliance to labour laws on working hours and work relief.
- iv. Identifying and documenting any police misconduct during the policing of the protests with a view of launching investigations to provide legal relief to the victims of police action or inaction.

1.5 Methodology

The monitoring teams used observation, interviews, perusal of police records, social media monitoring, desktop review of applicable laws and photography to gather the findings contained in this report. The findings were documented using IPOA's structured public order management monitoring tool and are presented in tables, statistics and themes. The report

proposes recommendations for various actors to ensure effective policing of protests in future.

2.0 KEY OBSERVATIONS

2.1 Deployment, Equipping and Tooling of the National Police service

During the monitoring, the Authority focused on level of preparedness by the NPS in terms of deployment, equipping and tooling of the officers. Key Observations included;

2.1.1. Inadequate Resources and Personnel

In several locations such as Karatina Town, Nairobi CBD and Kitengela Town there were shortage of essential equipment, insufficient riot gear and teargas leading to injuries among police officers. Kitengela Town in particular the police were overwhelmed by increasingly large crowds resulting to difficulties in managing the protesters. Additional equipment and reinforcements particularly of GSU and RDU officers had to be sent from Nairobi.

2.1.2. Deployment and Equipment

The Authority noted that there were varying levels of preparedness among NPS in various locations. The Service deployed both uniformed and civilian officers. Some of the Officers in civilian were hooded and others wore masks thereby concealing their identity. While some areas such as Nyeri Town and Mombasa CBD had Police officers deployed as early as 6:00 AM, equipped with batons, teargas canisters, and protective gear, in others such as Kitengela NPS was caught ill-prepared which led to ineffective management of the protests. The Police in all the regions monitored were equipped with teargas, rubber bullets, water cannons and live ammunition.

2.2 Engagement of the Police and the protesters

2.2.1 Organisation of the protesters

The protests varied in organization and intent across different regions. Protests that largely commenced as peaceful often escalated into violence, destruction of property and incidents of looting. There were incidents of outright provocation of the police by the protesters such as at Parliament road, Bondo Town, Kangemi among other regions. Demonstrations in various towns had distinct patterns but shared common issues such as disruptions, police confrontations, and incidents of looting. Protesters frequently blocked roads, paralyzing transport and disrupting normal operations. Interviews with police officers and National Government Administration Officers in Ongata Rongai ,Karatina,and Kitengela, revealed that the protests could have been influenced by influential people in respective regions.

2.2.2 Conduct of NPS

In all the locations, Police aimed at mainly maintaining order by arresting protesters, lobbying teargas canisters, splashing of water, use of rubber and live ammunition and use of batons. The protests generally ended chaotically with instances of police being overpowered. Looting and destruction of private and public property including police stations and vehicles was observed to occur as the Police were helpless on their safety.

Specific incidents Observations

1. In Mombasa CBD on 25/06/2024, protesters lit bonfires and advanced towards the Central

police station, leading to the use of teargas, blank and live ammunitions by the police. Members of the public and the Police were injured.

2. In Garissa Town on 25/06/2024, demonstrators communicated intentions and received approval. The protest remained peaceful and orderly, the police were present monitoring the protesters.
3. In Nyeri Town on 25/06/2024, demonstrators were initially peaceful. Police provided distant security but intervened with teargas after looting began, leading to running battles.
4. In Karatina Town on 16/07/2024, the police were overpowered as demonstrators turned chaotic. Seven protesters sustained gunshot injuries.
5. In Nakuru Town on 25/07/2024, the police shot at the protesters who attempted to access Nakuru State Lodge. On 16th of July, 2024 a journalist who was covering the protests was shot by the police.
6. In Kakamega Town on 25/07/2024, the police maintained a presence but did not engage in confrontation with demonstrations since they were largely peaceful in the morning hours. However, in the afternoon confrontations arose leading to fatal shootings of some protesters who attempted to access Kakamega State Lodge.
7. In Kisumu Town on 25/07/2024, Police showed restraint but faced challenges when protesters attempted to force entry into the Central Police Station. Protesters sustained gunshot injuries as a result.
8. In Ongata Rongai Town on 27/07/2024, Police used teargas and live ammunition to disperse protesters. Protesters were arrested while others were fatally injured.
9. In Githurai 45 Town on 25/07/2024, police were overwhelmed by the crowd and had to flee for their safety. They were assaulted by the protesters leading to hospitalization of some Officers. The protests continued in the evening and the military which was passing through Thika superhighway had to fire in the air to disperse the protesters and clear the way for their passage.
10. In Kitengela town on 25/06/2024, the Police were caught unaware by the protesters who overpowered them. The protesters took advantage of the situation and looted private businesses. The Police responded with teargas canisters and live ammunitions. In the melee that ensued, protesters sustained gunshot injuries.
11. In Nairobi CBD on 25/06/2024, teargas was used extensively to disperse protesters in various locations. The situation escalated into violent confrontations, with protesters lighting bonfires and hurling stones. The Police were overpowered. Some protesters breached police barriers and accessed parliament road and subsequent parliament building where the police used live ammunition.

March to Parliament on 25/06/2024

As at 1030 hours, all Roads leading to Parliament had been barricaded. Rowdy protesters were

observed at Accra Road, Bomb blast Area, and Odeon Center Area. Teargas was lobbed to disperse them. Teargas was also lobbed at youths gathering at Nation Center. Protesters were still gathering around Wabera Street and City Market Area – Koinange Street. Most areas were still calm.

From 1300hours, heavy police presence all around the Nairobi Central Business District was witnessed. The protesters were equally many. Teargas was lobbed inside a bus ferrying people along Kenyatta Avenue. Protesters were in all major streets of Nairobi and were engaging the police in running battles. Some streets like Moi Avenue were like war zones. Protesters around Kencom were hurling stones at Police. A team of freelance doctors were treating the injured at Jamia Mosque. Police shootings were observed at different times and locations in attempts to disperse the bulging crowds. Water cannons were also used to disperse protesters but they seemed to be quickly running out of water. The demonstration turned chaotic. A group of protesters from Eastland's managed to push the police beyond their barrier and got access to parliament road. Bonfires were lit on some roads in the CBD. Part of the demonstrators on Uhuru Highway were Teargassed. Police resulted to more use of rubber bullets and live bullets. Protesters overpowered the Police and found way into parliament precincts. A team of medics attending to injured demonstrators were teargassed at Holy Family Basilica Church. Several protesters were killed along parliament road and many others injured. Several police vehicles were torched and parliament building vandalized. City hall and green park terminus were torched. Several vehicles were also vandalized and torched at Supreme Court premises. Most outlet roads were closed and demonstrators were on all streets and their safety was not guaranteed. 120 people were arrested and detained at Central police Station Nairobi. Fatalities and gunshot injuries were documented.

In Nairobi CBD on 08/08/2024, there was notable large numbers of APS members during the day. The anticipated protests did not happen however, teargas was largely used to disperse any kind of grouping in the CBD (protesters or not). Arrests, Rubber bullets and batons were also used to disperse real and assumed protesters. Persons donned in orange reflector jackets and private security guards were observed wielding wooden sticks (similar to batons) while allegedly protecting business premises; the Police did not disperse or arrest them.

2.2.3 Destruction of Properties of public and police

There was significant destruction of both public and private properties during the protests. Police vehicles were frequently targeted and damaged across multiple regions. Private properties, including businesses and infrastructure, were vandalized, looted, and torched. Public properties such as county offices, police posts, and important buildings were also targeted. For example on 25/06/2024, the following Private and Public properties were destroyed;

- i. The residence of Molo Member of Parliament in Nakuru
- ii. Embu County Assembly
- iii. Private building of MP Hon Rahim Dawood pelted with stones at Makutano in Meru
- iv. Igembe South MP's CDF office vandalized
- v. Five civilian vehicles torched at the Uasin Gishu library parking lot
- vi. Two Uasin Gishu county vehicles torched at the county parking lot.
- vii. Uasin Gishu court, UG library, and Gemini insurance building torched.
- viii. City clocks and trees burnt in Eldoret
- ix. Timber XO and Baniyas clubs vandalized in Eldoret

- x. IPOA sign post in Eldoret and other organizational sign posts vandalized
- xi. Clean shelf Supermarket in Rongai
- xii. Parliament building vandalized.
- xiii. City Hall and Green Park Terminus torched.
- xiv. Several vehicles vandalized and torched at Supreme Court premises

2.2.4 Injuries and Fatalities

The Authority observed that both demonstrators and police officers sustained injuries across all regions. Numerous instances of gunshot injuries and fatalities were observed. Injuries ranged from minor to severe, with some cases resulting to fatalities. The Authority was investigating these cases as at the time of writing this report.

2.2.5 Arrests

There were arrests made across different towns during the protests. Charges included shop breaking, stealing, incitement to violence, and other related offenses. Some arrested persons were released immediately, while others were processed for court appearances.

3.0 ANALYSIS OF THE OBSERVATIONS MADE

3.1 Conduct of Protesters: The protests in many areas began peacefully with protesters suspicious of Police actions. The protests turned and ended chaotically, with attempts to access Mombasa State House, Nakuru and Kakamega State Lodges and looting. Well-organized groups targeted and destroyed buildings associated with persons who had supported the Finance Bill 2024. Other infrastructure like roads were also damaged and or vandalized.

There was emergence of counter protests in Nairobi CBD, Kakamega and Eldoret towns. The Police did not interfere with these protests but instead allowed them to proceed.

3.2 Conduct of Police

- The protests began with the Police being suspicious of the protesters.
- The Police response ranged from providing security from a distance to active engagement using teargas, arrests, rubber and live ammunition.
- In majority of the instances, police conduct was restrained while in others, use of force led to injuries and fatalities.
- The Police attacked medical camps at Jamia Mosque and at Holy Family Basilica with teargas.
- The Service did not effectively facilitate the protests as envisaged under article 37 of the Constitution.
- The Service did not interfere with counter protests that were allegedly pro-government.
- The Police used unmarked vehicles.
- The Police deployed hooded and masked Officers who were in civilian clothes. These officers carried and deployed riot equipment and also conducted arrests.
- Some commanders had concealed badges of ranks and name tags.
- Police had a negative attitude towards the protesters and the right to protest. This was the leading cause of distrust between the Police and the demonstrators.

3.3 Destruction of Property: There was destruction of public and private property. The Police were unable to protect the properties.

3.4 Attack on Medical Facilities: During the protests in Nairobi, the Police attacked medical

camps at Jamia Mosque and at Holy Family Basilica with teargas.

3.5 Deployment of hooded and masked Police Officers: During the protests in Nairobi, the Police deployed hooded and masked Officers who were in civilian clothes. These officers carried and deployed riot equipment and also conducted arrests.

3.6 Non-interference with perceived pro-government protesters: During the protests in Nairobi, counter protests such as the one organized by boda boda riders on 23/07/2024 were not interfered with by the Service.

3.7 Injuries and Fatalities: Injuries and fatalities occurred in all areas monitored. Some injuries later became fatalities.

3.8 Arrests: Arrests were made during and after the protests. There were also cases of alleged abduction as the Police tried to unearth who was organizing and financing anti-government protests. Most of the arrests did not result to prosecution and or successful prosecution due to lack of evidence.

3.9 Tooling and equipment for the Police

- Police officers were equipped with teargas canisters, handcuffs, guns, batons, and water cannons.
- Some police officers had protective gear including, bullet proof vests, shields and helmets.
- The Police had standby vehicles for logistics and to transport arrested protesters.
- Some Police Vehicles, especially in Nairobi, had concealed names and number plates.



Figure 1: Police Vehicle with a deleted Station name to conceal identity



Figure 2: Tools deployed to police the protests

3.10 First aid to injured persons during the protests: The Service did not assist those who were injured to seek quick medical attention during the protests.

3.11 Police Welfare: It was established that:

- Not all police officers had water and food.
- Police worked for long hours.

3.12 Notification as per Section 5 of the Public Order Act 2014: It was not clear whether the protesters had served formal notices to the Service. The protesters claimed that some Station Commanders refused to receive their formal notices. The protests were widely publicized both on social media and mainstream media. The Service was therefore adequately informed of the intended protests. Best international practice would be that under this circumstance, the Police were informed and should have facilitated the protests.

3.13 Gaps identified on laws governing the conduct of protests.

- a) There were allegations of Station commanders refusing to receive protest notifications from the organizers. Lack of a formal notice was used as a justification for dispersing the protests. Section 5 (2) is silent on what protest organizers are supposed to do when the regulating officers decline to receive their notices.
- b) The Public order Act 2012 does not recognize counter protests and spontaneous protests and hence no guideline to the police on how to police them.
- c) *Ngunjiri Wambugu v Inspector General of Police, & 2 others* [2019] case law orders have not been implemented. The orders stated as follows in verbatim:
 - i. A declaration be and is HEREBY issued to the effect that the fundamental right under Article 37 of the Constitution of Kenya to assemble, to demonstrate, to picket and to present Petitions to public Authorities is conditional on the protesters or demonstrators conducting themselves peaceably and unarmed and that police officers working under the 1st Respondent are duty bound to immediately stop protesters or demonstrators if they are armed with any form of weapons including stones or any offensive weapon of whatever nature.
 - ii. A declaration be and is HEREBY issued to the effect that the Petitioner and non-demonstrators/third parties enjoy equal rights and freedoms during demonstrations since their rights and fundamental freedoms are not suspended during such times.
 - iii. An order be and is HEREBY issued directing the Respondents to formulate and/or amend the requisite law and regulations to ensure that demonstrations are peaceful and held as per the Constitution including inter alia prescriptions for demarcation of demonstration zones, responsibilities for clean-up costs, maximum numbers, consents of persons/entities adjacent to demonstration zones with appropriate penalties when they go outside the expectations of the law.
 - iv. An order be and is HEREBY issued directing the Respondents to formulate a Code of Conduct for convenors of demonstrations that includes detailed explanations of how they intend to ensure non-demonstrators are not adversely affected by such demonstrations and that provide a clear line of responsibility of who is liable in case of loss to life or property, or for injury, when a member of the public is aggrieved due to such demonstration.

3.14 Deployment of Kenya Defense Forces in Support of National Police Service: On 25th June 2024, the Finance Bill protesters overwhelmed the police before attacking and vandalising some of Kenya's Critical infrastructure in Nairobi. This included Parliament buildings, Supreme Court and City Hall. The then Cabinet Secretary for Defence (Hon. Duale) vide gazette notices

7861 and 7868 authorised the KDF to support the NPS in response to the security emergency arising from the protests in various parts of the Country. Gazette notice number 7868 deployed the KDF to all the 47 counties in Kenya where critical infrastructure is located to assist the Police to preserve life, provide internal security, protect property and maintain law and order. In line with Section 2 of the IPOA Act which defines who a police officer is, the Authority monitored policing of critical infrastructure by the KDF. Members of the KDF were observed around Parliament Buildings and the Supreme Court areas of Nairobi. They were also observed manning all the routes near and leading to the State House. On 25th June 2024 at Githurai 45, members of the public reported that KDF officers based at Kahawa Barracks fired in air to clear the Thika-Nairobi Highway which protesters had barricaded as they made their way to Nairobi to beef up security. No reports were made as to whether the shooting by the KDF resulted in any injuries. Generally, the Authority did not observe any misconduct by the KDF who were conspicuously present in all subsequent protests.

The legal backing for the KDF deployment

The first critical entry is **Article 241(3)(b) of the Constitution** (provides - The Defence Force (b) shall assist and cooperate with other authorities in situations of emergency or disaster, and report to the National Assembly whenever deployed in such circumstances). Second entry is in the Kenya Defence Force Act CAP 199 under Part III Co-operation with Other Authorities in Kenya where there has been reliance to **Sections 31 to 35 of the KDF Act** as follows in a nutshell –

- a) Section 31 – provides for Co-operation with Other Authorities and subsequently report to the National Assembly accordingly. It also provides for the CS Defence to provide the parameters – reason, place, period and expense of deployment.
- b) Section 33 – provides for the Deployment in Support of the NPS. Provides that KDF may be deployed in a joint operation and in support of the NPS and any other authority in situation of emergency or disaster. Where they are deployed as such, the IG of the NPS shall be responsible for the control and overall superintendence of the operation.
- c) Without a doubt the foregoing means that the KDF Officers assumes the definition of ‘Police’ as provided for in both IPOA and NPS Act.
- d) Section 34 – provides for Regulation of Support of Operation.
- e) Section 35 – is also very critical to provide for the Powers and Duties of Members while Being Deployed whereupon. The said powers are construed to be (shall) the same powers and exercise the same duties as those conferred or imposed upon a member of the National Police Service.

Importantly, reference is made to the current locus classicus case – Nairobi Constitutional Petition No. E307 of 2024 determined by the Honourable Justice Lawrence N. Mugambi on 27th June, 2024 in the Petition filed by the LSK as against the AG, CS Defence, KDF Council, Chief of Defence and the IG as the Respondents. The Court ruled as follows –

1. The intervention of the military in supporting National Police is necessary in view of the need to preserve order, peace, public safety and critical infrastructure as it in conformity with the Constitution and the relevant statute and was properly invoked.
2. That it is hereby directed that the terms of military engagement, duration of engagement be clearly defined and gazetted within the next two days to alleviate public fear that their constitutional liberties could be in jeopardy and also to give

public confidence that their liberties will be observed during the duration of military engagement.

3. That the Court retains residual powers of oversighting the military deployment on observance of human rights and that this file shall remain open during the course of this Petition to receive and deal with any complaints of violation for as long as the military intervention lasts.

The arising issues in the cases were in the manner of deployment, at that time there had been no notification to the National Assembly as required by law and as such there was no explanation of the circumstances warranting the deployment of the KDF. And even after deployment, the terms of reference had not been defined and hence when silent it could easily lead the country to a militarized state. The other arising issue was the clarity on what was meant by emergency and disaster to warrant deployment of the KDF. The deployment of KDF was deliberate to cause fear and intimidation of which by extension infringed on Article 37 of the Constitution.

4 CONCLUSION

Through this monitoring, the Authority observed and documented the aspects of policing of the demonstrations from tooling and equipping, welfare of the police, conduct of the police, the plight of demonstrators and compliance to various laws governing holding and policing of demonstrations.

The findings revealed that there were compliance lapses especially on the use of force by the NPS and also instances of violence by armed protesters.

Several cases of alleged police misconduct were documented by the Authority. The misconducts included fatal shooting, shooting causing serious and minor injuries, assault and abductions.

The report makes recommendations aimed at ensuring better policing of demonstrations in the Country.

5 RECOMMENDATIONS

5.1 Protection, promotion and enjoyment of Human rights in Kenya: In compliance with Article 37 of the Constitution and other laws, the IGP is advised to facilitate lawful protesters to enjoy their constitutional rights without interference. Failure to facilitate implementation of the rights under Article 37 is the leading cause of violence, deaths, injuries, destruction of property and significant resource drain in the NPS during peaceful protests.

5.2 Provision of adequate Tools and Kits: Inadequate tooling and kitting of officers leads to exposure of the said officers to risks such as injuries. The Inspector General of Police to ensure proper and adequate tooling and kitting of police officers during demonstrations.

5.3 Adherence to the law: Use of proportionate force: The IGP to ensure that police officers adhere to the Sixth Schedule of the NPS Act, 2011 and the Riot drill training for the Service pamphlet on the use of force.

5.4 Death and Serious injury notifications: The IGP to ensure that all deaths and serious injuries are reported to IPOA for independent investigations.

5.5 Clear identification of all Police Officers in demonstrations: In line with the law, the IGP to ensure that all police officers assigned to police demonstrations are clearly identifiable

including through affixing name tags for public and police safety. In protest situation, the uniform identifies police officers and validates their verbal proclamations and actions. The Riot Drill Training for the Force pamphlet to be followed strictly as it does not envision civilian attired officers policing riots including carrying weapons and arresting protesters.

For riot gear that is not personalized at the Service, the equipment can be calibrated/serialized with distinct visible numbers and a record kept for accountability purposes.

5.5 Clear identification of all Police Assets and Vehicles in demonstrations: The IGP to ensure that all police assets and vehicles are clearly labelled and identifiable for accountability, easy identification and for emergency assistance.

5.6 Avoid attacks to medical camps: During the protests, the Police fired teargas inside and or close to medical camps at Jamia Mosque and at Holy family Basilica in Nairobi. The IGP, should ensure that in future places of medical care should never be targeted by the Service by way of teargassing or use of any form of force.

5.7 Provision of first aid to the injured by the Service: The IGP to ensure that medical aid is provided to those injured during protests.

5.8 Notification to the Police on intended protests: The anti-Finance Bill protests have presented a new form of notification such as..... for intention to picket. The IGP to consider including the emerging forms of notification and mobilisation for early planning for provision of security during demonstrations.

5.9 Training of Officers on use of crowd control equipment: Two officers in Nairobi were seriously injured after a teargas canister exploded as they sought to deploy it. The unreasonable application of instruments of force including live ammunition, arbitrary arrests, teargas and water cannons revealed the need for police training on their proper use including the applicable laws for use. The IGP is subsequently called upon to ensure that Police officers are adequately trained and retrained on use of policing tools and equipment.

5.10 Honest communication/dialogue with Protesters: The IGP to establish adequate mechanisms of proactive engagement with protest organizers to reduce the tensions that are often witnessed during protests. Both parties to reach common agreements as regards the security of the assemblies. This will introduce humanness and citizen-centric policing of assemblies.

5.11 Deployment of information technology in Policing assemblies: The IGP to embrace the use of videography and body-worn cameras during protests to enhance evidence gathering to inform prosecution of persons arrested during protests.. Importantly, this will also contribute to independent police accountability.

5.12 Enhanced Welfare of the Officers: The IGP to ensure that meals, water and allowances are provided for police officers deployed to provide security during protests.

5.13 Police preparedness and planning ahead: For the Service to be able to adequately police protests and ensure safety of property as per its obligations under section 24 of NPS act 2011, there is need for the Service to plan ahead covering all aspects pertaining Policing of assemblies including offering security to protect private business.

5.14 Establishment of a Policy to supplement the Public Order Act, 2012: This monitoring exercise examined the applicable laws that guide the holding of public gathering and has found out that the actions of the Police are usually subjective and are not uniform across the Country. In order to bring objectivity in how the protests are managed by the Service, the Minister for Interior should develop a policy to inform actions by Police officers rather than leaving the Officers to decide what to do during protests. The Policy to also accommodate the

recommendations made in *Ngunjiri Wambugu v Inspector General of Police, & 2 others* [2019] case law.

5.15 Standard Operating Procedures: The NPS to put in place the Standard Operating Procedure for handling demonstrations.

5.16 Picketing Rights: Parliament to put in place guidelines on actualization of Article 37 of the Constitution with respect to how citizens can enjoy the right to picket without resulting in the loss of life or property.

5.17 Compensation of police officers: The NPS to fast-track insurance compensation to police officers who either lost lives or suffered injuries as a result of the demonstrations.

**You can lodge a
complaint against
or compliment a
police officer
direct to IPOA by
dialling 1559 toll
free***

Or by emailing: complaints@ipoa.go.ke

* Calls can be received during working hours and are free of call charges

