POLICE CONDUCT

in Public Order Management and Constitutional Policing at National and County Levels

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KENYA HUMAN RIGHTS COMMISSION

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Acronyms and abbreviations

APCOF	African Policing Civilian Oversight Forum
APS	Administration Police Service
CPC	Community Policing Committee
CS	Cabinet Secretary
DCI	Director of Criminal Investigations
IAU	Internal Affairs Unit
IGP	Inspector General of Police
IMLU	Independent Medico-Legal Unit
IPOA	Independent Oversight Authority
KFS	Kenya Forest Service
KHRC	Kenya Human Rights Commission
KNCHR	Kenya National Commission on Human Rights
KPS	Kenya Police Service
KPS	Kenya Prison Service
KWS	Kenya Wildlife Service
NCAJ	National Council on the Administration of Justice
NPS	National Police Service
NPSC	National Police Service Commission
NYS	National Youth Service
ODPP	Office of the Director of Public Prosecutions
SOPs	Standard Operating Procedures

Executive Summary

The Constitution of Kenya 2010 introduced a new era of police accountability with a requirement for a professional, competent and effective police service, and broad human rights standards that the police must promote, respect and protect. It set in motion the enactment of a series of new laws to effect the new constitutional dispensation. These include the National Police Service Act 2011, National Police Service Commission Act 2011, and the Independent Policing Oversight Act 2011. Two oversight bodies, the Internal Affairs unit (IAU) and the Independent Policing Oversight Authority (IPOA) were specifically created with a mandate of entrenching police accountability.

However, these progressive laws have not been matched by a change in police-thinking and practice. In many instances, Kenyans continue to witness police actions/inactions, impunity due to interference on the independence of the Service and disregard of the rule of law, which has led to many Kenyans shot dead by security forces and many others maimed while they are exercising rights and freedoms guaranteed under the law.

This study commissioned by the Kenya Human Rights Commission (KHRC) set out to assess the conduct of police when responding to public order management and generally discharging their constitutional duties at both the national and county level. Using a mixed methods research method, the study was guided by the following research questions as aligned to the study objectives:

a. How has the historical, legal, political and philosophical perspectives influenced the conduct and behavior of the police;
b. What are the root causes of police misconduct during public order management and when discharging their duties;
c. How has the oversight and justice mechanisms contributed to enhancing accountability of the police;
d. To what extent has the political class contributed to shaping the conduct and behavior of the police;
e. What is the role of civil society and the media in documenting, analyzing, reporting and exposing the conduct and behavior of the police;
f. What are impediments to holding the police accountable for their conduct during the discharge of their constitutional duties in the context of public order management; and
g. Assess the efficacy of legislation and policy and recommend ways of enhancing accountability.

The study came up with several key findings:

- Negative police culture, which is mainly a throwback from the colonial legacy and post-colonial one-party rule is rampant in policing and negatively impacts on police misconduct and behavior while performing public order management duties.
- That a number of legal and operational factors contribute to police misconduct as they fulfil their constitutional duties, as some legal frameworks could be widely interpreted while imprecise orders and inadequate tools may affect police behavior.
- Existing oversight and justice mechanisms fall short in providing robust accountability over police conduct in public order duties.
- The political class continue to meddle in and significantly shape or influence police behavior in dealing with public order policing, mainly concerning politically-motivated assemblies.
- Civil society and the media have, despite threats and intimidations, done a commendable job in fulfilling their mandate of maintaining social accountability over police conduct.

From these findings, the study proposes a raft of recommendations, a most pertinent one being the operationalization of critical legislations including the National Coroner's Service Act, public order policing policies and Standard Operating Procedures on the investigations and prosecution of serious human rights violations perpetrated by the police. More importantly, it also recommends a review and advisory on the roles of the existing oversight bodies such as IPOA and IAU to ascertain their capacities and gaps thereof. Other recommendations include a revision of police training curriculum to rid trainee officers of lingering negative police culture and entrench tenets of modern democratic policing approaches.

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1.0 Introduction

The concept of policing in Kenya is a product of colonialism. The Imperial British East Africa Company (I.B.E.A.) administration first introduced policing at the beginning of the Protectorate years in 1887 to protect the Company's trading interests. It would be reinforced after Kenya formally became a British Crown Colony in 1920, when it was renamed the Kenya Police Force. Either way, the Force was structured to serve the colonial interests and exclusively used to coerce and subdue the Africans, by denying them their rights and freedoms of speech, assembly and association.[1]

Successive post-independence administrations failed to align the work of the police to reflect to new environment, and routinely continued to use the police to stifle dissent, and generally perpetuate their power and elitist tendencies. The regimes of both Jomo Kenyatta and his successor Daniel arap Moi, witnessed widespread abuse of power by the Kenya Police Force.

Despite numerous efforts to reform the police in Kenya, not much success has been achieved.[2] There exist significant human rights violations including, extrajudicial killings, forced disappearances, torture and cases of arbitrary arrest and; arbitrary interference with privacy; and interference with the freedom of peaceful assembly and freedom of expression.[3]

Police reforms in Kenya date back to 2003, when the new Kibaki government initiated a sector-wide Governance, Justice and Law and Order Sector (GJLOS) Reform Programme to enhance security and justice. Howerver, the the strongest push for police reforms was a result of the tragic events of the post-election violence (PEV) in 2007–08 in which over 1,000 people were killed. The Commission of Inquiry into Post-Election Violence (CIPEV) indicted the police for committing widespread and serious human rights violations,[4] and recommended far-reaching police reforms, including the establishment of a taskforce on reforms.

The right to freedom of assembly is guaranteed by the 2010 Constitution under an elaborate Bill of Rights and further reinforced by legislation. On the other hand, the Public Order Act (Cap 56), the NPS Act 2011, Service Standing orders and Police Regulations give guidance as to how police may handle public order situations such as protests or assemblies. Responsibilities by the police and citizens during public assemblies are subject to Article 37 of the Constitution which states: "Every person has the right, peaceably and unarmed, to assemble, to demonstrate, to picket, and to present petitions to public authorities". As per Article 24, this freedom can be limited by law only to the extent that such limitation is reasonable and justifiable in an open and democratic society.

1 Mazurova, N. (2022), Law Enforcement Development in Kenya: History, Reform, and Path Forward. Washington, DC: Office of Community Oriented Policing Services.
2 KIPPRA (2021), Policing Reforms to Enhance Security in Kenya, p21.
3 Country Reports on Human Rights Practices for 2020 United States Department of State, Bureau of Democracy, Human Rights and Labor.
4 Ogada, M (2016), Deepening police reforms in Kenya post-National Accord: Policy implications.

Respect for human rights has become an essential component of policing in Kenya and the world in general and police are supposed to uphold certain accountability standards when carrying out their mandate in public order management.[5] These relate to measures regulating the use of force and equipment as provided in the Sixth Schedule of the NPS Act and Chapter 58 of the Service Standing Orders.

Yet, misconduct by police in responding to assemblies and protests remain widespread, even with all the guarantees prescribed by the Constitution and other written laws. Police response to protests following the disputed August 2017 presidential election and October 2017 repeat presidential election, left at least 214 people shot or beaten to death by the police. At the height of the COVID-19 movement restrictions in 2020-21, police came under heavy criticism for meting out violence against curfew and lockdown regulations breakers, including journalists. Similarly, in 2016, at least five people died and 60 wounded by gunfire as police tried to contain peaceful protests in Nyanza region.[6]

During mass protests called by the opposition coalition over cost of living and taxation, police responded with unusually violent manner even with Kenya's common police heavy-handedness. Amnesty International issued a statement in May detailing a trail of police violations of human rights including killings, illegal arrests, beatings, destruction of civilian property, indiscriminate and disproportionate use of tear gas and water cannons, and other serious rights violations.[7] Police response and use of violence on unarmed protestors seems to be part of a larger problem of their understanding and interpretation of their role in the management of public order and gatherings. It essentially remains a key weakness and gap in police transformation.

1.1 Objectives of the Study

The overall objective of the study is to conduct a study on the conduct of police at national and county level when responding to public order management and generally discharging their constitutional duties.

The specific objectives of the study shall include the following:

a. Establish a historical, legal, political and philosophical perspectives of the conduct and behavior of the police;
b. Identify the root causes of police conduct during public order management and when discharging their duties;
c. Establish whether oversight and justice mechanisms have contributed to enhancing accountability of the police;

5 Duncan Onyango & Petronila Otuya. Police Perceptions, Attitude and Preparedness in Managing Public Assemblies.
6 Defenders, (2016), Overview of the Human Rights Situation in the East and Horn of Africa April – October 2016
7 Human Rights Watch and Amnesty International Kenya. Kenya: End Abusive Policing of Protests. May 2023.

d. Assess the extent to which the political class has contributed to shaping the conduct and behavior of the police;
e. Determine the role of civil society and the media in documenting, analyzing, reporting and exposing the conduct and behavior of the police;
f. Identity impediments to holding the police accountable for their conduct during the discharge of their constitutional duties in the context of public order management; and
g. Assess the efficacy of legislation and policy and recommend ways of enhancing accountability.

1.2 Methodology of Study

The study combined key informant interviews and documents review methodologies of research, achieving a mixed method research, which uses both secondary and primary data sources.

For secondary data, an in-depth analysis of literature review of previous decisions in court, reports from various human rights institutions and organizations in legal areas both nationally and internationally on police reforms was undertaken. Additionally, a desk review of relevant secondary data sources including policy papers, official documents, reports, journals, magazines, newspapers, periodicals and published works was carried out.

Primary data was collected through key informant interviews with highly knowledgeable individuals selected using subjective sampling method. Among the key organizations from which the targeted informants are from include, IPOA, NPS (KPS, APS and IAU), ODPP, Judiciary, the Social Justice Centres, CSOs under the Police Reforms Working Group umbrella and a sample of the community at the County level.

Finally, triangulation was applied to enhance findings from the data collected in the two main research methods in the study, with a view to enhancing the findings.

2.0 Historical, legal, political and philosophical perspectives on the conduct of the police during public order operations.

2.1 Colonial Perspectives

The protection of the right of peaceful assembly has been a part of Kenya's constitutional order since independence in 1963. Before then, colonial legal instruments, including the 1954 Lyttleton Constitution and the 1958 Lennox-Boyd Constitution, were primarily concerned with administration of the Kenyan colony, and not the fundamental rights and freedoms of the public.[8] In fact, the administrative and legal structures of the time were designed to repress the natives.[9] The entrenchment of the Bill of Rights in the Constitution of Kenya, 1963 (henceforth, the 1963 Constitution) was therefore one of the significant differences between the pre-independence and the post-independence legal instruments.

2.2 Post-independent perspective

Section 24 of the repealed 1963 Constitution guaranteed the right of peaceful assembly. The provision read as follows: 'Except with his own consent, no person shall be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to trade unions or other association for the protection of his interests.' These freedoms could be restricted on the grounds of defence of the republic, public safety, public order, public morality, public health or the protection of the rights of others.[10] In addition, restrictions could be imposed on public officers.[11] Of note is that the limitation clause provided that any law that restricted the exercise of the right of peaceful assembly and of association on the grounds stipulated could not be considered to be inconsistent with the Constitution. At the time of the promulgation of the 1963 Constitution, the Penal Code[12] and the Public Order Act[13] were already in place and were used to regulate assemblies, as is still the case today.

In spite of the entrenchment of the right of peaceful assembly in the 1963 Constitution, the political environment in Kenya shortly after independence did not encourage the actual exercise of the right. Constitutional limitations on the exercise of powers by the Executive

8 Makau Mutua, 'Justice under Siege: The Rule of Law and Judicial Subservience in Kenya' (2001)23, Human Rights Quarterly 96, p. 97.
9 n. 1.
10 Constitution of the Republic of Kenya, 1963, s. 24(2) (a) & (b).
11 n. 3, s. 24(2) (c).
12 Penal Code, Cap. 63, 1930 (Revised 2014) Laws of Kenya.
13 Public Order Act, Cap. 56, 1950 (Revised 2018) Laws of Kenya.

were gradually dismantled through various amendments of the Constitution.[14] For example, in 1966 significant amendments touched on the independence of the then Kenya Police Force, and which had an impact on how the police reacted especially to the political activities of opposition parties and civil society groups.[15] Previously, the 1963 Constitution had provisions that secured the independence of the police by establishing a Police Service Commission, whose membership included the chairperson of the Public Service Commission.[16] It also provided for the appointment of an Inspector-General of Police who was to be appointed by the Governor-General '…acting in accordance with the advice of the Police Service Commission.'[17] The Constitution also had detailed provisions on the process of removal of the Inspector-General from office.[18] Through the 1966 amendment, the Police Service Commission was abolished. Further, in place of the Inspector-General of Police, there was a Commissioner of Police who was appointed by the President, without reference to either Parliament or any other organ. Moreover, the Commissioner of Police did not have security of tenure. Consequently, the Police Force was a highly politicized institution and was frequently used to suppress dissent against the regime in power.[19]

In addition to amendments to the Constitution, other statutes were also being amended to serve the interests of those in power. For example, in 1968, an amendment was made to the Public Order Act prohibiting persons participating in public meetings or processions from displaying or wearing any '…flag, banner, badge or other emblem signifying association with or support for the promotion of a political object….'[20] The provision (section 10 of the Public Order Act) remained in force until 1997 when it was repealed.[21] Further, section 5 of the Public Order Act, which regulates public meetings and 'processions', was introduced.[22]

Taking into consideration the politicisation of the Police Force, the broad powers of the Executive and the extensive limits to the exercise of the right of peaceful assembly, the actual enjoyment of the right faced significant challenges, especially in the context of assemblies that pursued political causes. During such assemblies, participants were often subjected to violence by State security agencies.[23] In an environment where there was little room for dissent, most of the incidents of violence perpetrated by the police against assembly participants were generally ignored by the authorities.

14 HWO Okoth-Ogendo, 'The Politics of Constitutional Change in Kenya since Independence, 1963-69' Journal of African Affairs, Vol. 71, No. 282 (Jan. 1972), pp. 20-9.
15 n. 7, p. 20.
16 Constitution of Kenya, 1963, s. 161.
17 Constitution of Kenya, 1963, s. 162.
18 Constitution of Kenya, 1963, s. 162(4)-(7).
19 Constitution of Kenya Review Commission, 'The Final Report of the Constitution of Kenya Review Commission' (2005), p. 30.
20 The Public Order (Amendment) Act, No. 12 of 1968, clause 2.
21 The Statute Law (Repeals and Miscellaneous Amendments) Act, No. 10 of 1997.
22 n. 14.
23 For example, in 1991, protests held on 7 July by opposition and civil society groups (popularly known as the *Saba Saba* protests) were violently suppressed by police officers, leading to the deaths of at least 14 pro-democracy protesters. See US Department of State, 'Kenya Report on Human Rights Practices for 199' 30 January 1998. Available at https://1997-2001.state.gov/global/human_rights/1997_hrp_report/kenya.html. And in 1997 the National Convention Executive Council (NCEC), an umbrella organization of religious groups, civil society groups and, and opposition politicians, organised a protest to call for electoral reforms. The planned protest was prohibited, but the organizers went ahead to hold it. The police responded with brutal force, killing at least 13 protesters and wounding several others. About 500 people were also arrested. See, Human Rights Watch, 'Human Rights Watch World Report 1998 – Kenya' 1 January 1998, available at https://www.refworld.org/docid/3ae6a8b124.html.

2.3 Reforming policing

It was not until the violence that marked the disputed presidential elections of 2007 that the urgent need to initiate concrete legal and institutional reforms was appreciated. In 2009 the National Taskforce on Police Reforms was established.[24] One of its functions was to analyse the operational policies and the legal framework governing the work of the police and recommend reforms that would enhance accountability of the police to the public.[25] One result of the reform process was the establishment of the National Police Service (NPS) and the National Police Service Commission (NPSC) under the 2010 Constitution.

The NPS is led by an Inspector-General (IG-NPS) who according to Article 245 of the CoK is appointed by the President with approval of parliament. This was a significant change since the Constitution reintroduced the security of tenure of the IG-NPS and limited the powers of the President in relation to his/her appointment, thereby granting the IG-NPS a degree of independence from influence by the Executive. Notably, the institution of the police in Kenya was no longer a 'force' but a 'service'. The change of name was meant to change police and public perception about the work of the police and to reinforce the idea that the police existed to serve and not to subdue the public. Whether or not the shift from 'police force' to 'police service' actually led to changes in police attitudes is a subject of continued debate.

In spite of these developments, the actual exercise of the right of peaceful assembly has often faced significant obstacles. In particular, the use of excessive force has been a common feature in assemblies. Many times, such use of force has led to violations of human rights and fundamental freedoms, particularly the right to life and the right to freedom of assemble and security of the person. Respondents in the survey asserted that the philosophy of the police service still contains colonial hangover and orientation to oppress and harass innocent civilians. The next session explains what the incidents of police misconduct, particularly excessive use of force, in the context of public order operations can be attributed to.

24 Kenya Gazette Notice No. 4790 of 8 May 2009.
25 Report of the National Task Force on Police Reforms (2009), p. 3.

3.0 Causes of police misconduct during public order operations

There are a number of factors that influence the conduct of the police during public order operations. This section discusses them in two themes, namely legal and operational factors.

3.1 Legal factors

How the law frames the powers of the police in the context of assemblies and how it defines the scope of the right of peaceful assembly has an impact on police response to assemblies. In this regard, the Public Order Act, the Penal Code and the NPS Act grants the police powers to take certain measures when regulating assemblies. For instance, section 8 of the Public Order Act empowers the police to stop or prevent the holding of an assembly for various reasons, including the failure by organizers to issue a notice in accordance with section 5(2) of the Act, and the presence of a clear and imminent danger of a breach of the peace or public order. Further, the police may prohibit the holding of an assembly if the venue, date and time of the assembly clashes with that of another for which notice had already been issued.

According to the UN Human Rights Committee, the power to stop or prohibit an assembly is an exceptional measure that should only be used as a last resort.[26] The 2010 Constitution also requires authorities to consider the purpose of a restriction and to use the least intrusive means to achieve the intended legitimate purpose.[27] In practice, these powers are often abused, with the reason for stopping or preventing the holding of an assembly rarely meeting the threshold for prohibition under international law. The explanation for this could be the broad grounds upon which the decision to stop or prohibit an assembly can be based. Take, for example, the presence of a clear and imminent danger of a breach of the peace or public order. Without a clear definition of what amounts to a breach of the peace, disruptive conduct that is protected under international law may be interpreted as non-peaceful and may therefore warrant the stopping of an assembly. Under international law, even where there is a likelihood that an assembly will attract a violent reaction from the public, it may not be prohibited only on this ground.[28] Instead, the State has an obligation to take adequate measures to facilitate the assembly and protect its participants. The Public Order Act, on the other hand, is not as restrictive of the power to prohibit.

The Public Order Act also grants the police the power to disperse an assembly if the organizers failed to notify them about their assembly or if notice was issued but the participants engage in conduct likely to cause a breach of the

26 UN Human Rights Committee, 'General Comment 37: Article 21 (The Right of Peaceful Assembly)' 2020, CCPR/C/GC/37, para. 37.
27 Constitution of Kenya, Article 24(1) (e).
28 General Comment 37, para. 27.

peace.[29] The Act does not provide for an individualised assessment of the conduct of assembly participants. It may be the case that only a section of participants is violent. Yet the broad discretionary powers of the police to disperse means that the unlawful actions of a few may be attributed to an entire assembly. In addition, the determination of the nature of conduct that constitutes a breach of the peace or a threat to public order is dependent on the perceptions of the police. Again, it is not possible to tell how the police perceive disruptive conduct. Noting the conduct of the police during various public order operations in the past, it appears any level of disruption may prompt the police to classify an assembly as a riot, and therefore disperse it.

The provisions of the Public Order Act, particularly the procedural requirements and the broad discretionary powers granted to the police have had a significant influence on how they respond to assemblies. The Act has a strong focus on the preservation of public order, which in many cases is narrowly interpreted by the police. Consequently, the potential for interferences with assembly participants in circumstances not permitted by international human rights standards is great. In a report on protests in Kenya, an international non-governmental organization monitored 152 protests held between January 2018 and July 2019 and established that in 20% of the protests, there had been unwarranted interferences, including the excessive use of force.[30] It is true that in some cases assembly participants may engage in violent conduct, thereby necessitating interventions by the police. However, assemblies that start off as peaceful may turn violent due to the manner in which the participants are handled by the police.

The primary legislation that governs the use of force by the police is the National Police Service Act, augmented by the National Police Service Standing Orders (SSO).[31] The Public Order Act and the Penal Code also permit the use of force in certain circumstances. Though not a statute, the Standing Orders guide the work of the police, and the NPS Act requires the police to abide by the provisions of the law and the Standing Orders.[32] The NPS SOPs have specific guidance on various aspects of policing, including on the use of force and firearms, and on public order management. To a great extent, they reflect the standards in the NPS Act, only that certain other provisions may have implications on how the police exercise the discretion to use force.

In relation to public order management, paragraph 1 of chapter 58 of the SSO requires the police to ensure the protection of the right of peaceful assembly. Where there is serious disorder or riots, the police are to refer to their operational manuals on how to respond to such situations.[33] These manuals are however not publicly accessible.

29 Public Order Act, s. 5(8).
30 Article 19, 'Right to Protest in Kenya' September 2019, p. 4. Available at https://www.article19.org/wp-content/uploads/2019/11/Kenya-Free-to-Protest-Article-19.pdf.
31 It should be noted, though, that there are other key laws that regulate the use of force by law enforcement officials in various contexts. For example, the Prisons Act, the Wildlife Conservation Act and the Kenya Forests Conservation Act, all have provisions on the use of lethal force. However, since these Acts are not relevant in the context of peaceful assemblies, they are not discussed.
32 National Police Service Act, Sixth Schedule, Part A, para. 10.
33 National Police Service Standing Orders (n. 264 above), chapter 58, para. 2.

Section 14 of the Public Order Act provides that whenever force for any purpose under the Act, '…the degree of force which may be so used shall not be greater than is reasonably necessary for that purpose….' Thus, irrespective of the character of an assembly, any use of force must comply with the principles of necessity and proportionality.

Provisions under the Penal Code on the management of riots also have implications on the use of force. Where an assembly is classified as a riot and a proclamation to disperse has been issued, the police may use force to disperse any person who does not comply with their orders. Section 82 of the Penal Code provides that a police officer may do all things necessary do disperse such persons, and if force is used resulting into death or serious injury, an officer may not be held liable in civil and criminal proceedings. The effect of this provision is to give the police broad powers to use force against persons they perceive as disobedient, and to exclude liability for any deaths or injuries that occur as a result of the use of force in such circumstances. Further, by stating that the police may use 'all such force as is reasonably necessary', the Penal Code does not specifically exclude the use of lethal force to disperse a riot. It is true that it adds the qualifier that the force used must be reasonable and necessary. However, this does not provide an adequate shield against the use of lethal force to disperse an assembly. This is because what is considered reasonable depends on the circumstances of a case, and therefore leaves the police with a wide discretion to determine what level of force to use.

Overall, the shortcomings in the law highlighted above have an impact on how the police respond to assemblies. Importantly, it should be noted that in the 2022 decision in the case of *Katiba Institute and AFRICOG v. Attorney General and others*,[34] the High Court of Kenya found the 2014 amendments to the NPS Act which broadened the circumstances under which firearms may be used to be unconstitutional. This decision marked an important shift towards domestic compliance with international standards. Nevertheless, the NPS Act is yet to be amended and is still being relied on as is by the police.

> "There is a clear way on how public order is managed in Kenya right from the constitution, penal code, public order act, NPS act, SSO, among others. While applying the above, commanders' appreciation also plays an important part on how different situations are handled."
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> Police Informant.

34 Katiba Institute & AFRICOG v. Attorney-general & others, High Court Nairobi Petition No. 379 of 2017 (unreported, as of writing).

3.2 Operational factors

Aside from the law, there are several operational factors that also influence how the police manage public order operations. To begin with, in relation to training on public order management, it has been pointed out by various oversight institutions that the training is neither adequate nor regular. While the NPS organizes in-service refresher courses, some police officers do not benefit from such courses yet they are still involved in the policing of assemblies. One respondent indicated that incorporating other ancillary agencies like the Kenya Prison Service, Kenya Wildlife Service, Kenya Forest Service and the National Youth Service to manage assemblies without conducting adequate joint trainings in public order management has also poised a great challenge in managing assemblies. creates barriers in understanding of each other's roles and responsibilities. "Pooling officers from other units without proper training and having better understanding of these individuals, is a great challenge especially to the commanders who have to give instructions to people they do not know…," a senior police informant. NPS also recognized the gap in training, and in October 2021, it announced plans to conduct comprehensive training for police officers on the use of less-lethal weapons in public order operations.

Another operational challenge is the absence of mechanisms to facilitate communication and dialogue between assembly organizers and law enforcement authorities before an assembly. The Public Order Act only requires organizers to notify the police about an upcoming assembly, and eaves it to the police and organizers to decide whether or not to engage beyond the issuance of a notice. This is unlike, for instance, the South African Regulation of Gatherings Act, which provides for consultations and negotiations between law enforcement officials, local authorities and conveners where necessary.[35] This is particularly important where large gatherings are anticipated. The fact that in Kenya there is no framework for structured engagement between organizers and law enforcement officials denies the organizers and the police an opportunity to address any issues that may have a bearing on how an assembly will be managed and any interventions that may need to be put in place after being agreed upon by the parties. Proactive engagement of organizers does not only aid in facilitation of the assembly but it also helps reduce tension between law enforcement officials and the participants and organizers, thereby reducing the likelihood of police resorting to the use of force. `

The manner and extent to which police are equipped to manage pubic order also has a bearing on their use of force during such operations. From the observations and monitoring reports of IPOA and reports from the media, law enforcement officials involved in policing assemblies are usually equipped with batons, teargas canisters, firearms, riot guns and water cannons. A police informant stated that public order management resources are not evenly distributed among the different units within the

35 Regulation of Gatherings Act, Act No. 205 of 1993, section 4.

NPS. "You find that the general duty officers are much neglected in terms of resources despite being the first responders before formed up units are called in for reinforcement, come in." Sometimes officers have adequate protective gear, though in most cases they do not. This can increase the potential for resort to the use of force and firearms.

Yet another challenge is poor command and control of operations and inadequate or a complete lack of pre-deployment briefings. In some cases, officers are deployed without prior briefing, and this may include officers who have not been adequately trained on public order management. In effect, this enhances the possibility of officers reacting inappropriately or unlawfully to incidents that may occur during an assembly.

> "The Police use live bullets against the protestors instead of rubber bullets. This leads to loss of lives plus injuries and maiming of protestors. There is also no clear documentation of firearms issued to officers hence in case of anything it becomes difficult to know who fired. Also, to note that in almost all cases when the arms are returned, it is indicated that they have been returned in good order, even where the police have fired,"
>
> IPOA Informant

4.0 Effectiveness of police oversight mechanisms and their contribution to enhancing police accountability

Kenyan law provides for both internal and external police oversight mechanisms. This section starts by setting out what the mechanisms are, and assesses their effectiveness in addressing violations committed in the context of public order operations.

4.1 Internal mechanisms

Section 87 of the NPS Act establishes the Internal Affairs Unit whose function is to receive and investigate complaints against the police and to promote discipline within the NPS. It is headed by a director who is appointed by the IGP of the NPS. All the members of staff of the Unit are police officers who are selected based on their experience, competence and integrity.[36] Since the Unit is part of the NPS, its ability to conduct independent and impartial investigations may be questioned. However, the NPS Act attempts to secure its independence by providing that in the performance of its duties, the Unit shall not be subject to the command or control of the Kenya Police Service, the Administration Police Service and the Directorate of Criminal Investigations.[37]

The NPS Act does not limit the nature of cases that may be handled by the Internal Affairs Unit. Consequently, in some cases, the Unit has been involved in investigations of deaths and serious injuries resulting from police action. For example, the Unit investigated the fatal shooting of a university student leader during a demonstration in 2018.[38] Like IPOA, it also recommended murder charges against the police officer who shot the student. A challenge may arise if the two institutions conduct investigations and arrive at different outcomes. If, for instance, IPOA recommends prosecution while the IAU does not find culpability on the part of an officer, an accused police officer could rely on the Unit's investigation report as exculpatory evidence should the officer be charged by the Office of the Director of Public Prosecutions. The competing mandates has on some occasions seen IPOA demand that the Internal Affairs Unit stop conducting investigations in certain serious cases.[39]

36 Internal Affairs Unit, Operational Manual (2018), p. 6. Available at https://www.iau.go.ke/wp-content/uploads/2019/07/IAU-OPS-MANUAL-.pdf.
37 NPS Act, s. 87(11).
38 IAU, Annual Report-2018, pp. 9-10. Available at https://www.iau.go.ke/wp-content/uploads/2019/07/IAU-ANNUAL-REPORT-2018.pdf.
39 See, G Osen, 'IPOA demands IAU to stop probing disbanded SSU team' The Star Newspaper, 24 October 2022. Available at https://www.the-star.co.ke/news/2022-10-24-ipoa-demands-iau-to-stop-probing-disbanded-ssu-team/.

As a matter of practice, the IAU does not ordinarily monitor public order operations, but may investigate complaints arising therefrom. However, other than the 2018 annual report of the Unit that highlights one case of a fatal shooting during an assembly, the other annual reports available online do not have information on investigations or complaints arising from violations committed during assemblies. It is therefore not possible to tell how much of a contribution the Unit has made in enhancing accountability for violations resulting from the unlawful use of force by the police during assemblies.

Aside from the IAU, the command structure within the NPS also serves as an internal oversight mechanism, with superior officers expected to exercise effective command and control of their subordinates and to ensure that action (administrative, criminal or both) is taken in the event that an officer has engaged in misconduct.

4.2 External mechanisms

External accountability mechanisms include State institutions officially established by law and other unofficial civilian oversight mechanisms such as the media and civil society organizations. The primary external police oversight mechanism in Kenya is the Independent Policing Oversight Authority (IPOA). Under the IPOA Act the objectives of IPOA include to 'hold the police accountable to the public in the performance of their functions' and to give effect to Article 244 of the Constitution which requires, among others, transparency and accountability of the NPS.[40]

Although IPOA is legally independent and is equipped with relevant legal powers required to facilitate their work, operationally it relies on the support and cooperation of the NPS. This is both in relation to forensic support in investigations (and access to crucial evidence in possession of the NPS. A lot of reliance is particularly placed on the DCI, which also conducts investigations into other serious crimes committed by civilians. As such, IPOA's investigations may not be given priority and there may be long delays in the investigations as a result. In 2017, the then President Uhuru Kenyatta assented into law the National Coroner's Service Act, mandated to investigate all deaths arising in police, military and other lawful custody. Under Section 29 of the Act, the coroner for purposes of investigations is given powers to collect forensic and other evidence and to preserve it as may be necessary. In the case of reportable deaths in police custody, the coroner-general and will hand over a report of findings to IPOA for action. The Act transferred the investigation of unnatural and violent deaths, including those in police custody and prison, from the police to the coroner-general. To date, this Act has not been fully operationalised and one key informant said: "due to lack of political will."

IPOA regularly monitors public order operations and investigates cases of use of force. While its performance reports contain data on the nature of complaints received and number of cases involving deaths or serious injuries, the

40 IPOA Act, s. 5.

reports do not indicate in what context the serious injuries or deaths occurred. As such, one cannot tell how many of the cases investigated arose from violations during an assembly. Nevertheless, IPOA occasionally shares press statements about investigations it has initiated into various cases, including fatal shootings during assemblies.[41] However, this happens mostly when an incident is widely covered by the media. Information on convictions can also be obtained from IPOA's website. As of November 2023, IPOA had not reported any conviction of a police officer for a death or serious injuries caused during an assembly. However, there are several prosecutions that were pending.

Another relevant external oversight institution is the Kenya National Commission on Human Rights (KNCHR), which has the mandate to investigate human rights violations committed in any context, including during assemblies. Where necessary, it pursues redress for victims of violations through civil processes and may watch brief for victims in criminal cases. In this sense, its role complements that of IPOA. There are also other external mechanisms that have a limited role to play in addressing violations committed by the police during assemblies. For instance, the NPSC exercises disciplinary control over members of the NPS and may remove them from the service if necessary.[42] Though the NPSC Act provides that it may investigate cases and summon witnesses during investigations, the cases in question would ordinarily not involve investigations into deaths or serious injuries attributable to the police. Should it receive such complaints, it has an obligation to refer them to IPOA, the ODPP or KNCHR.[43]

By virtue of its broad oversight role, the Parliament of Kenya may also contribute to enhancing accountability of security actors through parliamentary debates, directing questions to the top leadership of the NPS or the Cabinet Secretary (CS) in charge of the police, and in some cases conducting their own inquiries.[44] Parliament has in the past held sessions discussing issues concerning excessive use of force by the police during demonstrations and lack of accountability for the violations.[45]

In cases where violations are widespread and prevalent, the President may establish a commission of inquiry if it is in the public interest to do so.[46] For example, in 2008, the Commission of Inquiry into the Post-Election Violence was established to address, among other issues, the question of human rights violations committed by the police in the context of the 2007 general elections and their accountability for the violations. Most of the reforms initiated within the Police Service after the year 2008 were the result of the recommendations of the Commission. It should be noted that the establishment

41 For a list of some of the press releases, see https://ipoa.news/gallery-2/.
42 Article 246(3), Constitution of Kenya.
43 NPSC Act, s. 10(1) (o).
44 For instance, the Parliamentary Standing Committee on Justice, Legal Affairs and Human Rights conducted an inquiry into extrajudicial killings and enforced disappearances in Kenya. It shared its report in October 2021. See 12th Parliament (Senate), Standing Committee on Justice, Legal Affairs and Human Rights, Report on the Inquiry into Extrajudicial Killings and Enforced Disappearances in Kenya, October 2021. Available at http://parliament.go.ke/sites/default/files/2021-11/Report%20on%20Inquiry%20into%20Extrajudicial%20Killings%20and%20Enforced%20Disappearance%20in%20Kenya_.pdf.
45 Parliament of Kenya, The Senate, the Hansard, 30 November 2017, pp.13-30. Available at http://www.parliament.go.ke/sites/default/files/2017-05/Thursday_30th_November_2017.pdf.
46 Commissions of Inquiry Act, Cap 102, Laws of Kenya, s. 3.

of a commission of inquiry is purely at the discretion of the President.

Non state oversight mechanisms such as civil society organizations, the media, and professional bodies such as the Law Society of Kenya and the general public do not bear the legal obligation of ensuring police accountability. However, by highlighting incidents of police violations and calling on the State to act, such informal mechanisms can also enhance accountability for violations.

4.3 Barriers to the effectiveness of the internal and external police accountability mechanisms

The ability of the above mechanisms to ensure accountability for excessive use of force by the police during assemblies has been impeded by legal, structural and socio-political barriers, as is now discussed.

As stated before, when reviewing police action, the standard against which the action is measured is the one set out in law. As stated above, the Penal Code, the Public Order Act and the NPS Act permit the police to use force and firearms in circumstances that are not permitted under international law. Where permissive provisions exist, the threshold for accountability may also be lowered if police oversight mechanisms rely on the domestic standards to judge the lawfulness of the use of force or firearms. For example, in April 2019 police officers shot and injured two people who were allegedly trafficking drugs. Investigations into the case were initiated by IPOA and it was established that the police had received prior information that the two alleged traffickers would use a certain route and had planned to arrest them. When the suspects, who were on a motorbike, spotted the police, they sped past them. The police shot at them, wounding one on his back and the other on the leg. They were later charged with drug trafficking and one was found guilty while the other's case was still pending at the time of writing.

According to IPOA, their investigations revealed that the 'police officers were justified to shoot with an aim of immobilizing the escaping suspects who were transporting narcotic drugs.'[47] The circumstances of the case, as narrated by IPOA did not, in fact, warrant the use of firearms. However, since IPOA may have relied on the permissive provisions in the NPS Act which allow the use of firearms in circumstances that are not permitted under international law, it concluded that the use of firearms was justified. Although this case did not concern the use of firearms in an assembly, it is possible that IPOA may hold similar views in cases where excessive force is used against assembly participants who engage in violent conduct such as destruction of property.

A structural challenge that faces the oversight mechanisms is the difficulty of investigating violations committed during assemblies, especially if the assembly was large. In most cases, vic-

47 IPOA, 'Police were Justified to Use Firearms,' Press Release, 30 May 2022. Available at https://ipoa.news/wp-content/uploads/2022/05/261.-police-were-justified-to-use-firearms-investigations-reveal-30.05.2022-2.pdf.

tims are not usually able to identify the specific officers who assaulted them or other participants. Apart from the fact that the chaotic circumstances of an assembly may make it difficult for positive identification, police officers involved in assemblies are sometimes clad in riot gear that have no identification tags. Even if an identification parade were to be conducted during investigations, it would still be difficult for a victim to accurately identify a police officer if their entire face could not be seen. This is a challenge that IPOA can surmount with the help and cooperation of the NPS, which is rare.

Should the failure to identify perpetrators make it impossible to institute a criminal prosecution, steps can still be taken to pursue redress through a civil case. Since IPOA does not pursue civil remedies on behalf of victims of police violence, the KNCHR, which is mandated to take steps to secure redress for victims, can file such cases and seek reliefs against the State. Provided that it can be proved that the perpetrators were police officers, the State can still be held vicariously liable. This role can be, and has been, played by civil society organizations and human rights defenders.

Another challenge has been the habitual failure by the NPS to share with IPOA operational orders and other critical pieces of evidence to facilitate investigations into violations committed during assemblies.

Technical and operational capacities too, may present another barrier in external accountability mechanisms. As stated earlier, IPOA mostly relies on the DCI and the Government Chemist to assist in conducting forensic analysis of evidence. Questions may be raised about the independence and credibility of such investigations. Further, there may be delays in getting feedback from the DCI. With only a few investigators across its eight offices, investigations can either take an unreasonably long time or not take place at all. A frequent complaint from members of the public has seen delays in investigations. In some cases, victims and their witnesses give up on pursuing justice.

Furthermore, another challenge arises from the failure by complainants to cooperate with investigators. Understandably, victims and witnesses may shy away from court processes since such processes may expose them to the risk of reprisals by the accused officers or their colleagues. IPOA informant noted that IPOA faces non-cooperation from victims and families of victims. Although the Witness Protection Agency can facilitate protection of witnesses at risk, it cannot do so in all cases due to resource constraints. Further, an informant noted that where a victim was a participant in an assembly that was declared illegal, reporting violations committed against them would be tantamount to inviting the police to arrest them. As a result, many victims choose not to seek redress.

In terms of access to the accountability mechanisms by the public, the IAU, IPOA and KNCHR do not have physical presence across the country. While all three have online platforms through which the public can lodge complaints, such platforms are not necessarily accessible to all. From the annual reports of the institutions, it is evident that the majority of members of the public prefer reporting their complaints

physically.[48] Noting that the NPS routinely fails to comply with their obligation to notify IPOA about cases of deaths or serious injuries, it is possible that victims who do not have the means to travel to lodge their complaints may not have them addressed at all.

The lack of dedicated data on deaths and injuries in the context of assemblies has also made it difficult to determine the magnitude of the problem and design interventions that can adequately address the gaps in accountability. In the absence of comprehensive official data on deaths and injuries during assemblies, the reported cases may be viewed only as isolated incidents rather than a systemic problem with police response to assemblies.

The key police accountability mechanisms all prepare monitoring and investigation reports and share recommendations with the NPS. It is not clear whether these institutions have in place a system of following up with the police on implementation of recommendations that they have accepted. For instance, the IPOA Act requires IPOA to make public responses to recommendations it makes to the relevant authorities after investigations.[49] From its published press releases, IPOA mostly updates the public on decisions to charge made by the ODPP and convictions of police officers. Their annual and bi-annual reports also contain information on implementation of recommendations following inspections of police premises,[50] but no information on responses or status of implementation of recommendations resulting from its investigations. Without evidence that the recommendations from oversight agencies actually trigger positive change, it is possible that the cycle of violence against the public during public order operations will continue.

The social and political environment in which the police operate also has an impact on whether or not they are held accountable for violations. Police in Kenya generally perceive assembly participants as disruptors and troublemakers, and in some cases, they are also branded as thugs or criminals.[51] These tags can be believed by sections of the public who may then support police violence against assembly participants.[52] When such hostile attitudes are adopted by top government officials and political leaders, the likelihood of any violation committed in such contexts being addressed is reduced. For example, when protests erupted in 2017 after the release of the results of the presidential elections, more than 80 people were fatally shot or suffered fatal injuries after being beaten with batons.[53] When journalists

48 For instance, in the Internal Affairs Unit annual report for the year 2021, 85% of complainants lodged their complaints by physically visiting the offices.

49 IPOA Act, s. 6(a).

50 See, for instance, IPOA Performance Report-July-December 2021, p. 22.5.

51 M. Ruteere and P. Mutahi, 'Policing Protests in Kenya' (CHRIPS, 2019), p. 29. Available at https://www.chrips.or.ke/wp-content/uploads/2019/08/CHRIPS-Policing-Protests-in-Kenya-full-book.pdf.

52 For instance, in 2017, the then leading opposition coalition planned to hold protests demanding the resignation of the Chief Executive Officer of the Independent Electoral and Boundaries Commission. A group of people claiming to be businessmen whose businesses had been disrupted by protests by opposition supporters emerged vowing to counter the protests and protect their interests. Some of the members of the group were captured on video armed with clubs. Possibly, their counter-protests were intended to be violent. See Josphat Thiong'o, 'Businessmen vow to 'protect' their businesses ahead of planed NASA protests,' The Standard Newspaper, 25 September 2017. Available at https://www.standardmedia.co.ke/article/2001255611/businessmen-vow-to-protect-their-businesses-ahead-of-planed-nasa-protests?fb_comment_id=1443678902348704_1443996238983637. Also see, NTV, 'Nairobi Business Community members emerge to counter protests' NTV-Kenya YouTube Channel. Available at https://www.youtube.com/watch?v=c-mVcurm-0M.

53 See KNCHR, 'Mirage at Dusk: A Human Rights Account of the 2017 General Election' (2017). Available at http://www.knchr.org/Portals/0/CivilAndPoliticalReports/MIRAGE%20AT%20DUSK%20-%20A%20Human%20Rights%20Account%20of%20The%202017%20General%20Election.pdf.pdf?ver=2017-10-09-130024-457.

asked the then CS in charge of internal security about the deaths, he responded that he was not aware of any peaceful demonstrator who had been killed and appeared to imply that those who were killed were violent criminals.[54] As of the time he was addressing the press, there were media reports of at least 12 people having been killed. The Inspector General of the NPS stood alongside the CS during the press briefing. It was therefore not surprising that the majority of the cases of deaths and serious injuries were not redressed.

Another barrier to accountability is the fact that while police reforms have led to the establishment of important accountability institutions, police attitudes and culture has not reformed as fast as the law. Police officers still view demands for accountability for human rights violations as interference with their work. For instance, in December 2022 the IGP of the NPS publicly advised the police to use their arms effectively to deal with criminals.[55] He encouraged the police not to fear institutions like IPOA, which he referred to as 'busybodies'.[56] With such attitudes still existing within the top leadership of the NPS, much remains to be done.

KII Quotes:

> "Police are firstly very combative. The police whenever there is an assembly, they are seen to usually come ready for combat,"
>
> Kisumu Informant

> "It is important to note that where police seek to bring situations under control, they quickly result to the use of violence,"
>
> Isiolo CPC Member

> "Equally, it has been observed that the force used is not usually proportionate,"
>
> IPOA Informant

> "The police Aggressive, ready to use lethal force unprovoked, ready to declare unlawful in total disregard of the rule of law,"
>
> Nairobi CBO member

54 Al Jazeera News, 'At least 37 people were killed in election violence' 9 October 2017, Available at https://www.aljazeera.com/news/2017/10/9/at-least-37-people-were-killed-in-election-violence.

55 B Makong, 'Koome Tells Off 'Busybodies' In IPOA, Asks Police to Use Arms Effectively' Capital News, 16 December 2022. Available at https://www.capitalfm.co.ke/news/2022/12/koome-tells-off-busybodies-in-ipoa-asks-police-to-use-arms-effectively/.

56 n. 184.

5.0 Extent to which the political class has contributed to shaping the conduct and behavior of the police

5.1 A Colonial legacy

Policing in Kenya is a concept of the colonial administration starting in the late 19th century. Prior to the arrival of the British, different communities within the geographic region that would later become the Kenya Protectorate, used varied cultural methods in maintaining law and order within their societies.[57] The current policing structure in Kenya can be traced back to 1887 when Sir William McKinnon of the Imperial British East Africa (IBEA) formed a security company to provide protection for his stores along the coastline of Kenya (Kenya Police, 2003).[58]

In 1906, the Kenya Police Force was officially established through a Police Ordnance[59]. Through both the British Protectorate and Kenya Colony eras, the colonial police force was used to enforce draconian laws introduced by the administration and ensure the settlers were safe from the perceived threats from the "*natives*". It was around this time that the Administration Police was also established[60], hence forming the genesis of the two-tiered policing system that Kenyans came to identify with for decades.

The colonial police force aggressively pursued offenders, and the colonial administration even condoned tactics such as hostage taking of family members, confiscation of property, and corporal punishment—tactics which explain the public distrust, even hatred, for the provincial administration and police. Indeed, it was during this time that the culture of influence on police conduct and behaviors originated.[61] Many white settlers, especially those with vast land holdings, positioned themselves above the law.

The settlers were influential, armed, and had strong connections with senior level police officials. Lawbreaking went largely underreported and transgressions were often resolved through private negotiations.[62] At the height of the Mau Mau war of independence, the police became a major tool of the colonial administration efforts to put down the so-called rebellion, including the Tribal Police and thousands of the pseudo-police known as the home guards unit.

Non-violent protests were not unheard before independence. A major nonviolent rural cam-

57 Mazurova, N. (2022). Law Enforcement Development in Kenya: History, Reform and Path Forward, p1.
58 Kenya Police, 2003
59 Waller, R. (2010). Towards a contextualising of policing in colonial Kenya. Journal of Eastern African Studies 4(3).
60 Kivoi, D (2020). Policing Reforms to Enhance Security in Kenya. KIPPRA. p1.
61 Muzurov, N. (2022). Op.cit.
62 Waller, R. (2010). Op.cit.

paign involving a mass march on Nairobi was staged in 1938 by the Kamba against colonial soil erosion policies, which required drastic enforced destocking. The ring leaders were arrested.[63] There were also frequent strikes, including the 1947 Mombasa dock strike and general strikes in Mombasa and Nairobi, and there was a debate about 'positive action' versus violent resistance.[64]

5.2 Post-colonial experiment

Upon Kenya attaining independence from Britain in 1963, at attempt was made to professionalize the Kenya Police Force and make it more accountable and independent from abuse and influence. The framers of the independence constitution understood this need and sought to create an autonomous police service.[65] Some constitutional safeguards separating the police and the executive were put in place, including an independent NPSC and restrictions on the president's power to appoint or dismiss the IGP.[66] It envisaged that the police force would be set by legislation and overseen by a Commission and a National Security Council. The IGP would be appointed by the President, but on the advice of the Parliament.[67] Article 157 (13) of the repealed 1963 Constitution expressly stated that the NPSC shall NOT be subject to the control of any other person or authority while Article 162 conferred on the IGP independent command and protected him from arbitrary removal except through a tribunal and advice from the Commission.[68]

Furthermore, Section 14 (a) of the Police Act stated the force shall be impartial and objective in all matters and in particular in all political matters and shall not accord different treatment to different persons on the basis of their political opinions.[69] But the new government quickly went to work with a clear intention of dismantling any attempt to shield the police from politicians' self-interests and schemes to perpetuate their rule. The Kenyatta government refused to implement these provisions and a constitutional amendment in 1964 saw the police become a political tool of the executive, hence watering down its independence and autonomy.[70]

The political reality in Kenya, and many countries in Africa, is that police are an instrument for those in power rather than a service to the people, and it is not necessarily in the interest of those in power to build a fair and effective police apparatus that is accountable to the public.[71] As Kenya moved towards becoming a one-party state, successive governments rolled

63 Gadsden, F. Notes on the Kamba destocking controversy of 1938. International Journal of African Historical Studies, Vol. 7, issue 4, 1974, pp. 681-687
64 Arnold, Guy, Kenyatta and the Politics of Kenya, London, Dent, 1974, pp. 226
65 Ogada, O. (2016). Deepening police reforms in Kenya post National Accord: Policy implications, p1.
66 Furuza, Y. (2011). 'Two police reforms in Kenya: Their implications for police reform policy,' Journal of International Development Cooperation 17 (1) p55.
67 The Commonwealth Human Rights Initiative & the Kenyan Human Rights Commission. (2006). 'The Police, The People, the Politics: Police Accountability in Kenya.
68 Constitution of the Republic of Kenya, 1963
69 The Kenya Police Act, 1963
70 Saferworld Kenya, (2016), Politics and Policing: Understanding the impact of post-conflict political settlements on security reforms in Kenya,
71 Hills, A. (2007). Police commissioners, presidents and the governance of security. *The Journal of Modern African Studies*, 45 (3)

back all proposed protections to bring the police under the control of the president. The administrations of Mzee Jomo Kenyatta and his successor Danial arap Moi became virulently pervasive at (mis)using the police to stifle rising dissent associated with the excesses of the one-party KANU rule. There was total 'police capture' by the executive.

It is safe to say that police have, since colonial times, been used for partisan politics by the state, the government, and the ruling party for mischief.[72] This is not especially a uniquely Kenyan experience. In many developing democracies, elected officials and other powerful individuals have often exerted their influence over the police that has been extra-legal or illegal in nature.[73]

This practice has been labeled 'regime policing', as opposed to democratic and accountable policing. Auerbach, a renowned law enforcement and Kenya expert asserts that police in Kenya are more inclined to serve the demands of the ruling party and powerful individuals ahead of the rule of the law and ahead of needs of the citizens.[74]

In Kenya, the ability and extent of the political elite to influence police action has had far-reaching consequences. Kenyatta's government retained and even in some cases, enhanced colonial policing models to serve elite interests. Constitutional amendments in 1964 and 1969 strengthened presidential powers, which Kenyatta used to suppress dissent and arbitrarily detain political opponents, wielding the police force as a political tool to serve the interests of the new elite—a small circle of Kikuyu dubbed the "Kiambu Mafia."[75] His administration used state security machinery to suppress dissent and opposition to the extent that opposing parties, such as the Kenya Peoples Union (KPU) found it difficult to function, making Kenya in effect a one-party state.[76]

Several high-profile political assassinations, including those of populist politicians Tom Mboya in 1969 and former Nyandarua North legislator J.M. Kariuki in 1975 rocked the Kenyatta government, triggering protests which the police put down ruthlessly. While the alleged assassin of Mboya was apprehended and convicted, an investigation by Parliament on the murder of J.M. Kariuki, eventually implicated sections of the police in the killing, allegedly done at the behest of some unnamed senior political figures in the government.[77] In his book, Kenya: A History Since independence, author Charles Hornsby connected the commandant of the crack General Service Unit (GSU) Ben Gethi to the murder of JM Kariuki in 1975, claiming that Gethi had publicly accosted the MP outside the Hilton Hotel before his disappearance.[78] "He had been followed by the police throughout the day, including by the dreaded white police reservist Patrick Shaw," Horneby asserts. Gethi asked Kariuki to accompany the security officials to a convoy of cars and took him to an unknown destination," states the author.

72 From Jomo Kenyatta to William Ruto: Inside the politics of police control. November 20 2022. John Kamau. Accessed at: Daily Nation, accessed at: https://nation.africa/kenya/news/from-jomo-kenyatta-to-william-ruto-inside-the-politics-of-police-control-4026042
73 J. Auerbach, 'Police Accountability in Kenya: African Human Rights Law Journal, 277.
74 Ibid, 275, 276.
75 See Muzurova, N.
76 Chege, E. (2021), 'Myths and Truths: Jomo Kenyatta's Hollow Legacy, The Republic.
77 National Assembly of Kenya, The Hansard Report 1976-79
78 Kenneth Kwama, The Standard, article accessed at: https://www.standardmedia.co.ke/article/2000097072/

The government also forced through Parliament enactment of the Preservation of Public Security Act, which the administration used to harass and eventually detain vocal legislators, academics and labour union officials.[79] At the same time, the government kept tight leash on protests of any kind and unleashed the police on them. The intolerance and uptick in use of police action to suppress dissent was especially notable as the politics of Kenyatta succession intensified towards the end of his reign from the mid- 1970s.

5.3 One party rule

Throughout both of the Kenyatta and his predecessor Daniel arap Moi's reigns, the Kenya Police Force continued to be guided by the Police Act of 1960 and the Police Standing Orders of 1962, which had entered into force before independence, the Public Order Act and Police Regulations. Kenyatta died in office in 1978 and was succeeded by his vice president Daniel arap Moi, a man many considered a weakling and pliable personality but who would go on to prove everyone wrong on many fronts over a record 24 years in power. Even more than his predecessor, Moi politicized, personalized and weaponized the police and other security structures and ignored calls for police reform, increasingly employing the police as a weapon of the state.[80]

An abortive coup in 1982 would hand Moi an opportunity to consolidate his power by purging the administration of the remnants of the Kenyatta era administration and security officials as well tightening his grip on the ruling KANU party. Kenya officially became a one-party state following a constitutional change. The use of the police for political purposes deepened in the 1980s under the increasingly autocratic Moi, as officers were deployed to stem protests, attack and torture political opponents.[81]

During the 24 years of Moi rule, the Kenya Police Force, which included the infamous Special Branch or secret police, was instrumental in a trail of gross human rights violations, including politically motivated disappearances and targeted killing of many perceived opponents. Scores of leading pro-democracy activists were harassed and brutalized by the police, with many critics of the regime ending up in unlawful and prolonged detentions. Furthermore, owing to the prolonged undemocratic rule by President Moi, the police institution became highly politicized with the result that recruitment and promotion of officers were mostly based on cronyism and clannism and largely dominated by certain ethnic groups, corruption became widespread, and crime soared in the 1990s.[82] This made it easier for the regime leaders to arbitrarily employ the police against perceived critics.

The emergence of revolutionary movements such as Mwakenya, set the stage for more widespread human rights violations by his Ad-

79 Conboy, K. (1978), Detention without Trial in Kenya. Accessed at: https://digitalcommons.law.uga.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=2083&context=gjicl
80 Muzurova, N. op.cit. p5.
81 Noyes, A. (2013). Cleaning House in Kenya's Police Force, Lab Report.
82 Omeje, K. & Githigaro, J. (2010). The challenges of state policing in Kenya. *The Peace and Conflict Review.*

ministration. In 1986 alone, 100 people were arrested and detained for their alleged association with Mwakenya, the movement started by some Kenyans in Europe who had fled Moi's oppression, demanded, inter alia, social justice and respect for human rights.[83] At the height of the clamour for multiparty democracy in 1990, President Moi declared that he would use the police to 'crush his critics like rats.'[84] Towards the end of the 1990s, a wave of pro-democracy protests swept Kenya prompting the Moi government to unleash the fury of a comprised police force. A series of pro-democracy rallies leading to the famed *saba saba* rally left at least 20 killed by police, hundreds injured and at least 1,000 in police cells across the country in just four days.[85]

In Kenya, it is fact that the president, as the commander of the armed forces, has a very strong hand in anything that happens at NPS. Daily Nation columnist John Kamau aptly records the experience of former powerful Attorney General Charles Njongo in an interview in which he admitted having kept a file in his office, which contained a list of all MPs who had filed false mileage claims- and they were many. "I would have jailed half of that Parliament," Njonjo said.[86] And it has been like that from the first president Jomo Kenyatta to William Ruto (current president).

5.4 The reality now

During the recent protests in March 2023 called by the opposition against the high cost of living, top government officials publicly declared that police would ruthlessly deal with protestors. In deed, a section of high-profile leaders supported the police brutality, sometimes justifying the killings by asking, "what do you expect from the police when you stone them."[87] A key police informant admitted that many officers operated under "orders from above."[88]

In the aftermath of the fall-out between former President Uhuru Kenyatta and his deputy William Ruto, following the controversial "handshake", Ruto's close allies alleged that Kenyatta's government was using the police to harass them on trumped up charges.[89] In the public order management realm, both President Ruto and his predecessor Uhuru Kenyatta have variously employed the police to clamp down on public protests in a manner that contradicts provisions of the Constitution guaranteeing the right to assemble. Human rights groups documented killings, illegal arrests, beatings, destruction of civilian property, indiscriminate and disproportionate use of tear gas and water cannons, and other serious rights violations.[90]

83 Ibid.
84 Martini, M. (2012), Kenya: Overview of Corruption and Anti-corruption. Transparency International, U4 Anti-Corruption Resource Centre, Expert Answer No. 348
85 Keesing's Record of World Events [Cambridge]. July 1990. Vol. 36, Nos. 7-8. "Kenya: Government attempts to Suppress Pro-Democracy Campaign."
86 See John Kamau, (2022). From Jomo Kenyatta to William Ruto: Inside the politics of police control.
87 A key informant
88 A police key informant interviewee.
89 Uhuru's Reign Has Been One of Terror and Brutality,' Kandara MP Alice Wahome Claims. January 3 2022. Citizen Digital.
90 Human Rights Watch, Kenya: End Abusive Policing of Protests, May 2023.

Throughout the Kenyatta administration and now during President Ruto's reign, a number of leaders who have earned the ire of the government have found themselves harassed by the police, including having their security details withdrawn or even their firearms licenses revoked. Findings from the study reinforce the trend, saying political leadership interfered with police work in 'a big way.' After every election, the new leadership ensures their preferred officers are promoted to the senior most ranks. "They influence promotions and the transfer of police officers, especially those who are perceived as having frustrated the new politicians previously or during the electioneering period,"[91] a respondent said.

Furthermore, top government leaders egged on the police to continue with excesses by publicly praising their brutality and illegal actions.[92]The civil society was quick to criticize the president and his executive for promoting police misconduct.[93]

According to findings from the study, one of the main reasons that influence misconduct among police officers while dealing with public order is because the police are normally under the command and control of their seniors who owe allegiance to the politicians. Basically, they are securing their ascendance to senior police office levels. So, the problem is the politicization of the police service.[94] A respondent averred that the culture of police involvement in partisanship and impunity has been institutionalized over time.

91 An activist key informant.
92 See The Star, Kenya Kwanza defends police on alleged brutality in demos. 20 July 2023.
93 Sharon Mwende, The Star, Lobbies hit out at Ruto for praising police over handling of demos, June 2023
94 Key informant interviewee

6.0 Impediments to police accountability in their conduct during the discharge of their constitutional duties during public order management

Police accountability refers to the high expectations placed upon law enforcement agencies and individual officers to act in a responsible and legal manner while upholding the law or dealing with crime.[95] It consists of a system of internal and external checks and balances aimed at ensuring that police carry out their duties properly and are held responsible if they fail to do so.[96]

Effective police accountability involves many different actors in a modern democracy such as Kenya, including government officials, parliament, the judiciary, civil society actors, the media and independent oversight bodies such as national human rights institutions.[97] But essentially, it involves the police themselves. This is especially so when police are dealing with public order situations.

Public order is a situation characterized by the absence of widespread criminal and political violence, such as kidnapping, murder, riots, arson, and intimidation against targeted groups or individuals. In the event, such activities are managed to an acceptable minimum, perpetrators are pursued, arrested, and detained and the local population has freedom to engage in their normal activities without fear.[98] Understandably, therefore, maintaining public order is the domain of the police or law enforcement agencies the world over. The debate about police accountability is therefore essentially a debate about how, and in whose interests, such social control is carried out.[99]

There exist several mechanisms for police accountability. Some are embedded structures such as the National Police Service Commission, IPOA or performance evaluation boards; others are *ad hoc* in nature, like commissions of inquiry, while others provide sustained oversight, such as committees of parliament.[100] For these accountability mechanisms to operate optimally, they should be strong and independent such that they can monitor each other, and must be designed to work in tandem. The mechanisms can be either internal or external, depending on whether they are within the law enforcement agency's ambit (such as the Internal Affairs Unit or without (i.e. IPOA or parliamentary committee).

95 Sands, Laura (2006). What is Police Accountability, *My Law Questions*.
96 United Nations (2011). Handbook on police accountability, oversight and integrity.
97 United Nations, *op. cit.*
98 United States Institute of Peace, *Public Order*.
99 Bruce, David (2021). The African Police Accountability Agenda in 20202: Continuity and Disruption, *APCOF*.
100 CHRI & KHRC (2006). The Police, the People, the Politics: Police Accountability in Kenya.

One can therefore assess police accountability in four different dimensions. These are; state control comprising of the three arms of government, i.e. the Executive, Judiciary and Parliament; independent external control through an independent civilian body such as IPOA or the Ombudsman; internal control by such mechanism as the Internal affairs unit or a disciplinary system that is informed by a working public complaints systems; and/or through social control or social accountability driven by the civil society and the media or similar community groupings.[101]

6.1 Police accountability in Kenya

The Kenyan police have been the subject of stinging criticism for decades over their use of brute force, impunity, corruption and general disregard for democratic ideas and citizen rights,[102] actions that contravene the basic tenets of democratic police practices. Democratic policing requires the police to be accountable for their actions either as institutions or individually. Because policing is intrusive by nature and the police are vested with extensive, discretionary powers, it calls for restraint and accountability when they exercise this power.[103]

The police in Kenya are vested with critical core law and order functions in the society. They include provision of assistance to the public when in need; maintenance of law and order; preservation of peace; protection of life and property; investigation of crimes; and collection of criminal intelligence. Other responsibilities are prevention and detection of crime; apprehension of offenders; enforcement of all laws and regulations with which it is charged; and any other duties that may be prescribed by the Inspector-General under the Act or any other written law from time to time.[104]

There is need for accountability while they discharge these important duties. However, several notable impediments hinder holding the police to account when discharging their constitutional responsibilities, especially in connection to public order maintenance. The challenges range from weak structural and institutional capacities in various bodies; weak legal and institutional framework that makes the police prone to political abuse and interference; lack of public confidence, and endemic corruption. Others are wide regional variations in provision of police services; lack of capacity, skills, and trained personnel, leading to ineffectual coverage.[105]

6.2 Institutional Framework

Institutional weakness is the gap between the actual and intended effects of an institution with three types of institutional weakness categorized as insignificance, noncompliance, and instability.[106]

101 CHRI and KHRC, *op. cit.*
102 Etannibi E.O. Alemika, Mutuma Ruteere & Simon Howell (2028) (eds), Policing Reform in Africa.
103 CHRIPS & APCOF (2014). Local Policing Accountability in Kenya: Challenges and Opportunities for Action, p10.
104 The National Police Service Act, 2011
105 World Bank (2009). Kenya - Economic Development, Police Oversight, and Accountability: Linkages and Reform Issues.
106 Daniel Brinks, Steven Levitsky, and Maria Victoria Murillo (eds.) (2020) The Politics of Institutional Weakness in Latin America.

Key institutions charged with overseeing policing in Kenya in one or the other, are the National Police Service (which comprises the Kenya Police Service, Administration Police Service and the DCI), the NPSC, the IPOA mandated with civilian oversight of the police and Parliament, through the relevant committees. Others include the Kenya National Commission on Human Rights (KNCHR), in as far as police work may amount to human rights violation as well as the Judiciary.

6.3 National Police Service command and capacity gaps

These are a creation of the Constitution of Kenya, 2010 were especially keen on the particular aspects of police conduct and accountability, informed by the bitter experience of several decades of repressive administrations which widely (mi)used the police against regime critics and perceived opponents. The capacity of these mechanisms to effectively bring police to account for their actions, though, has been a matter of conjecture, after numerous attempts to claw back the gains guaranteed by the Constitution and resistance from within the police itself.

The drafters of the Constitution 2010 were alive to the dire need to shield the IG from political interference and pressure, hence to make him or her accountable to the people rather than the executive or any other body. Still, the institution of the office of the IG has repeatedly come under threat of emasculation, with a view to watering down the requirements by the Constitution and vesting some of those powers to another institution, specifically the president's office.[107] Both the Constitution in Article 245 and Section 8 of the National Police Service Act, 2011, guarantee the IG independent command and tenure of office and envisages unbiased and 'competitive' recruitment process.

The Act stipulates in Section 16 that the IGP shall be the accounting officer and the National Assembly shall allocate adequate funds to enable the Service to perform its functions while the budget for the Service shall be a separate vote. Further, the Inspector-General shall ensure that every police station, post, outposts, unit, unit base and county authority is allocated sufficient funds to finance its activities. A police key informant said during an interview "the resources provided to police officers are not enough to facilitate their work, thereby compromising their ability to discharge their duties, including public order management."

The reality is different: Until this year (2023), allocation to the Police Service was part of the budget for Office the President, a practice that highly compromised the IG's independence and accountability. The challenge thereafter, cascaded downwards to the stations, units and outposts, which are often starved of funds to maintain their law and order operations, in many ways contributing to performance and accountability deficiencies.[108] Little wonder then,

107 Kenya Human Rights Commission. Call the IG to respect the constitutional mandate of the NPSC. Press Release
108 Amnesty International and PRWG (2019). The First One Hundred Days: Civil Societies Expectations of the Third IG of the National Police Service, p17.

that the IGP would not mount the courage to execute a court warrant to arrest the Interior CS Fred Matiang'I during Uhuru's administration for contempt of court.[109] This is just one case among many in which the IGP and the police exhibited limited institutional capacity to execute orders against specific individuals or office holders in the society.

The NPS and its head, the IGP, are far from being immune to political influence, further compounding accountability checks. Both the Constitution Article and the NPS pronounce autonomy and independent command. Article 245 (4) of the Constitution is clear as to when the Cabinet Secretary in charge of the police may lawfully give direction to the IG on policy matter but no one can direct the IGP on matters of law enforcement, investigations or employment and staffing matters. But this isn't the case. Repeatedly, the sitting president and ruling part with majority in the National Assembly and Senate have to a high degree influenced the nomination and appointments of police bosses or even the way the discharge their mandates.

In the recent protests called by the Azimio opposition, the IGP would often echo the hardline stance of the president and government, and threaten dire consequences to both protestors and organizers of the protests even where prescribed processes were followed.[110] He purported to ban the protests even though he doesn't have such legal powers, and proceeded to unleash police on protestors leading to deaths, injuries and destruction of property.

The culture of police partisanship has refused to die even as political leaders cling tenaciously to police capture. Respondents in KII interviews validated this as an entrenched practice that interferes with police duties and accountability.

Another important capacity impediment is that of training on public order management and equipment available to officers during such duties. Both have direct consequences on the behavior of officers and their accountability. Findings from the study indicated inadequate police training has also contributed to low levels of accountability by officers who are trained to believe that citizens are an enemy, which has to be dealt with violently. "The structural architecture and philosophy of the police in Kenya is still dominated by a colonial hangover and orientation to oppress and harass innocent civilians," A CSO key informant responded.

Some cited lack of regular training and sensitisation of public order management, as lack of proper gear and equipment to effectively situations such as demonstrations. More human rights education should be integrated into the police training curriculum and ensure that police adhere to the code that governs their conduct while dealing with members of the public in lawful assembly by providing protection of citizens and property. There is lack of proper supervision by senior officers during protests and junior officers are left to do as they consider correct. Then whenever things go wrong, the senior officer cover-up for juniors.

109 Kenya court finds interior minister and police chief guilty of contempt. Reuters. March 2028.
110 Monday protests: Expect full force of police, IG Koome warns as security of Azimio leaders withdrawn. Nation. 26 March 2023

6.4 Internal Affairs Unit (IAU) challenges

The 2011 Act Section 87 established an Internal Affairs Unit (IAU) that is supposed to act as an internal accountability mechanism. IAU is mandated to receive and investigate complaints against the police, promote standards, discipline and good order within the Service and maintain documentation of all complaints made. Headed by a director, it is not supposed to be directed by anyone in its internal accountability duties. On concluding investigations, IAU is expected to submit its recommendations to the IGP and the NPSC for further action. But little has been heard from the Unit since its inception in July 2013.

There have been allegations that it protects rogue officers willing to bribe their way out of trouble.[111] In 2020, Independent Medical Legal Unit (IMLU) director Peter Kiama declared that IAU was 'ineffective in holding rogue officers accountable' because it still depends on the National Police Service for financing and seconding of officers.[112]

6.5 National Police Service Commission inadequacies

Perhaps the classic case of weak institutional capacity is that of the National Police Service Commission. Article 246 prescribes the duties of the Commission, which include a human resource function as well disciplinary role. Section 12 of the NPSC Act, 2012, requires the Commission to strive for the highest standards of professionalism and discipline in the Service, besides preventing corruption, and promoting and practicing transparency and accountability. But the Commission has consistently faced both capacity and credibility questions, even as it constantly became embroiled in turf wars with the top management of the Police Service it is expected to oversee, affecting its oversight and accountability credentials.

NPSC and the IG often fail to agree on certain critical mandates, despite existing laws and the Constitution detailing the duties of each institution. This dents the image and credibility of both institutions[113] diminishing their capacities to play their roles in enhancing accountability. They have even moved court for arbitration. The Commission had embarked on a police vetting exercise that soon became mired in allegations of malpractice, unfairness, bribery, and eventually to an ignonimous anticlimax.[114]

111 The Conversation (2022). Kenya has tried to reform its police force, but it left gaps for abuse.
112 Make Internal Affairs Unit independent to check police – lobby .The Star. September 2020.
113 Cracks emerge over promotion, hiring of police. People Daily. June 2023.
114 Ndung'u, C. (Nov. 2017). Failure to Reform: A Critique of Police Vetting in Kenya, ICTJ Briefing.

The two institutions have been at loggerheads about hiring and promotions, to an extent the IG ordered the withdrawal of personal security for Commissioners. A low moment was reached when two senior Commission officials, including the chairperson became subjects of investigation by the EACC on corruption allegations.[115] Despite the Constitutional and regulatory enhanced requirements, the harsh verdict is that the IGP and the NPS have yet to exert their independence from the Executive as constitutionally required.[116]

The Constitution establishes and confers very specific, accountability mandates to the offices of the IGP and the NPSC allocates the IG an independent command over the NPS and tenure of office.[117]It also establishes IPOA and KNCHR as constitutional commissions. These mandates are given effect by the NPS Act, 2011, NPSC Act, 2011, and the IPOA Act, 2011. Police duties involve enforcement activities, which may violate citizen rights. The KNCHR Act, among other key mandates confers on the Commission the duty to promote the protection and observance of human rights in public and private institutions, and to monitor, investigate and report on the observance of human rights in all spheres of life in the Republic.

6.6 IPOAs Performance

The IPOA Act 2011 gives the authority to among other things, receive and investigate complaints about misconduct and accountability by members of the Service.[118] It is mandated to receive and process complaints on police misconduct, conduct independent, inspect police premises including holding cells and generally monitor police operations involving the public. Yet, Kenyan police continue to top every list in almost every governance test: from corruption, brutality, abuse of human rights, impunity to lack of impartiality. For instance, at the height of COVID-19 pandemic in 2020, police enforcing curfew in several parts of the country killed at least 2015 people between March and May 2020 over curfew violations, assaulted hundreds and maiming scores others in their zeal to enforce the directive.[119]

During protests over the disputed 2017 presidential election, more than 33 people were shot by police across selected counties, most hailing from Kisumu County.[120] Between March and May 2023, police were at again. Findings by various human rights organizations accused police of shooting and killing more than 30 protestors mainly in several informal settlements in Nairobi, Machakos, Kisumu and Mombasa counties.[121] Police have also come under heavy criticism for documented extrajudicial killings, torture and forced disappearances of criminal and violent extremist suspects over the years.[122] Special police units were especially singled out for various excesses by the civil society, media and even senior government officials in the new administration.

115 Hunter becomes hunted in probe. Isaac Ongiri, Nation,.March 2015.
116 KHRC & PRWG (2019). The First One Hundred Days: Civil Society Expectations of the Third Inspector General of the National Police Service.
117 Constitution of Kenya, 2010. Art. 243, 244, 245, 246.
118 IPOA Act, 2011
119 Rasnah Warrah, A brutal pandemic: Kenya police under fire for the death of two brothers, August 2021.
120 GoK, (2007), Governance, Justice Law and Order Sector Reform Programme: Administrative Data Collection and Analysis
121 See Amnesty International Kenya, Press Statement, 20 July 2023.
122 Irungu, H. & Moige, B. Deepening Police Reforms and Accountability: Promoting Better Policing Through Shared Practices, *Amnesty International Kenya*.

But efforts by IPOA to bring officers to account for their actions and inactions seem appallingly disappointing compared to the egregious violations experienced at almost every turn. In its 2021 performance report tabled in the National Assembly, IPOA stated it had only secured 12 convictions since inception as of June 2021. At that point, 98 cases were pending before various courts. The Authority cited several impediments to its ability to fully bring rogue officers to account. They include shrinking budgetary allocation by Treasury and non-cooperation from complainants after reporting to the Authority for justice to be served.

These details are collaborated by findings from the qualitative data in the study. IPOA is said to regularly submit recommendations on improving police accountability and conduct to the NPS but the uptake by the Service was wanting or better still, negligible. Even more worrying are details that there is lack of proper documentation on personnel and firearms used in the protests. This would make attempts to hold individuals accountable for misconduct extremely difficult. Worryingly, a key informant asserted in many cases, public order management is not done within the confines of the law, and on occasions there are no operation orders, making it is difficult to identify the officers involved in the public order management. In the instance where there are violations by police officers, identification of perpetrators is more difficult.

IPOA Informants:

> “Blue code of silence where officers will cover up for the perpetrators.”

> “Lack of proper documentation on personnel and firearms used in the protests.”

However, one of the biggest impediments is reluctance by members of public to record statements, fearing to be involved due to threat of retribution by the officers involved. This makes getting concrete evidence a challenge.[123]

Furthermore, there is what respondents referred to the “blue code of silence” where fellow and even senior officers will cover up for perpetrators and do everything possible to sidetrack investigations.[124] Non-cooperation by the police, including obstruction of investigation by some senior NPS command, remains a significant challenge to the execution of its statutory mandate. In some instances, police officers decline to produce key documents, while others frustrate investigations and attempts at identifying their colleagues who are suspected of wrongdoing.

123 Key informant interviewees
124 Police key informant interview respondent.

6.7 Legal Framework

The conduct, duties and responsibilities of the police in Kenya are spelt out in the Constitution, NPS Act, 2011, NPSC Act, 2011, Service Standing Orders, the Penal Code and Police Regulations. There are numerous challenges and impediments to ensuring accountability by police when discharging their constitutional duties. Article 243 of the Constitution establishes the National Police Service comprising the Kenya Police Service, DCI and the Administration Police Service. Article 244 envisages a service that upholds the highest professional and discipline standards; that shall prevent corruption and promote and practice transparency and accountability. It also requires the officers to comply with constitutional standards of human rights and fundamental freedoms.[125] While they sound impressive on the book, in reality their spirit is tested constantly by various actors and decisions at times are contested all the way to the courts. On occasion, even a court order can be quietly ignored for expediency.

6.8 Police reforms

The National Police Service is at the core, still a colonial relic. Over the years, several abortive attempts have been made to reform the Kenyan police to make it more responsive to the needs of the citizens, be more accountable in its actions and to bring the law enforcement agency at par with the demands of modern democratic policing standards. When Mwai Kibaki was propelled to power by the NARC coalition in 2003, there were great hopes for substantive police reforms, initiated by the sector-wide GJLOS programme.[126]

A wake up call for urgent police reform arrived in a rude style in the form of the deadly 2007-8 post-election violence in which more than 1,100 people were killed, thousands maimed and hundreds of thousands others displaced and property destroyed.[127] The Waki Commission that investigated the violence indicted the police conduct and lack of accountability in trying to restore public order as well as indiscriminately shooting and assaulting people and recommended reforming the Kenya Police Force.[128] Thereafter, the Kenya National Task Force on Police Reform, otherwise known as the Ransley Task Force, highlighted corruption, impunity, lack of accountability, arrogance and hostility as among the most significant and most enduring challenges affecting delivery of police service to civilians in Kenya and souring the relationship between police officers and civilians.[129]

125 ibid
126 World Bank, Justice for the Poor
127 GoK, Report of the Commission of Inquiry into Post-Election Violence (CIPEV)
128 Ibid.
129 Report of the National Task Force on Police Reforms (2009).

Among the key recommendations by the Task Force included one for enhancing police accountability and transparency. They included the creation of an independent policing oversight authority, a national police service commission, and a comprehensive code of ethics for police officers. The Task Force's report, which largely considered as the 'blueprint' for Kenya's police reform, was quickly followed by the establishment of the Police Reform Implementation Committee (PRIC) in October 2009, to oversee implementation. PRIC developed legislation establishing a group of new policing institutions, produced a new police training curriculum, and prepared a roadmap for the roll-out of police reform. The adoption of the 2010 Constitution of Kenya entrenched and even enhanced some of the recommendations by the Task Force, including the concept of community policing.

Implementation of the reforms has endured a long and painful journey, faced with myriad challenges and whose outcomes are mixed. A joint study by CHRIPS and APCOF in 2014[130] revealed that most people considered police misconduct a rampant problem, and deeply ingrained in the culture of policing in Kenya. According to the findings from the study, Kenyans see the policing system as 'tolerant' of police abuse of power and that it focused more on protecting officers facing complaints rather than dealing with the abuse of office and the complaints. Consequently, no responsibility for accountability is seen to be placed on the police and as such the accountability of an officer depends on his or her individual character and the character of the OCS manning the local station.

6.9 Parliament and the Judiciary

Other institutions with a role in oversighting police accountability include Parliament and the Judiciary. Parliament has powers to question police misconduct correct systemic faults by amending legislation and even seek accounts of police performance. In Kenya's current parliamentary system, oversight is usually conducted the committee system. In this case, the police fall under the Committee on Administration and National Security. However, in Kenya, years of Executive dominance and tight control by the ruling party over MPs means Parliament has only minimal oversight, and the real influence lay elsewhere.[131]

The courts have the potential to identify misconduct, monitor the application of the law criticize bad governance and act as a practical accountability mechanism.[132] Where the court makes remarks about the evidence or conduct of any police officer, the prosecutor or senior police officer in the court is required by the Police Manual to submit an immediate report to their senior officer addressing the comments.[133] However, no evidence exist this has been happening, which means then, the court's usefulness as an accountability is greatly diminished.[134] This role is further compounded by other challenges facing the Kenyan judiciary, including interference and graft allegations.

130 CHRIPS & APCOF (2014), op. cit.
131 CHRI & KHRC (2006), The Police, the People, the Politics: Police Accountability in Kenya.
132 Ibid.
133 See The National Service Police Manual
134 CHRI & KHRC (2006), *op. cit.*

6.10 Public trust and support

The NPS have made significant progress towards institutionalizing a rights-centric policing culture, this is evidenced in legislative, institutional and policy reform and other initiatives. For instance, in 2018, the NPS established robust community policing initiatives including the development of the NPS community policing information booklet[135] that serves as a guiding tool in their engagement with the communities they serve. Though, significant challenges remain in achieving trust and cooperation between the public and police. What ails lack of public trust and confidence in the police include: sustained police misconduct, corruption, excessive use of force and brutality, extrajudicial execution of suspected criminals and a dearth of professionalism in the investigations of human rights violations[136].

A Community Policing Committee informant from Nyeri stated that undertaking community education and awareness through existing community policing structures allows all actors, including government agencies and other special interest groups at the community level to interact and address police accountability concerns and channels to report which has enhanced police-public partnerships, a key ingredient in policing.

135 https://www.nationalpolice.go.ke/downloads/category/20-nps-community-policing-information-booklet.html
136 ICTJ, A Failure to Reform. A Critique of Police Vetting in Kenya, 2017, p. 10.

7.0 Role of civil society and the media in documenting, analyzing, reporting and exposing the conduct and behavior of the police

7.1 Social accountability role

Kenyan civil society and media play a critical role in accountability and integrity oversight within law enforcement institutions. Generally, they help to check the power of state, oppose authoritarianism and ensure the state is not captured by vested interests.[137] They achieve this through several mechanisms including monitoring and reporting, advocacy and awareness raising by conducting research and disseminating information.

Specifically, the media acts as a watchdog by exposing corruption and helps to promote good governance and accountability by providing accurate, balanced and timely information (including policing) that is of interest and relevance to the public.[138] Many consider the media as a mirror, which shows the public or strives to show the state the bare truth and harsh realities of life.[139] Furthermore, sustained media coverage of police misconduct, puts pressure on authorities to act against errant officers. The Kenyan media is considered one of the most robust and independent in Africa and routinely and actively covers police misconduct, corruption, and extra-judicial killings. This practice does not always endear them to the policing, ruling party and government authorities.

Freedom of the media is guaranteed under the Constitution of Kenya 2010 Article 34. Part 2 declares that the State shall (a) not control or interfere with any person engaged in broadcasting, the production or circulation of any publication or dissemination of information ANY medium or (b) penalize any person for any opinion or view or the content of any information.

The civil society continue to execute critical oversight and accountability roles in public order management. These groups especially constantly highlight human rights violations, bad governance and democracy accountability deficiencies. They conduct research, publish data, routinely moves to court and even defends victims besides creating public awareness on various police accountability issues. Some are household names; Kenya Human Rights

137 Davies, I. (2010). GSDRC, The role of Civil Society and the Media.
138 The Star. Why civil societies play key role in police reforms. March 2023. Young, Humphrey.
139 Kanyinga, K (2014). Kenya: Democracy and Political Participation. Open Societies Foundation.

Commission (KHRC), Independent Medico-Legal Unit (IMLU), Amnesty International Kenya, Transparency International, just to name a few of the many operating at both national and local levels- all fulfilling an important mandate of keeping the government in check.

Both the civil society and media highlight police excesses and misconduct at every turn; from brutality against protestors, human rights violations, including forced disappearance and extra-judicial killings. During the Moi regime, the bolder civil society and media would document some of the excesses of the police-at great risk. Journalists and activists who took on the Moi administration were persecuted, jailed on trumped up charges or even detained. Some opted to flee to exile.[140] The 2010 Constitution contains extensive guarantees to freedom of the media, speech, access to information, expanded civic space,[141] and higher accountability standards for the police. However, both the media and civil societies routinely find themselves targeted by the police and government for performing their social accountability duty of attempting the two institutions to account.

7.2 Media reporting

The media sufficiently chronicled the brutality unleashed by police during protests in the aftermath of the disputed presidential elections in 2013 and 2017, in which scores of people were shot and killed and many others maimed by police officers. Riot police used live bullets, batons, whips and pepper water sprays on unarmed protestors even when organizers of such demonstrations had followed the law to inform police on their intentions, [142] a right guaranteed by the Constitution in the Bill or Rights.

Both the media and civil society have actively monitored, documented and reported cases where police have failed to exercise accountability, including forced disappearances, extra-judicial killings, illegal demolitions and evictions. At the height of the COVID-19 curfews, the media extensively covered police shooting, whipping, and generally assaulting citizens wantonly across the country even before curfew hours kicked in, prompted even President Uhuru Kenyatta to apologize.[143] Civil society groups accused police of killing more than 15 people in the opening few days of movement restrictions in Nairobi, Mombasa and a few other urban areas.[144]

Severally, the National Assembly has enacted or attempted to pass controversial laws specifically targeting the media with retrogressive clauses despite provisions of Article 34 of the Constitution, which enshrines freedom and independence of the media. The Security Laws

140 Adar, K. & Munyae, I. Human rights abuse in Kenya under Daniel arap Moi, 1978-2001. African Studies Quarterly.
141 Constitution of Kenya 2010, Chapter ….(bill of rights)
142 IMLU, Excessive Force: Police Brutality During Kenya's Protests. Accessed at: https://imlu.org/2023/03/excessive-force-police-brutality-during-protests-in-kenya/
143 Mercy Asamba, The Standard, President Uhuru apologises to Kenyans for police brutality. Accessed at https://www.standardmedia.co.ke/nairobi/article/2001366479/president-uhuru-apologises-to-kenyans-for-police-brutality
144 Human Rights Watch, (April 2020), Kenya: Police Brutality During Curfew. Accessed at: https://www.hrw.org/news/2020/04/22/kenya-police-brutality-during-curfew#:~:text=The%20Curfew%20Killings%2FDeaths&text=Kenya's%20curfew%20to%20curb%20the,injured%2C%20Human%20Rights%20Watch%20found.

(Amendment) Bill, perhaps the most controversial and divisive legislation in the 11th Parliament, proposed that, among other things, that police must approve the publication or broadcasting of information relating to investigations on terrorism.

During protests called by the Azimio opposition from March 2023 over high cost of living, the media covered police charging at crowds, using live ammunition, teargassing opposition leaders, including former Prime Minister Raila Odinga. Police were recorded using illegal tactics, including running down protestors using vehicles with foreign registration plates and even masquerading as journalists covering the protests to get closer to and arrest people.[145] Civil society organizations reported that by May, police had killed more than 20 people and maimed hundreds of other, mainly from Nairobi's informal settlements and Kisumu County.[146] Several journalists were deliberately targeted for attack by police, leading to serious injuries and destruction of equipment.[147]

Successive administrations have generally shown hostility towards and desire to control or regulate the media and civil society sectors. Even the progressive President Kibaki assented to the Kenya Communications Amendment Bill in 2009, which introduced the initial draconian measures of heavy fines for perceived media offences, allocated powers to government ministers to dictate content on broadcast media, and permitted the seizure of equipment. In 2006, hooded men, who were later identified as police officers, stormed the Standard Group offices and and switched off the lights and CCTV cameras. They immobilized the lifts before detaining and harassing the journalists on duty. The goons also destroyed broadcasting equipment and put KTN off air.[148] Internal Minister John Michuki later explained the Standard Group was raided because it was planning to publish a series of exposes that were damaging to the government and would compromise national security. "If you rattle a snake, you must be ready to be bitten by it," he was quoted saying.[149]

145 ICJ Kenya Chapter, Kenya Marching Slowly into a Police State, Press Release, 21 July 2023. Accessed at: https://icj-kenya.org/news/kenya-marching-slowly-into-a-police-state/
146 Revealed: The impact of Azimio protests on Kenya. Nation. July 2023. Accessed at: https://nation.africa/kenya/news/revealed-the-impact-of-azimio-protests-on-kenya--4317920
147 KHRC. Civil society statement on continued harassment of Journalists by security officers, Press Release, 21 September 2023. Accessed at: https://www.khrc.or.ke/index.php/2015-03-04-10-37-01/press-releases/821-civil-society-statement-on-continued-harassment-of-journalists-by-security-officers
148 Human Rights Foundation. (2006). Kenya: Armed police attack and shut down newspaper and tv station.
149 Attack on Standard Group shakes the Media. Nation.

7.3 Civil societies' troubles

Civil society has similarly found itself targeted by the police, sometimes at the instigation of senior government officials, for exposing police excesses during protests, pickets and demonstrations. Rights guaranteed under the Bill of Rights include freedom of speech, association as well as access to information.[150] The Constitution additionally stresses on public participation in all aspects of governance that elevates the role of the civil society to contribute in public engagement. In police accountability monitoring, Kenyan civil society organizations have had a significant impact in detailing police misconduct. They have pointed out and condemned rampant corruption within the police, disregard for the rule of law, forced disappearances and extra-judicial killings. In 2022 and early 2023, scores of bodies were discovered dumped in the Yala River in Nyanza, with the civil society accusing special police units of being behind the killings.[151]

For their effort, civil societies have faced harassment and intimidation from several quarters, including arrests and assaults. Kenya is among several African countries that have attempted to curtail the freedom and ability of the civil society to hold governments to account. This was done through an attempt to amend the Public Benefits Organization (PBOs) Act in 2014, to restrict foreign funding to NGOs which then President Uhuru Kenyatta likened to 'advancing foreign interests to destabilize the government.'[152] At one time, the President famously declared that the print (newspapers) are only useful for 'wrapping meat.'

Police, and by extension the executive, are always ready to diminish the impact of the media and the civil society regarding public order situations. In the aftermath of the Azimio demonstrations between March and July 2023, the IGP claimed opposition was duping the media by hiring bodies from mortuaries to justify claims of police killings in the protests. But the media was quick to challenge the police chief to prove his claims, which he declined.[153]

Respondents in the study validated police and government mistrust and unease working with a robust media and civil society, despite a decades-long working relationship. Even today, civil society plays a vital role in the police reform process. Elements in both police and the government would be happy to water down the role and impact of the two institutions where possible, as they consider them intrusive and pesky, by revealing the unpleasant sides of both. The media and civil society want the police and government to discharge their duties in transparent and accountable ways as required under the Constitution and the law.

150 Constitution of Kenya, 2010.
151 Amnesty International Kenya, Statement on the discovery of over 30 bodies in the Yala River, Siaya County, January 2022.
152 Musila, G. (2019). Freedoms Under Threat: The Spread of Anti-NGO Measures in Africa. Freedom House
153 Show us the rented bodies, mortuary attendants now tell IG Koome. Nation. August 10, 2023.

8.0 Key Findings

Findings from the study affirms strong influence of the current NPS from the colonial and postcolonial policing approaches and perspectives. It reveals a police culture deeply rooted in the traditions of using brute force and notion that enforcing the law means coercion, with no room for negotiation. The existing legal and policy frameworks reflect the historical origin of policing in colonial Kenya, where police were used to suppress the indigenous peoples and protect the white settlers.

The philosophy that was employed was an aggressive 'us versus them,' and it is still very much the mentality of most police officers in Kenya, 60 years into independence and extensive efforts to reform the police that has gobbled up billions of shillings for close to three decades. Public order was a by word for denying the citizens freedoms to express themselves over pertinent issues, or even to associate with others. Despite an extensive Bill of Rights, police are today still inclined to purport to deny citizens freedoms guaranteed by the Constitution and the law.

The study identified several significant factors that influenced the conduct of police in public order management. These are both legal and operational in nature, pertaining to laws and regulations that guide police conduct as well as training, capacity and operational equipment deployed for such duty. These will, to a great extent, determine how officers on public order duties will behave. The wide discretionary powers given to police in power by such legal frameworks as the NPS Act, the Penal Code and Public order Act. But it was also clear that skills and knowledge, and equipment affected the behavior of officers faced with stressful public order situations. For instance, if an officer does not have the correct operational orders and is deficient in riot gear, he is more likely to shoot at an assembly at the slightest provocation.

The study also determined that there is a significant deficiency in the effectiveness of oversight mechanisms and their impact on accountability. Both internal and external accountability mechanisms are severely impeded by legal, structural and socio-political barriers. Internally, IAU is embedded within the NPS under Section 87 and there is even an attempt to label it as an autonomous unit. But in reality, it is not. Its funding and logistics are a function of NPS and the IG. Evidence from the study affirmed that there is interference in its investigations or collusion with an aim to temper the findings. Externally, though IPOA and even KNHRC are mandated to probe police misconduct, they also rely a lot on the police in aspects of their investigation, either evidential related or processes. And that is where their problems begin. For IPOA to have successfully investigated and helped convict a paltry 32 cases since 2013, is in itself a stinging verdict concerning the effectiveness of accountability oversight mechanisms in the country.

According to the study, there exist a pervasive desire by politicians to influence police conduct in performing their constitutional duties-usually to their favor. This is a relic evolved from the colonial mind-set, honed by the post-colonial

administration and perfected by authoritarian one-party rule. It's a hang-up even today's national police are unable to wean itself from despite years of efforts to shield police work from political influence and manipulation, that requires sustained interventions and efforts. Political leaders have repeatedly, and unlawfully, used the police to deny the public rights and freedoms given by the law or even harass their opponents, where issues in contention are not to their favor. In most cases, the justification of law and order has been peddled to defend the curtailing of these rights.

Acceptable police accountability standards are still a long way from achievement, thwarted by several important impediments. These include institutional and legal framework setbacks, lack of public confidence and rampant corruption. Weak institutional capacity within the key oversight bodies including IPOA and IAU have hamstrung their mandate, which is complicated by infighting and turf wars between IPOA and the IGP and NPS over important mandates and processes. The same was experienced when the ODPP clashed with NPS on prosecutorial powers involving police prosecutors in court. A similar pattern was repeated when the DCI and ODPP differed on the threshold for charging suspects.

A noteworthy finding depicts an astonishing level of success by civil society and the media in their role of documenting, analyzing, reporting and exposing conduct and behavior of police. But findings also reveal that the two institutions perform these duties while faced with great odds and obstacles, including threats, intimidations and harassment from the state and police in particular. Media outlets have faced closure and vandalism, denied government advertising and reporters and editors attacked or arrested arbitrarily. Outspoken civil society have been threatened with deregistration and officials arrested over flimsy offences. But they have all performed their duty of oversighting social accountability on police misconduct commendably.

Policing, Public Order & Accountability in Kenya

Historical Roots of Policing

- Colonial legacy of repression & control
- Laws shaped by past practices

Police Culture & Mindset

- "Us vs Them" Mentality
- Brute Force Over Dialogue

Public Order & Human Rights

- Freedoms Restricted
- Rights Suppressed

Legal & Operational Drivers

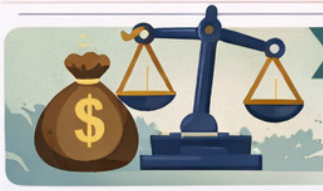
- Broad Powers (NPS Act, Penal Code)
- Training & Equipment Deficiencies

Weak Oversight & Accountability

- Internal: Interference & Collusion
- External: 32 Convictions Since 2013

Political Interference

- Influence & Suppress Dissent
- Law & Order Pretext



Barriers to Accountability

- Corruption & Infighting
- Weak Oversight Bodies

Role of Civil Society & Media

- Expose Abuses
- Face Threats & Harassment

Key Takeaway

Colonial Legacy, Weak Oversight & Political Influence Hinder Police Reform

9.0 Conclusions

From these findings, we can conclude that effective accountability in policing the constitutional duties and public order management still faces significant impediments. Negative police culture, use of unnecessary force, corruption, impunity, police capture, all adversely impact on oversight over police misconduct and behavior. They are compounded by regime policing, political interference, weak institutional and legal frameworks among other factors, to diminish efforts to put police to account for their actions while managing assemblies.

Sadly, the result of these excesses and violations by the police has been loss of lives, maiming of persons and destruction of property. Above all, police have continued to deny citizens the right to exercise their freedoms as guaranteed by law and near impunity for officers who perpetrate these violations to existing gaps.

There is a need for concerted efforts, as this study is attempting to do, for reviewing existing legal and policy frameworks that guide police behavior when dealing with public order situations, with a view to aligning their actions with the demands of a modern, democratic service-oriented agency. It also incumbent to review the capacity of the existing accountability oversight mechanisms to ensure they are able to satisfactorily discharge their mandates.

Accountability Challenges in Public Order Policing

Key Barriers to Accountability

- Negative police culture
- Unnecessary use of force
- Corruption & impunity
- Police capture
- Weak oversight of misconduct

Systemic & Political Constraints

- Regime policing
- Political interference
- Weak legal & institutional frameworks
- Limited enforcement of accountability

Consequences of Police Excesses

- Loss of lives
- Injuries & maiming
- Destruction of property
- Suppression of citizens' ***freedoms***

Rights & Rule of Law Undermined

- Denial of constitutional rights
- Limited justice for victims
- Near-impunity for officers

Required Reforms & Way Forward

- Reform legal & policy frameworks
- Align policing with democratic standards
- Strengthen oversight bodies
- Enhance public order accountability

Strengthening police accountability *is essential for* ***protecting rights****, upholding the* ***rule of law****, and ensuring* ***democratic*** *public order management.*

10.0 Recommendations

The following recommendations are proposed from the above findings and conclusions:

1. **Implementation of the National Coroner's Service Act and the public order policing policies:** One of the findings from the study is the lack of operationalization of the National Coroners Service Act 2017, which offers a comprehensive framework to facilitate an effective investigation process on mysterious deaths. Operationalization of this Act would see much responsibility taken away from the police as the primary investigator. In addition, the implementation of the public order policing policies will ensure that assemblies and gatherings are managed in compliance with the ethos of the relevant laws including the Constitution and other regional and international human rights instruments.
2. **Revision of the police training curriculum:** Revise the police training curriculum to align it with reining realties of democratic policing and requirements of the Constitution of Kenya 2010, especially under the Bill of Rights. In addition, enhance mandatory regular refresher and capacity building trainings for all NPS officers on public order management.
3. **Joint training for all actors in public order management:** Robust training of the auxiliary forces drawn from other units including the KWS, KFS, Prisons and NYS, who should be trained together with the NPS on public order management to enhance operational synergy. These joint trainings will not just enhance the knowledge and skills of the officers, create a better understanding of each other's roles and responsibilities but also align the command structure during public order management.
4. **Execution of IPOA's constitutional powers:** IPOA has the power to invoke section 25 of the IPOA Act which requires police to notify the Authority and supply it with the evidence and all other facts relevant to the matter, including, the names and contact details of all persons who may be able to assist IPOA should it decide to conduct an investigation. A police officer who fails to notify the body, as required by the law, commits a crime. The IPOA Act gives the Authority the necessary legal provision to take action against any officer who fails to notify them.

5. **Clarity of legislation and accountability mechanisms:** The Attorney General to set in motion efforts to seek a clear advisory through Judiciary on any ambiguous mandates contained in legislation governing activities of police accountability oversight mandates to end turf wars that erode credibility.
6. **Implementation of the standard operating procedures on investigation and prosecution of serious human rights violations committed by police officers:** Findings from the study have revealed the inefficiency in the investigation of human rights related offences among the relevant criminal justice actors. The ODPP in 2021, launched SOPs that provide a guideline(s) on how the ODPP, IPOA and NPS will interact in investigation and prosecution of human rights related offences committed. To promote effective investigations between these actors, both the ODPP and the NPS should intensify efforts to disseminate these SOPs to its officers to serve as a guiding tool in their investigations and prosecution efforts.
7. **Policing must be free of politics**: The independence of the NPS must be respected and the policing of protests should be left to those who are charged with that role without fear and favour. Full independence of the NPS will only be achieved when the IGP is granted full financial and operational autonomy. In addition, there is need to review the procedure that hands politicians an opportunity to remotely influence the nomination and appointment of the IGP and promotion of officers to senior ranks.
8. Enhance monitoring by civil society and media that the IGP oversees the kitting of police with right gear and adequate training when involving them in public order maintenance duties.
9. Make available systems and procedures that ensure operational orders for public order duties are recorded, preserved and accessible to authorized institutions, together with after-duty analysis information.

References

1. Adar, K. & Munyae, I. Human rights abuse in Kenya under Daniel arap Moi, 1978-2001. African Studies Quarterly.
2. Amnesty International and PRWG (2019). The First One Hundred Days: Civil Societies Expectations of the Third IG of the National Police Service,
3. Arnold, G. (1974). Kenyatta and the Politics of Kenya. London.
4. Auerbach, J. (2010). Police Accountability in Kenya: African Human Rights Law Journal, 277.
5. Article 19, 'Right to Protest in Kenya' September 2019. Nairobi
6. Al Jazeera News, 'At least 37 people were killed in election violence' 9 October 2017.
7. Brinks, D., Levitsky, S. & Murillo, M (eds.) (2020) The Politics of Institutional Weakness in Latin America.
8. Bruce, David (2021). The African Police Accountability Agenda in 20202: Continuity and Disruption, APCOF.
9. Chege, E. (2021). Myths and Truths: Jomo Kenyatta's Hollow Legacy. The Republic.
10. CHRI & KHRC (2006). The Police, the People, the Politics: Police Accountability in Kenya.
11. CHRIPS & APCOF (2014). Local Policing Accountability in Kenya: Challenges and Opportunities for Action, p10.
12. Commissions of Inquiry Act, Cap 102, Laws of Kenya, s. 3.
13. Commonwealth Human Rights Initiative & the Kenyan Human Rights Commission. (2006). The Police, The People, the Politics: Police Accountability in Kenya.
14. Conboy, K. (1978), Detention without Trial in Kenya.
15. Constitution of Kenya Review Commission, (2005). The Final Report of the Constitution of Kenya Review Commission. Nairobi
16. Constitution of the Republic of Kenya, 1963, s. 24(2) (a) & (b).
17. Daniel Brinks, Steven Levitsky, and Maria Victoria Murillo (eds.) (2020) The Politics of Institutional Weakness in Latin America.
18. David, B. (2021). The African Police Accountability Agenda in 20202: Continuity and Disruption, APCOF.
19. Davies, I. (2010). GSDRC, The role of Civil Society and the Media.
20. Defenders, (2016), Overview of the Human Rights Situation in the East and Horn of Africa, April – October 2016.
21. Etannibi E.O. Alemika, Mutuma Ruteere & Simon Howell (2028) (eds), Policing Reform in Africa.
22. Furuza, Y. (2011), 'Two police reforms in Kenya: Their implications for police reform policy,' Journal of International Development Cooperation.
23. Gadsden, F. Notes on the Kamba destocking controversy of 1938. International Journal of African Historical Studies, Vol. 7, issue 4, 1974

24. G Osen, 'IPOA demands IAU to stop probing disbanded SSU team' The Star Newspaper, 24 October 2022.
25. Governance, Justice Law and Order Sector Reform Programme: Administrative Data Collection and Analysis, 2007.
26. Hills, Alice, 2007. Police commissioners, presidents and the governance of security. *The Journal of Modern African Studies*
27. Human Rights Watch and Amnesty International Kenya (2023). Kenya: End Abusive
28. Policing of Protests. Nairobi
29. Human Rights Watch, (April 2020), Kenya: Police Brutality During Curfew.
30. HWO Okoth-Ogendo, 'The Politics of Constitutional Change in Kenya since Independence, 1963-69' Journal of African Affairs, Vol. 71, No. 282 (Jan. 1972), pp. 20-9.
31. IAU, Annual Report-2018, pp. 9-10.
32. Internal Affairs Unit, Operational Manual (2018), p. 6.
33. ICTJ. (2027). A Failure to Reform. A Critique of Police Vetting in Kenya.
34. ICJ Kenya Chapter, Kenya Marching Slowly into a Police State, Press Release, 21 July 2023.
35. IMLU. (2023). Excessive Force: Police Brutality During Kenya's Protests.
36. Irungu, H. & Moige, B. Deepening Police Reforms and Accountability: Promoting Better Policing Through Shared Practices, *Amnesty International Kenya*.
37. J. Auerbach, 'Police Accountability in Kenya: African Human Rights Law Journal, 277.
38. Kanyinga, K (2014). Kenya: Democracy and Political Participation. Open Societies Foundation.
39. *Katiba Institute & AFRICOG v. Attorney-general & others*, High Court Nairobi Petition No. 379 of 2017 (unreported, as of writing).
40. Kenneth Kwama, The Standard, article accessed at: https://www.standardmedia.co.ke/article/2000097072/
41. Kenya Gazette Notice No. 4790 of 8 May 2009
42. Kenya Human Rights Commission Call the IG to respect the constitutional mandate of the NPSC. Press Release
43. Kenya National Commission on Human Rights (KNCHR). Mirage at Dusk: A Human Rights Account of the 2017 General Election.
44. Kenya Police Act, 1963.
45. Kenya Gazette Notice No. 4790 of 8 May 2009.
46. Keesing's Record of World Events [Cambridge]. July 1990. Vol. 36, Nos. 7-8. "Kenya: Government attempts to Suppress Pro-Democracy Campaign."
47. KHRC & PRWG (2019). The First One Hundred Days: Civil Society Expectations of the Third Inspector General of the National Police Service.
48. KIPPRA, (2021), Policing Reforms to Enhance Security in Kenya. Nairobi
49. Martini, M. (2012), Kenya: Overview of Corruption and Anti-corruption. Transparency International, U4 Anti-Corruption Resource Centre, Expert Answer No. 348

50. Mazurova, Nicole (2022). Law Enforcement Development in Kenya: History, Reform, and Path Forward. Washington, DC: Office of Community Oriented Policing Services.
51. Makau Mutua, 'Justice under Siege: The Rule of Law and Judicial Subservience in Kenya' (2001)23, Human Rights Quarterly 96, p. 97.
52. Mercy Asamba, The Standard, President Uhuru apologises to Kenyans for police brutality. Accessed at https://www.standardmedia.co.ke/nairobi/article/2001366479/president-uhuru-apologises-to-kenyans-for-police-brutality
53. Musila, G. (2019). Freedoms Under Threat: The Spread of Anti-NGO Measures in Africa. Freedom House
54. From Jomo Kenyatta to William Ruto: Inside the politics of police control. Nation. John Kamu. 20 Nov. 2022.
55. National Assembly of Kenya, The Hansard Report 1976-79
56. National Police Service Act, 2011.
57. Ndung'u, C. (Nov. 2017). Failure to Reform: A Critique of Police Vetting in Kenya, ICTJ Briefing.
58. Noyes, A. (2013). Cleaning House in Kenya's Police Force, Lab Report.
59. Ogada, M. (2016). Deepening police reforms in Kenya post-National Accord: Policy implications.
60. Omeje, K. & Githigaro, J. (2010). The challenges of state policing in Kenya. The Peace and Conflict Review.
61. Onyango, D. & Otuya. P. Police Perceptions, Attitude and Preparedness in Managing Public Assemblies.
62. Parliament of Kenya, The Senate, the Hansard, 30 November 2017, pp.13-30.
63. Penal Code, Cap. 63, 1930 (Revised 2014) Laws of Kenya.
64. Public Order (Amendment) Act, No. 12 of 1968.
65. Public Order Act, Cap. 56, 1950 (Revised 2018) Laws of Kenya.
66. Regulation of Gatherings Act, Act No. 205 of 1993, section 4.
67. Republic of Kenya, The Constitution of Kenya, 1963
68. Republic of Kenya, Constitution of Kenya, 2010
69. Report of the National Task Force on Police Reforms (2009), p. 3.
70. Ruteere, M. and P. Mutahi. (2019). Policing Protests in Kenya. Nairobi.
71. Saferworld Kenya, (2016), Politics and Policing: Understanding the impact of post-conflict political settlements on security reforms in Kenya.
72. Sands, L. (2006). What is Police Accountability, *My Law Questions*.
73. The Conversation (2022). Kenya has tried to reform its police force, but it left gaps for abuse.

74. The Standard. Accessed at: https://www.standardmedia.co.ke/nairobi/article/2001366479/president-uhuru-apologises-to-kenyans-for-police-brutality
75. The Star. Why civil societies play key role in police reforms. Humphrey Young. March 2023.
76. The Statute Law (Repeals and Miscellaneous Amendments) Act, No. 10 of 1997.
77. United Nations (2011). Handbook on police accountability, oversight and integrity.
78. UN Human Rights Committee, 'General Comment 37: Article 21 (The Right of Peaceful Assembly)' 2020, CCPR/C/GC/37, para. 37.
79. United States Institute of Peace, Public Order.
80. US Department of State, (2020), Country Reports on Human Rights Practices for 2020 United States Department of State, Bureau of Democracy, Human Rights and Labor.
81. Waller, R. (2010). "Towards a contextualization of policing in colonial Kenya.
82. Warrah, R. (2021). A brutal pandemic: Kenya police under fire for the death of two brothers.
83. World Bank (2009). Kenya - Economic Development, Police Oversight, and Accountability: Linkages and Reform Issues.

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