



SILENCED BUT UNBOWED

YOUTH, PROTESTS, AND THE QUEST
FOR ACCOUNTABILITY IN KENYA

INDEPENDENT MEDICO LEGAL UNIT



Toll Free: 0800721401



www.imlu.org

medico@imlu.org

ACKNOWLEDGMENT

A society free from torture and related violations

The Independent Medico-Legal Unit (IMLU) would like to acknowledge the Lead Researcher, Morris Odhiambo, and his assistant, Eric Omburo Abuya, both of Kumekucha Africa Consultants, for consolidating this highly informative report. Also acknowledged is the role played by the IMLU Team, comprised of Wangechi Grace Kahuria, Emmanuel Yegon, Isabella Obara, Vivian Mwendu, Naomi Wambui, Stephen Outa, Simon Malenya, Sylvia Sein and Tony Were in developing the report.

The data set used in this report was collected by IMLU and analyzed. Reports are received from families, friends and the public on persons who disappeared, victims of extra judicial killings and those who face different forms of torture, cruel and inhumane treatment in the hands of those that are charged with the responsibility of providing safety and security of Kenyans. IMLU also receives calls and alerts directly from survivors of torture, families of victims of torture, the public as well as from its network of professionals and other civil society actors.

IMLU wishes to acknowledge all those who sent us alerts, who called, who rescued and facilitated survivors to access different services, and all our networks of professionals who worked with us. This includes monitors and Human rights Defenders, (HRDs), morticians, journalists, doctors, pathologists, lawyers. More importantly, IMLU's leadership in the Police Reforms Working Group Kenya (PRWGK) has been instrumental in fostering a collective approach to advocating against systemic human rights violations by the police, including those targeting Gen-Z protesters.

We wish to extend our heartfelt gratitude to IRCT and OMCT for technical review of this report.



IMAGE ATTRIBUTION:

This report includes images sourced from Unsplash.com and other publicly available online platforms. Images from unsplash are used in accordance with unsplash license which permits free use. Images used in this report are used to support non-commercial, advocacy-related communication. All rights belong to their respective copyright holders.

ABBREVIATIONS

ATPU	-	Anti-Terrorism Police Unit
CSO	-	Civil Society Organization
CIDT	-	Cruel, Inhuman or Degrading Treatment
DCI	-	Directorate of Criminal Investigations
GEN-Z	-	Generation Zoomers
IAU	-	Internal Affairs Unit
ICCPR	-	International Covenant on Civil and Political Rights
ICESCR	-	International Covenant on Economic, Social and Cultural Rights
IGP	-	Inspector General of Police
IFI	-	International Financial Institution
IPOA	-	Independent Policing Oversight Authority
ICT	-	Information and Communication Technology
IMLU	-	Independent Medico-Legal Unit
KDF	-	Kenya Defense Forces
KCA	-	Kenya Correspondents Association
KUJ	-	Kenya Union of Journalists
KNCHR	-	Kenya National Commission on Human Rights
NPS	-	National Police Service
PTSD	-	Post Traumatic Stress Disorder
SPSS	-	Statistical Package for Social Sciences
SSU	-	Special Services Unit
SSO	-	Service Standing Orders
UDHR	-	Universal Declaration of Human Rights
UNGA	-	United Nations General Assembly

Table of Contents

Executive Summary	1,2
State and Violence in Kenya :Background	3,4
Nation-building and the paradoxes of the Kenyan state	5
Governance through fear: setting new standards of impunity	6,7,8
The rhetoric and reality of police reforms	9,10,11
Legal Safeguards and the Jurisprudence on the Right to Protest :Background	12,13
Torture, extrajudicial killings and enforced disappearances	14,15
Policing Standards in Kenya	16,17
Emerging jurisprudence on police excesses	18,19,20
The question of command responsibility	21,22
The use of lethal weapons against protesters	23,24
The “positive” obligation to investigate and prosecute	25
Clawing back on the right to protest	26,27
Objectives, Scope, Approach and Methodology of the Study	28–33
Findings	34–46
Conclusions and Recommendations	47–54
Testimonials	55–60



EXECUTIVE SUMMARY

As part of its mandate, IMLU monitored the “Gen-Z Led” protests between June and August 2024 and documented police violations including extrajudicial killings, illegal arrests, and enforced disappearances. The protests were organized in response to the over-punitive Finance Bill, 2024 that increased the taxes of an already overburdened citizenry. The first major demonstration took place on Tuesday, 18th June 2024. One week later, on 25th June 2024, protesters entered the Kenya National Parliament buildings as the largest series of protests against the passing of the stated Bill. During the confrontation, 10 protesters were fatally shot. June 25, 2024 remains one of the darkest days in Kenya, with evidence from multiple sources including over 45 videos and 100 photographs that capture Kenyan police use of lethal and less lethal weapons including tear gas, rubber bullets, batons, and water cannons on unarmed protesters. As we release this report, 11 months after the brutal attacks on innocent Kenyans, we regret to note that no action has been taken yet at either individual or command responsibility level.

IMLU also documented widespread abductions (Enforced Disappearances) of protesters, with a total of 63 cases recorded—55 male (87%) and 8 female (13%). IMLU is also part of the situation room that recorded 89 Enforced disappearances. However, those that were directly referred for documentation by IMLU are 63 cases. These abductions appeared to be aimed at instilling fear and discouraging protesters from exercising their right to assemble. Many of those abducted reported having been subjected to torture. One of the most widely publicized cases was that of the “Kitengela Three”—activist Robert Njagi, Asmil Longton and Jamil Longton—who became the center of a standoff between the Judiciary and the National Police Service (NPS). After spending a month in illegal custody, they were finally released on 20th September 2024. . The abductees reported being tortured while in unknown holding centres. The 3 were abducted on 19th August 2024 while traveling in a bus to their home.

Further, the establishment of policing, dating back to colonial times has created a foundation whereby the police are a tool to protect and maintain the elite and political class, not the citizenry’s. If any reform towards police excesses is to be achieved, we must begin at the foundation of police as an institution; who the police are and for what interests. Otherwise, new crops of police will continue to be radicalized into a culture of violence during recruitment and training.

In this report, IMLU highlights the systemic nature of police brutality in public order management of protests. The cases reported follow a pattern of behavior consistently exhibited by police over many years and which has a direct relationship with significant political events, including elections. At the root of the violations, therefore, is the organization and management of political power in Kenya vis a vis the need to protect constitutionally guaranteed rights. As a result, IMLU calls for action at different levels by diverse institutions responsible for public order management and the safeguarding of human rights.

Immediate actions should include the full implementation of the Prevention of Torture Act and the National Coroners Services Act, establishment of an independent investigative mechanism for enforced disappearances and extra judicial killings through IPON, allocation of resources to the Victim Protection Trust Fund and the expedition of the ratification of the Optional Protocol on the Convention Against Torture (OPCAT) and the International Convention for the protection of all persons from Enforced Disappearances. Additionally, there is a need to increase funding for oversight institutions, including the Kenya National Commission on Human Rights (KNCHR), the Independent Policing Oversight Authority (IPOA), and the Internal Affairs Unit (IAU). Other critical measures include reviewing the Public Order Act, operationalizing the Victims Protection Trust Fund in line with the Victim Protection Act of 2014, and strengthening the role of civil society organizations (CSOs) in monitoring, documenting, and advocating against human rights violations. Of most importance is the end to impunity and interference with the investigative agencies.



STATE AND VIOLENCE IN KENYA : AN INTRODUCTORY OVERVIEW

Background

The strategy of using state violence to manage political processes in Kenya - whether those processes are legitimate challenges to power wielders by political formations or protests by ordinary citizens - is not a new phenomenon. This strategy long predates the Generation Zoomers (Gen-Zs) "Occupy" protests of June and July 2024. Rather, the widespread use of political violence to engineer desired political outcomes by Kenya's ruling elites can be traced back to various massacres (like the Wagalla Massacre^[1]) as well as the struggle for political pluralism in the 1980s and 1990s. However, the violence meted out to the Gen-Z protesters in 2024 will go down in the history of the country as among the most ruthless episodes of state violence in both its scope and manner of execution.

Widespread use of state violence against citizens became normalized in the early 1990s following the state's brutal response to the struggles for political pluralism. During this period, the Rift Valley region became the epicenter of political violence as the state attempted to beat back opposition to its rule and the then-emerging wave of democratization. Thus, the lexicon of "ethnic clashes" found its way into Kenya's political discussions. Ethnic clashes were the language used to depoliticize the political violence engineered by the state along ethnic lines with the aim of politically disenfranchising members of particular ethnic groups resident in the Rift Valley and other regions of the country.

In many ways, the struggle for a new constitutional dispensation in the 1990s - to the time of the 2010 referendum - was informed by the need to move away from this violent past. The constitution, therefore, sought to renew the social contract among the leaders and the citizens. In anticipating a radical change in the country's governance and politics, the constitution expanded the Bill of Rights fundamentally and demanded that it be the framework for social, economic, and cultural policies.^[2] The constitution further constructed the Bill of Rights as the main instrument in preserving the dignity of individuals and communities, promoting social justice as well as the realization of the potential of all human beings.^[3]

In October 2022, President William Ruto ordered for the disbandment of the Directorate of Criminal Investigations (DCI)'s Special Service Unit (SSU) in an effort to end extra-judicial killings. He noted that the country was very insecure. The police changed and became killers with the Special Service Unit killing Kenyans arbitrarily instead of protecting ordinary Kenyans.

[1]See, for example, Al Jazeera, "Kenya's Wagalla Massacre 30 Years Later: Survivors of the mass killings are upset the government has not brought the killers to justice: <https://www.aljazeera.com/features/2014/2/27/kenyas-wagalla-massacre-30-years-later>

[2]Article 19(1)

[3]Article 19(2)

Nation-building and the paradoxes of the Kenyan state

The constitution-making process in Kenya, which culminated in the 2010 referendum, was not only anchored on resolving the violent nature of the state and politics. Rather, it was meant to fundamentally shift the focus of the state from concentrating on the interests of the few but powerful, to focusing on the interests of the majority. It sought to create the necessary infrastructure for a democratic state in which the “aspirations of all Kenyans for a government based on the essential values of human rights, equality, freedom, democracy, social justice and the rule of law”^[4] become the critical pillars. Indeed, the constitution sought to resolve the many paradoxes of the Kenyan state by re-engineering the ethos of nation-building. However, this ambition remained unrealized even with the tools provided by the constitutional dispensation. By 2024, the Kenyan state was suffering from various crises. The debt crisis had engulfed the nation with the level of debt rising from slightly more than 1 trillion Kenya shillings in 2013 when there was a change of government, to more than 7 trillion Kenya shillings in 2024. The borrowing curve had risen sharply from the time Uhuru Kenyatta and William Ruto took power in 2013. 11 years later, Kenya was debt-stressed and on the verge of defaulting on its debt obligations. With debt repayment taking a huge chunk of the country’s tax revenue, the old solution of seeking prefecture from International Financial Institutions (IFIs) to resolve local problems seemed to sharpen the contradictions even further.

Furthermore, by 2024, Kenya was still considered a very unequal society, a situation compounded by insufficient job opportunities for the thousands of young people leaving college to join the job market. Urban housing conditions, especially in Nairobi City’s informal settlements, continued to deteriorate as more and more people from the rural areas moved to the City in search of livelihood opportunities. Labour unrest continued to be a major flashpoint as primary and secondary school teachers, doctors, nurses, etc., continued to agitate for better pay in the face of increasing cost of living. Even after the Gen-Z protests, labour unrest continued among various cadres of workers, targeting both the national and country governments^[5] Amid these challenges, sections of the ruling elite continued to openly display wealth and opulence.^[6] The picture emerging at the end of the Gen-Z protests sometime in mid-August was that whereas the people have a right to protest guaranteed by the constitution, and even if they have genuine grievances, they would not be allowed to exercise this right. In other words, the ruling elite were ready to undermine the constitution when it came to free expression, whether or not the situation warrants such expression. That this was being done to safeguard the interests of the ruling elite in the face of corruption, lack of employment opportunities, and debilitating debt, simply confirmed to the citizens that for the elite public resources are not meant to safeguard the public good; rather, the elite are free to engage in wanton accumulation using any method that works in their favour.

[4] Constitution of Kenya, Preamble

[5] See, for example, University World News, “Public Universities lecturers start strikes after talks fail”:

<https://www.universityworldnews.com/post.php?story=20240921113342702>; Kenya National Commission on Human Rights: “On-going Doctors Strike”: <https://www.knchr.org/Articles/ArtMID/2432/ArticleID/1192/ON-GOING-DOCTORS-STRIKE>

[6] Murkomen speaks of his Sh900k watch, Sh20,000 tie:

<https://www.standardmedia.co.ke/health/entertainment/article/2001498669/murkomen-speaks-of-his-sh900k-watch-sh20000-tie>

Governance through fear: setting new standards of impunity

The discovery of dead bodies in River Yala in Siaya County in 2022 stunned the nation.^[7] Dumping of dead bodies itself was not new, and neither was the suspicion of the involvement of police squads in their deaths. The phenomenon can be traced back to the period when dead bodies would be found in thick bushes inside the Tsavo National Park and other similarly innocuous places.^[8] These were allegedly associated mainly with the activities of Kenya's Anti-Terrorism Police Unit (ATPU), which was then targeting terror suspects mainly at the coastal area of Kenya and eliminating them.^[9] A good number of clerics, often accused of supporting the Al Shabaab terror group based in Somalia, were summarily executed during this time when a number of terrorist attacks took place in the country.



According to human rights activists, many of the River Yala bodies showed signs of torture. Some had died of strangulation. Apparently, the murders were carried out in a neat, systematic manner, suggesting the involvement of security officers. Evidence also showed that they were not all from the vicinity of River Yala, implying they were possibly killed elsewhere before being dumped in the river. From postmortems, which it supervised in accordance with its legal mandate, the Independent Policing Authority (IPOA) concluded that the victims were likely killed “by the same perpetrators.”^[10]

The existence of police killer squads is also not a phenomenon thing in Kenya. Political leaders have openly acknowledged their existence. However, the public only gets to know about them because of the levels of impunity they exhibit in their work, and when they are disbanded after public backlash. Past squads include the Kwekwe and Eagle squads, which were both accused of killing innocent citizens.^[11] This phenomenon exists alongside the equally obnoxious phenomenon of private violent gangs in control of political leaders.^[12]

When he came to power in 2022, President Ruto disbanded one of the police squads that was operating at the time with impunity, notably the Special Services Unit (SSU) of the Directorate of Criminal Investigations (DCI).^[13] The President himself seemed to have knowledge that the squad had been responsible for killing the victims whose bodies were found in River Yala. He noted the following when announcing the disbandment of the squad:

However, the disbandment of the SSU seemed to have a direct relationship with the President's political interests indicating that the action was not based on a need to change course. Not long after the disbandment, it was revealed that members of the squad were responsible for the murder of two foreign nationals, who had come to the country to handle some aspects of Ruto's presidential campaign.^[14] No investigations were ever carried out into the River Yala killings after the charging of the four officers assumed to be members of the squad. In fact, by the time of the Gen-Z protests, the River Yala affair had been more or less forgotten.

The validity of the above conclusion was somewhat confirmed when the Gen-Z protests were crashed with maximum brutality by the police. The police seemed to have invented new ways of not only violently quashing protests but also intimidating protesters and causing fear among them. The squads operating this time moved around in Subaru cars without number plates abducting protesters with impunity against all required standard operating of the police service. They were often clad in balaclavas and face masks so that protesters would not tell who they are. On 27th June 2024, the High Court attempted to solve this mischief by requiring the police officers to have a nametag and service number and avoid hiding or obscuring their faces^[15].

[7]Daily Nation, "River Yala: dumped bodies back as six men, woman retrieved from water": <https://nation.africa/kenya/counties/siaya/river-yala-dumped-bodies-back-as-six-men-woman-retrieved-from-water-3955046>; "Kenya's river Yala: mystery and heartbreak of the dead bodies": <https://www.bbc.com/news/world-africa-60083684>

[8]The Standard, "Six male bodies found damped in Tsavo National Park": <https://www.standardmedia.co.ke/article/2001318310/six-male-bodies-found-dumped-in-tsavo-park>; Capital News, "Six more decomposing bodies found dumped in Tsavo National Park": <https://www.capitalfm.co.ke/news/2020/02/2-more-decomposing-bodies-found-in-tsavo-west-national-park/>

[9]The New Humanitarian, "Gunned down in Mombasa: the clerics that had died": <https://www.thenewhumanitarian.org/analysis/2014/07/28/gunned-down-mombasa-clerics-have-died>

[10]The New Humanitarian, *ibid*

[11]All Africa, "Kenya: charge 4 Kwekwe cops with murder": <https://allafrica.com/stories/201105190173.html>

The deployment of the military for the first time in the country's history to undertake policing duties, which ignored the legal requirements for such deployment,^[16] was a clear signal that the intention of political decision-makers was to continue causing fear and despondency among the population and in particular the younger generation of protesters. Indeed, this action sets a precedent that could lead to future abuses of the rights of citizens through military deployment to resolve what are essentially political challenges to the ruling elite. A gazette notice by the then defense cabinet secretary Aden Duale, and noted as unprocedural, an approval by parliament on June 26, saw the army deployed to support the National Police Service in managing the protests.

This led to an escalation of arbitrary arrests, ill treatment including humiliation of protestors including stripping some half-naked. This impunity was further highlighted when tear gas was lobbed at an emergency medical center, set up to provide emergency services to the injured. This unprecedented action was upheld by the courts, unfortunately. This is contrary to international human rights laws and practice across the globe.

[7]Daily Nation, "River Yala: dumped bodies back as six men, woman retrieved from water": <https://nation.africa/kenya/counties/siaya/river-yala-dumped-bodies-back-as-six-men-woman-retrieved-from-water-3955046>; "Kenya's river Yala: mystery and heartbreak of the dead bodies": <https://www.bbc.com/news/world-africa-60083684>

[8]The Standard, "Six male bodies found damped in Tsavo National Park": <https://www.standardmedia.co.ke/article/2001318310/six-male-bodies-found-dumped-in-tsavo-park>; Capital News, "Six more decomposing bodies found dumped in Tsavo National Park": <https://www.capitalfm.co.ke/news/2020/02/2-more-decomposing-bodies-found-in-tsavo-west-national-park/>

[9]The New Humanitarian, "Gunned down in Mombasa: the clerics that had died": <https://www.thenewhumanitarian.org/analysis/2014/07/28/gunned-down-mombasa-clerics-have-died>

[10]The New Humanitarian, *ibid*

[11]All Africa, "Kenya: charge 4 Kwekwe cops with murder": <https://allafrica.com/stories/201105190173.html>

[12] A good example of this was the Jeshi La Mzee in the 1990s/2000s

[13]Sahara Reporters, "Kenya President Ruto disbands special police unit notorious for enforced disappearance of citizens, Nigerians, other foreigners": <https://saharareporters.com/2022/10/24/kenya-president-ruto-disbands-special-police-unit-notorious-enforced-disappearance>

[14]Voice of America, "Kenyan officers in disbanded unit tried for murder, abuse, conspiracy": <https://www.voanews.com/a/kenyan-officers-in-disbanded-unit-tried-for-murder-abuse-conspiracy/6803141.html>

[5] The ruling was rendered by Justice Mwamuye in a petition filed by LSK <https://nation.africa/kenya/news/court-police-officers-must-have-nametags-or-identifiable-service-numbers-during-demos-4725600>

[16] LSK challenges deployment of KDF to quell protests: <https://ntvkenya.co.ke/news/lsk-challenges-deployment-of-kdf-to-quell-protests/>

The rhetoric and reality of police reforms

The impunity displayed by police in Kenya has a direct correlation to perceived challenges to political power. Most abuses take place during moments of heightened political competition, whether from traditional competitors for power, workers, or citizens demanding their rights. Regimes in power do not seem to differentiate between these two challenges. They see both of them as a threat to their hold on to power. In this case, the police service maintains its construction as more oriented towards protecting the regime in power than in carrying out its actual mandate of protecting citizens' lives and property. There is continued tension between serving the public good and serving narrow political interests.

It is for this reason that attempts to reform the police seem not to have much impact. CSOs long advocated for training on human rights as part of the police training curriculum. So, the understanding of the imperative of human rights in itself does not seem to ultimately influence the behaviour of the police. This is compounded by a number of things. For example, the widespread corruption in the service, skews service provision and the image of the police as an extortionist establishment.^[17] There is a close causal link between corruption in the service and abuse of human rights in particular among the poorer sections of the society. It is the case that many times lack of resources to pay bribes when demanded results in repercussions which could include incarceration, enforced disappearance, and even death.

The above are the structural factors that have made police reforms more of rhetoric than a real commitment to improve service to the people. The findings of the National Task Force on Improvement of the Terms and Conditions of Service and Other Reforms for Members of the National Police Service, Kenya Prisons Service, and National Youth Service (The Maraga Taskforce) were, among others, simply a confirmation of the enduring nature of police impunity and its deeply entrenched structural roots. This means that actions that target only the police service and its structures are not bound to have much impact on the behavior of officers. Actions must also target the higher, political structures of decision-making which ultimately inform the orders that police respond to.

[17] See, Maraga taskforce reveals deep rot in police: <https://www.standardmedia.co.ke/national/article/2001503358/maraga-how-the-police-service-is-rotten>

It is important to point out that the Maraga task force was established in December 2022 and delivered its report to the appointing authority in November 2023. In between (from January to September 2023, to be precise), the police were involved in killing some 67 protesters during the 2023 cost of living protests as documented by IMLU and other human rights organizations.^[18] The irony of the situation being that at the same time, there was obvious disregard to rule of law and police impunity while the report called for police reforms.

In fact, as the Gen-Z protests were being quashed forcefully and violently, the process of implementing the recommendations of the Maraga taskforce report was also underway. A number of meetings were held with stakeholders of police reforms convened both by the Ministry of Interior and other stakeholders such as IMLU and the Police Reforms Working Group Kenya. Shortly after the violent suppression of the Gen-Z protests, a committee was formed to spearhead the reforms.^[19]

[18] IMLU, "Death, blood and tears," 2024: <https://imlu.org/2024/02/death-blood-tears/>

[19] Capital News, "Kindiki gazettes technical committee to oversee proposed NPS, NYS reforms":

CONCLUSION

The Gen-Z revolution was one more proof that the spirit of peoples power in Kenya will continue to endure. The use of extreme violence against citizens was proven, once again, to be ineffective in silencing the voices of those who feel the brunt of inequalities, lack of job opportunities, corruption, among others. How the state elite and the political class handle the social contradictions that perpetuate conflict will be the true measure of national stability, not suppression of the voices of those who feel marginalized from the system, including the nation's structures of decision-making. What is more, the Gen-Z revolution presented a "generational" turn in Kenya's politics and culture of social change protest. It builds on the more "traditional" ways of organizing, harnessing modern Information and Communication Technology (ICTs) platforms to carry out a seamless political mobilization process that did not require expensive physical meetings, retreats, and so on. In many ways, it was the harnessing of ICTs that made the main difference, improving the speed of mobilization and quick, instant awareness raising on critical issues and messaging. It not only built on the more traditional tactics of mobilization but energized the main CSO players as well. It also borrowed from and built the emerging tradition of "leaderless" revolutions that characterized the Arab Spring and other equally influential social change movements across the globe.^[20]

Sustaining the tempo of Kenya's social protest culture and harnessing its historic achievements such as the country's post-2021 constitutional architecture, requires more learning, more reflection and planning, and more collaboration. The Gen-Z led protests presented an important opportunity to continue expressing dissent and demanding accountability. Further, several cases have as a result of these protests been instituted by IMLU, the Law Society of Kenya, and other interlocutors, where important jurisprudential pillars were erected.^[21]

What demands particular attention is undertaking a political analysis that can help to nurture and develop the nexus between political and legal activism. Police impunity is essentially driven by the lack of consequences at both the lowest level of police officers and the level of political decision-making. Even though a number of police have been arraigned in court for violations and some even jailed for their crimes, the overall culture of impunity has not been significantly dented. This proves that police impunity is deeply rooted in structures of decision-making and the social relationships that they create and sustain. The question of command responsibility, another emerging jurisprudential pillar, is among the important developments that should be employed to deal with this systemic challenge.

[20] See, for example, Carne Ross, *The Leaderless Revolution: How Ordinary People Will Take Power and Change Politics in the 21st Century*, 2011

[21] See section 2 for more analysis of the emerging jurisprudence



A photograph of a protest scene. In the foreground, a large crowd of people is gathered on a street littered with debris, including bricks and wooden planks. A large, dark-colored water cannon vehicle is positioned on the right side of the frame, with a powerful stream of water being directed towards the crowd. The background shows a hazy, overcast sky and distant hills. The overall atmosphere is one of conflict and civil unrest.

LEGAL SAFEGUARDS AND THE JURISPRUDENCE ON THE RIGHT TO PROTEST

Background

As a member of the community of nations, Kenya has signed, ratified and domesticated a number of international human rights instruments. These instruments are aimed at safeguarding the rights of Kenyans when it comes to free expression and the rights to associate, protest, etc. The most basic of these instruments is the Universal Declaration of Human Rights (UDHR). The UDHR provides for the equal protection by the law of all persons without discrimination and against any incitement to such discrimination.^[22]

The foundational document, which has defined human rights for more than 7 decades, also provides that everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or the law.^[23] Furthermore, it forbids arbitrary arrest, detention or exile.^[24] The right to freedom of peaceful assembly and association is also provided for.^[25]

The most elaborate international instrument when it comes to civil and political rights is the International Covenant on Civil and Political Rights (ICCPR). Together with the Universal Declaration on Human Rights (UDHR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR), they form the main components of the International Bill of Human Rights.

Kenya's constitution entrenches both ICCPR and ICESCR values. The rights to freedom of assembly, demonstration, picketing, and petitioning are covered in Article 37, while political rights, which include the right to form or participate in forming a political party, are entrenched in Article 38. Article 43 elaborates on economic and social rights, which include health, housing, freedom from hunger, a clean and safe environment, and social security, among others.

Importantly, the constitution recognizes the right to life, the most fundamental and the basis of all rights. In line with all applicable international human rights instruments, including the ICCPR and the ICESCR, Kenyan laws recognize the 'inherent dignity' and the 'equal and inalienable' rights of all members of the human family in line with the United Nations General Assembly (UNGA) standards.^[26]

[22]Article 7

[23]Article 8

[24]Article 9

[25]Article 20

[26] IMLU, Death, blood and tears, op cit, p.11: <https://imlu.org/2024/02/death-blood-tears/>



Torture, extrajudicial killings and enforced disappearances

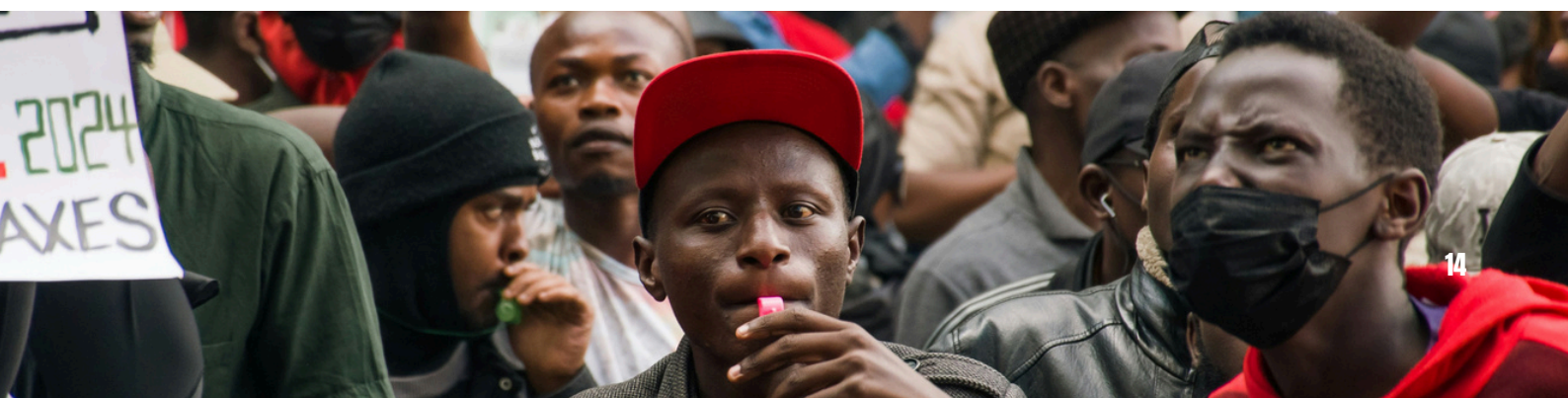
IMLU's report, *Death, Blood and Tears*, notes as follows:

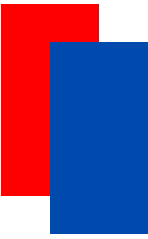
Extrajudicial, summary, or arbitrary execution is the deliberate killing of individuals outside of any legal framework. Such executions include deaths resulting from torture or ill-treatment in prison or detention, deaths resulting from enforced disappearances, and deaths resulting from the excessive use of force by law enforcement officials, among others.^[27]

Apart from the constitutional provisions reviewed above, Kenya's international obligations and domestic laws provide safeguards against the violations listed by IMLU in the 2023 report. For example, Kenya ratified the UN Convention Against Torture in 1997. Further, the Truth, Justice, and Reconciliation Commission Report recommended outlawing torture in 2013. Vide a Gazette Notice No. 8737 of 22 July 2009, the Commission was established with the objective of promoting peace, justice, national unity, healing, reconciliation and dignity among the people of Kenya. Additionally, Article 25 of the constitution classifies freedom from torture as a non-derogable right.^[28]

The enactment of the Prevention of Torture Act in 2017 was a significant milestone in the fight to end torture in the country. Broadly, it provides for the prevention, prohibition and punishment of acts of torture and cruel, inhuman or degrading treatment or punishment. It advances the issue of reparations to victims of torture and cruel, inhuman or degrading treatment or punishment. The Act creates the two related offenses of torture and Cruel, Inhuman or Degrading Treatment or Punishment (CIDT), among others. The Act clearly states that there can be no justification for torture.

In 2022, experts of the UN Committee against Torture commended Kenya for its efforts to implement anti-torture legislation. One of the experts stated that Kenya had made attempts to bring its legislation to be in line with the UN Convention against Torture, noting that the national definition of torture was more restrictive than in the Convention. The leader of the Kenyan delegation, during the occasion, is said to have remarked that, Kenya placed great importance on the respect of human rights and significant developments had been made in law as well as in practice. Kenya did not condone any acts of torture and attached great importance to the respect for human rights of all^[29]





The advancement in the fight against torture and the alignment of national legislation to international standards, there is a significant gap when it comes to legislation against enforced disappearances. Kenya has not yet ratified the UN Convention for the Protection of All Persons from Enforced Disappearance which inter alia obligates State parties to criminalize and investigate enforced disappearance. The criminalization of enforced disappearances is yet to be accomplished in spite of the campaigns that have been carried out by human rights organizations and their networks for many years. In December 2023, during the 75th celebrations of the International Declaration on Human Rights (UDHR), the then Attorney General, Justin Muturi, made a commitment to have the necessary legislation enacted. Regrettably, no discernible progress has been made to this end.^[30] Almost a year later, it was apparent that no action had been taken in that regard.

[27]IMLU, Death, blood and tears, ibid, p.11: <https://imlu.org/2024/02/death-blood-tears/>

[28]IMLU, Death, blood and tears, ibid, p.11: <https://imlu.org/2024/02/death-blood-tears/>

[29] Experts of the Committee against Torture commend Kenya: <https://www.ohchr.org/en/press-releases/2022/05/experts-committee-against-torture-commend-kenyas-efforts-implement-law#:~:text=In%20concluding%20remarks%2C%20Mr.,of%20human%20rights%20for%20all.>

[30] Ruto assures UN of commitment to safeguard human rights: <https://cloud.kbc.co.ke/human-rights-ag-justin-muturi-reads-out-kenyas-pledges/>

Policing Standards in Kenya



The point of departure for the establishment of policing standards in Kenya are the principles of national security embedded in Article 238 of the constitution. First, the constitution defines national security as the “protection against internal and external threats to Kenya’s territorial integrity and sovereignty, its people, their rights, freedoms, property, peace, stability and prosperity, and other national interests”.

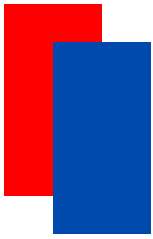
Second, the principles require that the goals of national security are “pursued in compliance with the law and with the utmost respect for the rule of law, democracy, human rights, and fundamental freedoms.” The constitution therefore expands the conceptualization of national security to embrace important elements of human security,^[31] including human rights.

Policing standards in Kenya are contained in the Service Standing Orders issued by the Inspector General of Police (IGP).^[32] The SSOs were reviewed after the passage of the constitution in 2012 so as to be in line with the new governance ethos particularly the Bill of Rights, and the structural changes brought by the constitution in the area of national security^[33].

In line with the above constitutional provisions, new laws were enacted to not only adjust the structure of the police service, but also to create civilian oversight institutions. The new bodies created include the Internal Affairs Unit (IAU),^[34] the Independent Policing Oversight Authority (IPOA)^[35] and the National Police Service Commission (NPSC).^[36] The establishment of IPOA and the NPSC entrenched the aspect of civilian oversight.

Further, the National Police Service Act^[37] sets standards when it comes to the circumstances in which the use of force by police is allowed. Testimonies of survivors of the Gen-Z protests (and other previous protests) demonstrate that this requirement is never observed. The other requirements that are often ignored relate to reporting to IPOA cases in which the use of force leads to death. The NPS regulations state as follows:

Any use of force that leads to death, serious injury and other grave consequences is required to be reported immediately by the officer in charge or by another direct superior of the person who caused the death or injury, to the Independent Policing Oversight Authority (IPOA) who shall investigate the case...^[38]



It is a further requirement, that, A police officer who makes a report to the Independent Policing Oversight Authority (IPOA), shall ;

- Secure the scene of the act for purposes of investigations, and
- Notify the next of kin, their relatives or friend of the death or injury...^[39]

It is the conclusion of this report that the high thresholds set by the constitution and various laws in regard to the police service have not been met by the police. On the contrary, evidence shows that the police in Kenya score very highly when it comes to excessive use of lethal force against civilians. In a comparative study carried out in Kenya, South Africa, and some Latin American countries, it was noted that, the conclusion would be that Kenyan police are clearly using lethal force excessively, thereby causing many more lethal than non-lethal outcomes, whereas the opposite should be the case^[40]

In regard to the number of civilians shot dead by police per incident, the report was equally forthright, noting as follows, “The last index for which there is relevant information for Kenya is the average number of civilians shot dead by the police per incident. The value for Kenya is 1.24 deaths per incident, the highest of all countries for which it was possible to calculate such index.”^[41]

[31]The Commission on Human Security: https://www.icbjapan.org/humansecurity_outline.pdf

[32]Service Standing Orders: <https://nationalpolice.go.ke/sites/default/files/2024-08/National%20Police%20%20Service%20Standing%20Orders.pdf>

[33] Article of the Constitution 2010

[34]See, for example, “10 things to know about police reforms and accountability”:

https://www.humanrightsinitiative.org/programs/aj/police/intl/docs/Pocketbook_for_KenyaPolice.pdf

[35]<https://www.ipoa.go.ke/>

[36]<https://www.npsc.go.ke/>

[37] National Police Service Act 11a of 2011 as revised in 2014

[38]IMLU, “Death, blood and tears,” *ibid*, 2024: <https://imlu.org/2024/02/death-blood-tears/>, *ibid*, p.44

[39]IMLU, “Death, blood and tears,” *ibid*, 2024: <https://imlu.org/2024/02/death-blood-tears/>, *ibid*

[40]Ignacio Cano, The Use of Lethal Force by Police in Kenya, October, 2022: <https://apcof.org/wp-content/uploads/the-use-of-lethal-force-by-the-police-in-kenya.pdf>

[41]Ignacio Cano, *ibid*

Emerging jurisprudence on police excesses

The Willie Kimani^[42] case is probably one of the most significant cases to be successfully prosecuted in Kenya in recent times involving police impunity. In many ways, it set an important standard in terms of how the question of police brutality in Kenya may be investigated, profiled, prosecuted, and finalised so that justice is achieved. There are many lessons that can be learned from the case to inform future advocacy at different levels.

International Justice Mission (IJM) lawyer Willie Kimani, his client Josephat Mwenda and taxi driver Joseph Muiruri were found murdered a week after they disappeared after attending a court session at the Mavoko Law Courts. Kimani was representing Mwenda, who had been shot and injured by police in April of the same year, 2016. Upon complaining to the authorities, Mwenda was systematically harassed by the same police who had been responsible for his troubles. While delivering her verdict, Justice Lesiit had the following to say:

“ I have carefully considered the mitigation of each accused person as given orally and in writing. I have also considered the various reports that were filed: the probation report, the medical report, the victim impact report, and certificates of the various courses undertaken by the accused persons during their incarceration. I have also considered the circumstances of this case, the meticulous planning, implementation and execution of the deceased. To say the least, this was a murder most foul and execution that was most heinous. ”

The judge went ahead to announce the sentences as follows:

“ The 1st accused, (Fredrick Leliman) is sentenced to death in each of the three counts with the prison terms running concurrently; the second accused (Stephen Cheburet) is sentenced to 30 years imprisonment in each of the three counts with the prison terms running concurrently; the third accused (Sylvia Wanjiku) is sentenced to 24 years imprisonment with the prison terms running concurrently; and the 5th accused, police informer (Peter Ngugi) is sentenced to 20 years with the prison terms running concurrently. ”

Evidence in the public domain shows that the Independent Policing Authority (IPOA), the body established to investigate police misconduct, had received 20,979 complaints against the police, eleven years after its establishment.^[43] This represents an average of 1,907 cases each year. Out of these, IPOA's complete investigations stood at 3,437 in 2022, representing only 16.4% of all the cases. Out of the cases investigated successfully, 141 cases were filed before courts of law, representing only 4.1% of all the cases investigated successfully. The analysis based on these figures alone gives an inkling of why there is so much police impunity in Kenya.

The problem of police impunity is, therefore, a systemic one. Even after the sentencing to death of Leliman and his colleagues who murdered Willie Kimani in cold blood, police brutality has continued with more police officers being arraigned in court. One of the cases that has received publicity is that of Ahmed Rashid, who served for many years at Pangani Police Station. Rashid was accused of murdering two teenagers - Jamal Mohamed and Mohamed Dhahir - in 2017 in an incident that was not only recorded but whose video recording went viral.

The arraignment of Rashid in court in December 2023, six years after the fatal shooting that killed the two teenagers, was a result of successful investigations conducted by IPOA.^[44] However, like the Willie Kimani ("Mavoko three") case, pressure from the public and human rights organizations played a greater role in ensuring that proper investigations were carried out and the suspect arraigned in court. However, to date, the case remains in the corridors of justice, never having been concluded while the families continue to bear the pain of their loved ones in vain. Basic reparation mechanisms for the families of the victims including psychosocial support provided by the state is non existence.

Since these 2 cases were successfully presented in court, there has been reluctance by the office of the Director of Public Prosecutions to present the investigated cases by IPOA to court. The IPOA we note, has no prosecutorial powers even where they have compelling evidence to prosecute. This situation is manifested through lack of political goodwill and shielding of police perpetrators by the state.

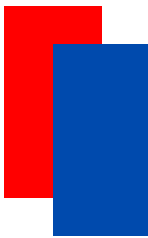
To underscore the systemic nature of police impunity in Kenya, the table next page gives details on police officers charged and/or convicted since 2016 when Willie Kimani was killed:

[42] Criminal Case No.57 of 2016 and Miscellaneous Criminal Application 244 of 2016

[43] The Guardian, "Kenya police officers found guilty of murder of three including human rights lawyer": <https://www.theguardian.com/global-development/2022/jul/22/police-officers-found-guilty-of-murder-of-three-including-kenyan-human-rights-lawyer-willie-kimani>

[44] Amnesty International Kenya: <https://www.amnestykenya.org/update-on-the-ahmed-rashid-case-progress-and-challenges-in-pursuit-of-justice-for-jamal-mohamed-and-mohamed-dahir-kheri/>

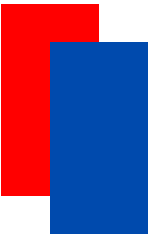




Victim's Name	Age	Details of Death
Nahashon Mutua, Officer in Charge of Ruaraka Police Station, Nairobi	Charged with the killing of Martin Koome while in police custody	Convicted in 2019
Chibungu Sanga, police officer in Mukurwe Ini, Nyeri County	Charged with the murder of King'ori Kanyi	Convicted in 2023
Naftali Chege, Charles Wang'ombe, Ismael Baraka, and John Pamba, all police officers serving in Diani area	Charged with the murder of Alexander Monson	Convicted in 2021
Benson Mbutia, Nicholas Cheruiyot, Lilian Cherono, Martin Wanyama, James Mwanikiwere and Consolata Kariuki, all officers in Kianjakoma, Embu County	Charged with the murder of twin brothers - Emmanuel Mutura Nwiga and Njiru Benson Ndwiga	Charged; trial proceeding
Ahmed Rashid, formerly of Pangani Police Station	Charged with the murder of Jamal Mohamed and Mohamed Dahir Kheri	Charged; trial proceeding

Table : Successful prosecution of police officers

The question of command responsibility



The assessment of the police in Kenya, in particular the wide deviation of police behavior from the normative framework established by the constitution, the laws, and the SSOs, leads to two broad hypotheses: (i) that the police are involved in violations as a result of their own errant behavior, and (ii) that the police are involved in violations of human rights as a result of following orders from their superiors.

The Willie Kimani case falls within the ambit of the first hypothesis. The killing was not prompted by orders from superiors but was simply a number of police officers conspiring to kill innocent citizens to resolve a “problem” that had developed in the course of duty. The police in this case were trying to escape responsibility for their actions, a clear violation of the normative framework established by the Constitution, and other similarly important documents. The many cases of misconduct that have resulted in police being tried, including the use of lethal force in situations that involve intimate relationships, add to the validity of this hypothesis.

The second hypothesis applies to cases involving public order management where one would say the actions are not premeditated. Even though they raise questions regarding one’s personal ethics and respect for human life, it is possible to conclude that in these cases officers are simply carrying out orders. This elevates the discussion to the issue of command responsibility.

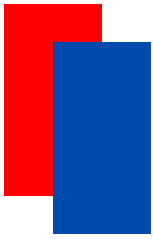
The doctrine of command responsibility is entrenched in the International Crimes Act, of 2011,^[45] which domesticated the Rome Statute^[46] in Kenya following the post-election violence of 2007/8. With its roots in international humanitarian law, the doctrine holds that both police/military and non-military commanders can be held liable criminally for crimes committed by their subordinates. As noted, “The liability applies as if the commanders themselves had personally committed the offenses. The concept, deeply rooted in historical precedents, serves as a potent reminder to Kenyan police officers of their accountability while maintaining law and order.”^[47]

The trial of 12 senior officers through the Act is bound to set a high threshold for police and their involvement in the widespread killing of citizens in situations of public order management. In February 2019, a magistrate in Kisumu ruled that the commanders and their juniors who were deployed in the county during the post-election protests were involved in the murder of Baby Pendo and directed that the investigation and prosecution of commanders under the doctrine of command responsibility since the juniors involved could not be traced.

[45]<https://ihl-databases.icrc.org/en/national-practice/international-crimes-act-2008-0>

[46]The Rome Statute of the International Criminal Court: <https://www.icc-cpi.int/sites/default/files/2024-05/Rome-Statute-eng.pdf>

[47] Command and individual responsibility in law enforcement: lessons for Kenyan police: <https://icj-kenya.org/news/command-and-individual-responsibility-in-law-enforcement-lessons-for-kenyan-police/>



Former Director of Public Prosecutions (DPP), Noordin Haji, confirmed in 2022 that the evidence gathered by IPOA met the “threshold of evidentiary and public interest test.”^[48] The plea has stalled since 2022 due to protracted litigation challenging the prosecution of the 12 commanders under the doctrine of command responsibility. On 21st March 2025 the Court of Appeal gave the green light for plea taking to proceed after an application seeking to stay the criminal proceedings was dismissed. In a shocking twist of the case, (on the sidelines of the publishing of this report) on the 5th of May 2025, the ODPP dropped charges against 8 of the 12 police officers involved in the killing of Baby Pendo. This came after consistent attempts by the DPP to defer or stall the proceedings, including delaying plea taking. The charge sheet was also changed, omitting the names of police officers who had overall command responsibility during the operations that saw the deaths, rape and injuries of over 60 Kenyans. We pray for an expedited conclusion of this case.

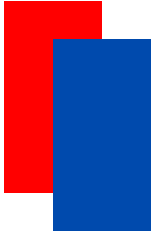
[48] Police commanders to be charged with the death of baby Pendo and other serious offences: <https://ipoa.news/2022/10/27/police-commanders-to-be-charged-for-the-death-of-baby-pendo-and-other-serious-offences/>

The use of lethal weapons against protesters

IMLU is a member of the Torture Free Trade Network bringing together over 80 organizations. The Alliance for Torture-Free Trade is a global effort by countries from all over the world to stop the trade in goods used for torture and the death penalty. IMLU's advocacy mechanisms seeks to stop the use of non lethal weapons largely deployed by the security forces during public order management especially batons, rubber bullets, tear gas and water canons. No known adherence to international standards by these weapons is shared by the state.

The Saitabao ole Kanchory case filed in the High Court in Malindi^[49] challenged the use by police of “brute force and violence” and the deployment of “water cannons, teargas, live ammunition, rubber bullets and other crude and archaic weapons against peaceful protesters.” The petitioner further stated that the Gen-Z protesters had been denied their fundamental rights and freedoms even though they were unarmed, peaceful, and even “good natured” in their protests. They had been “met with police brutalities, extrajudicial killings, illegal arrests, abductions, detention, intimidation, harassment, torture, cruel, inhuman and degrading treatment and other excesses and violence.” Further, the police had resorted to arbitrary arrests and illegal abductions of protesters and intimidation and harassment of their perceived ring leaders. This was an additional violation of their right to liberty and their illimitable freedom from torture and cruel, inhuman, and degrading treatment fundamentally safeguarded under the Constitution.





Kanchory's main prayers which IMLU fully associated with can be summarized as follows:

1. A declaration to the effect that the use of water cannons, tear gas, live ammunition, rubber bullets or other crude weapons or draconian measures is unconstitutional.
2. An order of prohibition against the use of the said weapons to quell protests.
3. A declaration that the extrajudicial killing, arrest, abduction, detention, harassment, intimidation, torture, cruel, inhuman, and degrading treatment of persons exercising their right to protest is a violation of the constitution.
4. An order of prohibition against the deployment of armed police in civilian clothes against protesters and that such deployment goes against the requirement for the police to be professional, disciplined, and maintain good relations with the society.
5. An order of certiorari be issued quashing any illegal and unconstitutional directive issued including the imposition of curfews, state of emergency, or shutting down of the internet; and
6. An order of mandamus was issued compelling the authorities to investigate complaints relating to disciplinary and criminal offenses by individual members of the NPS against protesters.

Towards the end of June 2024, the High Court gave orders restraining the police from using water cannons, tear gas, live ammunition, rubber bullets, crude weapons, brutal force, or any form of violence against people protesting the Finance Bill, 2024. In addition to that, the High Court restrained the police from carrying out extrajudicial killings, arrests, abductions, detention, harassment, intimidation, torture, cruel, inhuman, and degrading treatment of protesters pending the hearing of the full petition.^[50]

[49] Ndubai v Attorney General & another [2024] KEHC 9785 (KLR)

[50] High court protects anti-tax protesters from violent police tactics: <https://nation.africa/kenya/news/politics/high-court-protects-anti-tax-protesters-violent-police-tactics-4672756>



The “positive” obligation to investigate and prosecute

Another important principle established in recent times by the courts, which will have a bearing on future violations, is the positive obligation to investigate and prosecute violations. This principle was established in the case “Javeria Siddique w/o Arshad Sharif and 2 others v Attorney General and 4 others.[51]” The case involved the fatal shooting by police of a foreign journalist by the name of Arshad Sharif, a Pakistani investigative journalist who had escaped from his country because of threats to his life as a result of his work.

Arshad was shot dead in Kajiado County on 23rd October 2022. The police described his killing as a case of mistaken identity but took no steps to investigate the killing. Back at home, the family held that the death was an assassination. In their article, *Dicing with Death: Analysing the Killings of Pakistani Journalists with a focus on Arshad Sharif, Rabia Noor, and Noshina Nazir* revealed that Arshad had been charged with subversion, for “purportedly criticising state institutions and aiding defiance within the army.[52]

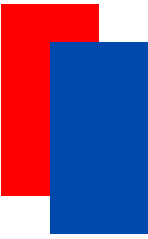
The case against the police was instituted by the journalist’s wife, the Kenya Union of Journalists (KUJ), and the Kenya Correspondents Association (KCA), on the basis that the police had failed to promptly and correctly investigate the murder. The case filed in Kajiado High Court ruled that the journalist’s death was “arbitrary and unconstitutional” and that his right to life had been violated. [53]

[51] Constitutional Petition E009 of 2023) [2024] KEHC 9667 (KLR)

[52] Rabia Noor and Noshina Nazir, *Dicing with Death: Analysing the Killings of Pakistani Journalists with a focus on Arshad Sharif*, 2023: <file:///C:/Users/Morris%20O/Downloads/20-J-ISOSS-9-2-Galley-Proof.pdf>

[53] Committee to Protect Journalists: Kenya court rules police unlawfully killed Pakistani Journalist Arshad Sharif: <https://cpj.org/2024/07/kenya-court-rules-police-unlawfully-killed-pakistani-journalist-arshad-sharif/>

Clawing back on the right to protest



Whereas the emerging jurisprudence on Kenya's protest politics is encouraging, the political elite appear to be clawing back on the gains made by CSOs and other actors. The proposed Assembly and Demonstrations Bill, 2024,^[54] is aimed at imposing stricter controls on protesters to curtail freedom of association and the right to protest, as well as the right to present petitions to public authorities. Although under the constitution the right to protest can be limited, if enacted, the law will curtail the right to protest as the only avenue through which social and political change has progressed in the country. The law is therefore being propelled by a reactionary instinct to preserve the status quo.

The Bill requires individuals planning an assembly to notify authorities at least three days and no more than 14 days before the protest event. Disobedience to police orders or organizing an unlawful assembly is criminalized, with penalties including imprisonment for up to one year.^[55]

The proposed Assembly and Demonstrations Bill of 2024, also mandates the creation of a public register of notifications, open for inspection during working hours. Further, the Bill grants regulating officers the power to impose conditions on organizers in the interest of public safety, order, and the protection of other people's rights. The conditions may include payments for clean-up costs and considerations of environmental or cultural sensitivities. Any special conditions or prohibitions can be appealed to the High Court.^[56]

One of the positive changes that was instituted in Kenya's protest legal regime was the removal of the notion that the police have to "allow" protests and therefore can also "disallow" them. The law was amended to make it mandatory to give notice of protests without the requirement for such notice to result in authorization. However, over the years, the police have increasingly read this to mean that protests cannot proceed without some kind of authorization. Alternatively, other means have been used to curtail the right to protest, for example, making claims that a proposed protest route was unsuitable.

[54] Kenya Law: https://kenyalaw.org/kl/fileadmin/pdfdownloads/bills/2024/TheAssemblyandDemonstrationBill_2024.pdf


[55] Kenya Law, *ibid*

[56] Kenya Law, *ibid*

CONCLUSION

This section analyzed the emerging jurisprudence on the right to protest vis a vis ongoing cases of police impunity. The assessment unearthed both positive and negative trends. Whereas the courts positively interpreted the right to protest whenever called upon to do so, the ruling elite and its surrogates continued to come up with ways of curtailing the right such as the Assemblies and Demonstrations Bill, 2024. Nonetheless, the emerging jurisprudence is capable of protecting the right to protest, but, ultimately, citizens in general and CSOs in particular have to be eternally vigilant, lest the political elite roll back all the gains secured through the post-2010 constitutional order.



A person is seen from the back, holding a flag with red, white, and green stripes. They are wearing a dark t-shirt with a graphic of a raised fist and the text "#REJECTFINANCEBILL2020".

OBJECTIVES, SCOPE, APPROACH AND METHODOLOGY OF THE STUDY



Objectives, Scope, Approach and Methodology of the Study

IMLU commissioned this study to comprehensively examine the reported cases related to the management of public protests. It aimed to shed light on the state of public order management in the country in specific reference to the Gen-Z protests that took place between June and August 2024. The first major protest action took place on 18th June 2024,^[57] while the last significant event happened on 10th December 2024 during the End Femicide march.

The report documents the violations that took place in relation to protests organized against the Finance Bill, 2024. The Bill, which faced opposition from a majority of Kenyans, was later withdrawn by the President.^[58] Apart from the recorded incidents of human rights violations, the other highlights of that period include:



Apart from the recorded incidents of human rights violations, the other highlights of that period include:

- Abductions that were largely brought to public attention through different social media platforms, especially X, formerly known as Twitter.
- The victimization of journalists while executing their mandate of reporting,^[59]
- The occupation of the National Assembly premises by Gen-Z protesters on the 25th of June, the burning of a section of Parliament building^[60] and the subsequent murder of 10 protesters by police,
- The abduction, torture, and subsequent release of the Kitengela 3, and others,^[61]
- The discovery of a number of bodies of women at an abandoned quarry in Kware, Nairobi, among others,^[62]
- The use of vehicles with no number plates and facial disguise by the police in a majority of the public order management operations related to the Gen-Z protests,
- A number of lawsuits challenging the actions of police and the arraignment of the Acting Inspector of Police Gilbert Masengeli on contempt charges.^[63]
- The arbitrary arrests and detention of human rights defenders by uniformed and non-uniformed officers of the National Police Service (NPS) during the end femicide march on 10th December 2024 at a time when femicide was reported to be at an all-time high in the country.



Specifically, the documentation was carried out with the following objectives:

- 01** Examine Kenya's sociopolitical context and how it informed the Gen-Z protests
- 02** Assess the constitutional, legal, and jurisprudential framework and its efficacy in safeguarding the right to protest,
- 03** Analyze specific instances of violations that occurred during the Gen-Z protests in the course of public order management, and
- 04** Recommend ways through which the right to protest can be more effectively protected.

[57]Anti-tax demonstrations spread nationwide and highlight Kenya's structural challenges: <https://acleddata.com/2024/07/19/anti-tax-demonstrations-spread-nationwide-and-highlight-kenyas-structural-challenges-july-2024/>

[58]Kenya's president withdraws tax plan after deadly protests: <https://www.bbc.com/news/articles/c3gg30gm0x2o>

[59]Outrage after police shoot journalist covering protests in Nakuru: <https://www.standardmedia.co.ke/article/2001499117/outrage-after-police-shoots-journalist-covering-protests-in-nakuru>; Kenyan journalist freed after "mistaken" arrest drama: <https://www.bbc.com/news/articles/cgrl62gln78o>

[60]Section of Parliament on fire after protester invasion: <https://www.the-star.co.ke/news/2024-06-25-section-of-parliament-on-fire-after-protester-invasion>

[61]Kitengela three released after 30 days ordeal in captivity: <https://nation.africa/kenya/news/torture-abductors-subjected-kitengela-three-captivity-4776518#story>

[62]Discovery of dismembered bodies in Kware dumpsite, Nairobi: <https://khrc.or.ke/press-release/discovery-of-dismembered-bodies-in-kware-dumpsite-nairobi/>

[63] High drama as Masengeli fights 6-month jail sentence: <https://nairobi.lawmonthly.com/high-drama-as-masengeli-fights-6-month-jail-sentence/>

Approach and methodology

This documentation focused on the policing tactics employed in the context of the exercise of protest rights, with a particular emphasis on the use of force by law enforcement officers, with resultant violations of human rights. The broad approach borrowed from the history and tradition of human rights reporting in Kenya and internationally, as well as IMLU's own specific approach that has developed over the years.

IMLU draws on both medical and legal methods in its assessments, combining the two to give a wholesome picture of human rights violations. Reports submitted by victims, as well as witness statements were triangulated with information received from key informant interviews involving lawyers, pathologists, and doctors. The organization applies both qualitative and quantitative methods and employs both primary and secondary data collection and analysis methods. All clients engaged by IMLU provided consent to be participants in the project.

The key components of the methodology are direct empirical observation, documentation, key informant interviews, and desktop review. These approaches were applied to the research as follows:

1. **Direct empirical observation:** During the Gen-Z protests, IMLU deployed (How Many) monitors in several counties to observe and record the conduct of police officers. As a result, the organization received information directly involving 482 cases from 18th June to 31st August 2024. Data from the observation and monitoring was collated, while witness statements were summarized into qualitative narratives, corroborated and triangulated with post-mortem examination reports and psychological evaluations and assessments. Claims were corroborated and backchecked through randomized key informant interviews, then synthesized. The information derived from these processes was availed to the author of the report for analysis.
2. **Desktop review of cases:** During the period of protests, several organizations, including IMLU, produced statements and preliminary motion reports covering the violations. These were used to generate the background information that is captured in this report. Media reports were also used as a basis for cross-checking relevant information for analysis and for providing specific cases of victims e.g. stories told by abductees.
3. **Medico-legal documentation,** including reviewing post-mortem reports, psychological assessment reports, witness and victim statements as well as mission reports were reviewed. Key informant interviews were carried out among IMLU staff who were part of the documentation process, the field monitors, as well as advocates involved in different cases, pathologists, and doctors.
4. **Review of available documentation:** Critical content analysis of all the preliminary reports and alerts received while monitoring demonstrations were analyzed to establish the trends in policing of various counties during protests and to underscore the applicable rules of public order management.
5. **Safe space for survivors:** IMLU organised spaces in which some of the survivors were invited. Additionally, this approach was reinforced by the analysis of media reports and general documentation.



Data analysis and presentation

The qualitative data was analyzed using content analysis methods. Major themes were identified and applied in the analysis. Narrative descriptions of cases of violations were used to enrich the analysis. The data was further augmented by the use of stories captured in newspapers as well as statements and preliminary reports from media houses and human rights organizations.

Ethical Issues

IMLU applies best practices when it comes to handling survivors of human rights violations. In its interactions with survivors, IMLU employed a survivor-centered approach while engaging clients to limit trauma. Interviews with survivors were held in safe and friendly spaces, mostly in the presence of their relatives and counselors.

IMLU also applied the “Do No Harm” principle when handling survivors. It provided safe spaces where the survivors would openly share their stories. One such meeting was held in early September. It brought together a number of survivors from the Gen-Z protests and survivors from past incidents of human rights violations to share their stories and learn lessons.

Limitations of the study

The Gen-Z protests started suddenly in the month of June 2024. Unlike protests called by opposition political parties (e.g. the 2023 “cost of living” protests), it was difficult for human rights organizations to properly plan their monitoring exercises and mobilize sufficient resources. Nonetheless, this hurdle was largely overcome when different organizations came together to pool resources. This collaborative approach was seen throughout the period of the Gen-Z protests.



FINDINGS



Overview

This section looks at two main parameters: consequences of taking part in the Gen-Z protests and the services provided by IMLU to the victims and survivors. The consequences, further analyzed in the following sub-sections, include extrajudicial killings, enforced disappearances, arrests, abductions, injuries, etc. The services IMLU provided to survivors, alongside other human rights organizations, include medical services, litigation, bail, and autopsies.

Consequences of taking part in the Gen Z protests

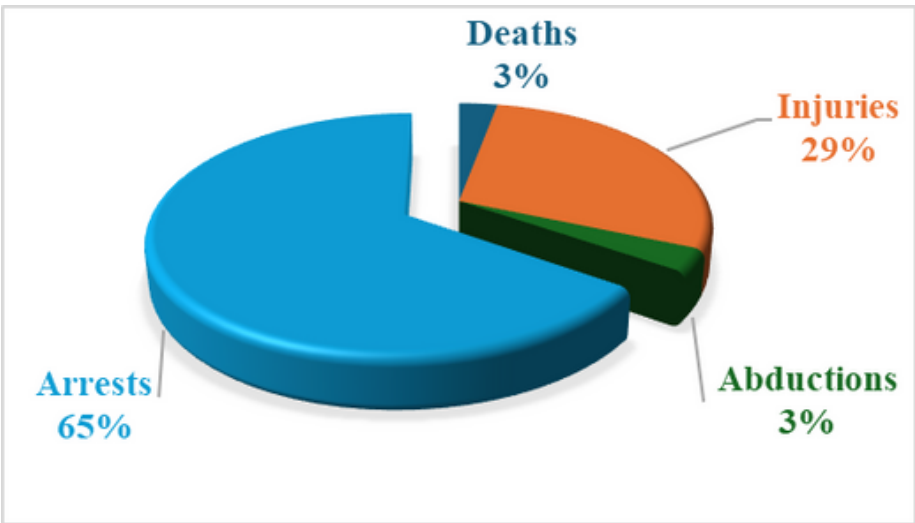
The consequences of taking part in the Gen-Z protests, which include extrajudicial executions, arrests, injury, and enforced disappearance, as listed above, were not different from what has been documented in past protests, pointing to the systematic nature of the problem. In the 2017 post-election violence, IMLU recorded similar grievous violations attributed to the police after the announcement of the presidential results on 11th August 2017. A statement released by IMLU then noted as follows: Following the announcement of the presidential election results on Friday night, 11th August 2017, we recorded grievous violations of human rights committed by members of the NPS in an unfortunate turn of events that led to excessive and unnecessary use of force, including lethal force by the police...^[64]

The use of “excessive and unnecessary force” by the police to quell the 2017 protests happened mainly in opposition strongholds where the protests were prevalent. The use of force was further described as “indiscriminate” leading to the killing and maiming of protesters.^[65] A total of 23 deaths were recorded by IMLU in this instance. The report concluded that “postmortem findings raise a clear case for an independent inquiry on the circumstances under which the police used lethal force...”^[66]

There is further evidence confirming the consistency of violations of human rights by police in Kenya. The 2022 report of the Missing Voices Coalition (MVC)^[67], shows that the Coalition, to which IMLU is a member, recorded 130 cases of extrajudicial killings and 22 enforced disappearances.^[68] In addition, the Coalition recorded 118 cases of extrajudicial killings and 10 cases of enforced disappearances in its 2023 report.^[69] For the Gen-Z protests, IMLU recorded 63 deaths, 601 injuries,^[70] 63 abductions (55 male & 8 female), and 201 arrests (177 male and 24 female).^[71] Figure next page illustrates the consequences of taking part in the Gen-Z protests.

From our data analysis and tabulations, on the enforced disappearances and those that were returned or later found dead, we still have 26 unaccounted for persons. There is need for thorough review and determination of the whereabouts of these persons.


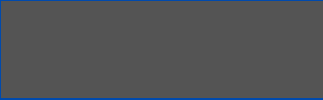
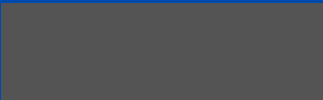
Figure : Consequences of taking part in Gen-Z protests



During the Gen-Z protests, the police disregarded alternative policing approaches that could have saved lives while effectively maintaining public order. These alternative means include reaching out to local leadership to de-escalate the situation and generating open dialogue with the protesters. This trend was also observed during the 2017 post-election violence. In both cases, the intention seemed to be to kill and maim as much as possible, thus defeating the ethos and expected standards entrenched in the constitution, the National Police Service (NPS) Act, and the Service Orders.

Victim's Name	Age	County	Details of Death
[REDACTED]	29	Nairobi	He was shot in Nairobi's Central Business Centre as he was, reportedly, running away from police who were pursuing a group of protesters. Like most of the reported incidents, his shooting went viral on social media after being captured in a video. He died at Bliss Hospital, Moi Avenue where he was taken after the shooting incident

[64] IMLU Press Statement, 1st November 2017: https://www.imlu.org/wp-content/uploads/2022/08/imlu_press_statement.pdf
 [65] IMLU Press Statement, *ibid*
 [66] IMLU Press Statement, *ibid*
 [67] <https://missingvoices.or.ke/about>
 [68] Missing Voices Coalition, Accountability Now: 2022 Annual Report, 2023: <https://ke.boell.org/sites/default/files/2023-09/missing-voices-2022-annual-report-digital-page.pdf>
 [69] Missing Voices Coalition, End Police Impunity: 2023 Annual Report, 2024: <https://ke.boell.org/en/2024/04/24/missing-voices-annual-report-2023-end-police-impunity>
 [70] This figure was also confirmed by the Kenya National Commission on Human Rights
 [71] This is the number of arrests reported directly to IMLU by its monitors that formed the basis for its own interventions. The figures recorded nationally are more than 1,000 (<https://www.the-star.co.ke/news/2024-09-26-42-people-died-as-a-result-of-gen-z-protests-kindiki-insists>)

Victim's Name	Age	County	Details of Death
	21	Nairobi	He was hit by a teargas canister during the Gen-Z protests. He was injured along Tom Mboya street (other reports say Haile Selasie Avenue) in the evening at a time when protesters were leaving the CBD. He is said to have died as a result of inhaling teargas that caused internal bleeding. He died at Kenyatta National Hospital, where he had been taken for treatment.
	24	Nakuru	A college student from Migori County, he was shot three times in Nakuru when police repulsed a group of protesters near State House. The reports revealed that Kevin had been sent home from college due to lack of fees. He proceeded to Nakuru to help in the family's small-scale business with the hope of raising the required fees.
	28	Nakuru	He was shot three times in Nakuru on June 25th 2024, just a few weeks after his father's burial. He had joined a group of protesters and were marching towards State House, Nakuru when he met his death.

The widespread cases of abduction of protesters seem to be an addition to the tactics that police have employed to intimidate protesters in the past. During the 2023 protests, the same pattern emerged but there were no incidents of abduction documented and reported during the 2017 post election protests. Notably, before the Gen-Z protests, there was a spate of abductions that took place in Nairobi and elsewhere, some suspected to involve the police but not related to public order management.^[72] This means that abductions are emerging as a main tactic among police in managing public order, even though it is patently unconstitutional as established in the Saitabao ole Kanchory case.^[73]

[72] Businessman missing three weeks after meeting Ruiru cops: <https://www.standardmedia.co.ke/article/2001368349/businessman-missing-three-weeks-after-meeting-ruiru-cops>; Footage captures businessman's abduction in Nairobi in broad daylight: <https://www.kenyans.co.ke/news/70812-footage-captures-businessmans-abduction-nairobi-broad-daylight?page=24>

[73] High court protects anti-tax protesters from violent police tactics: <https://nation.africa/kenya/news/politics/high-court-protects-anti-tax-protesters-violent-police-tactics-4672756>

The use of this tactic and others like wearing balaclavas and face masks, as well as using vehicles without number plates by the police, is one of the issues that were canvased in one of the court cases to be filed in relation to the Gen-Z protests.^[74] It is a trend that might fundamentally increase violations in public order management if not checked. It can also create a situation in which violent non-state actors adopt the same tactics with broader, negative consequences for the society in general. Some of the cases of abductions documented by IMLU, the media and other human rights organizations are recorded in the table below

Victim's Name	Details of Disappearance
	He was abducted in Nairobi's South B area as he waited to meet a friend. He was seen as one of the mobilisers who were using social media platforms to mobilize for the Gen-Z protests. He was eventually released by the police together with other abductees.
	One of the early cases of young female protesters to be associated with the Gen-Z protests, She was kidnapped at 3 am in her home by seven heavily armed policemen wearing face masks to hide their identities.
	Another social media influencer with a large number of followers on X, was kidnapped from his home at 3 am by police who refused to identify themselves. He later revealed after his release there were 12 heavily armed policemen the morning he was arrested, and that they "stole" some of his house property.
	Though not a Gen-Z and not involved in the Gen-Z protests in any way, a columnist for the Daily Nation, was abducted on 24th June in a case of "mistaken" identity. This interesting explanation was given by police when they finally released the journalist. It confirmed, more than anything else, that the police were responsible for the spate of abductions that took place during the period of the Gen-Z protests, even though they were publicly denying involvement.
	He was taken away from his home in Nairobi in the wee hours of the morning. A columnist with the Daily Nation, he seems to have annoyed the authorities with his criticism of the Finance Bill, 2024, and their conduct in public order management during the protests.

Table : Some abductees from the Gen-Z Protests

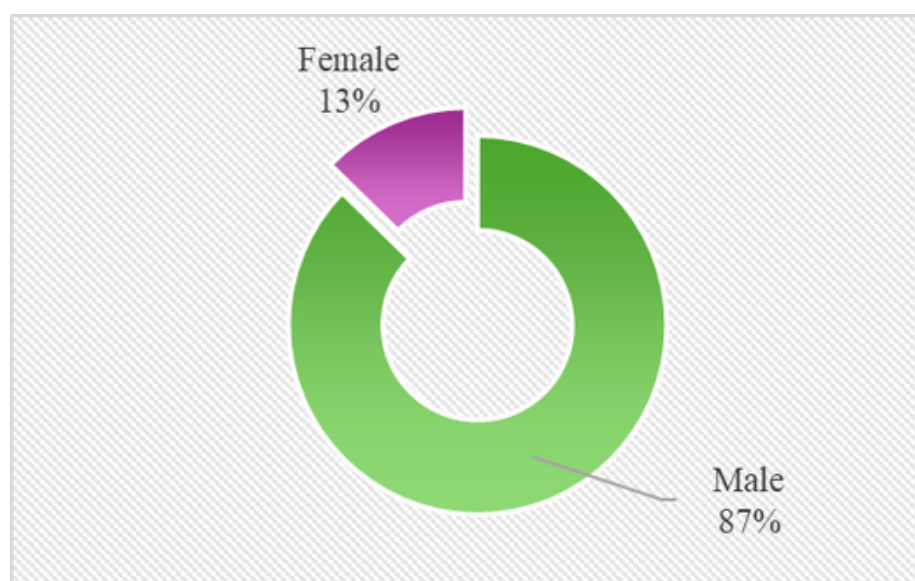
Deaths

Through its network of monitors, media sources, advocates, and counselors, IMLU was able to record 63 deaths caused directly by police during the Gen-Z protests. This figure was corroborated by the Kenya National Commission on Human Rights (KNCHR) as well as other agencies that monitored the protests.

Consequences of taking part in Gen-Z protests (sex disaggregated data)

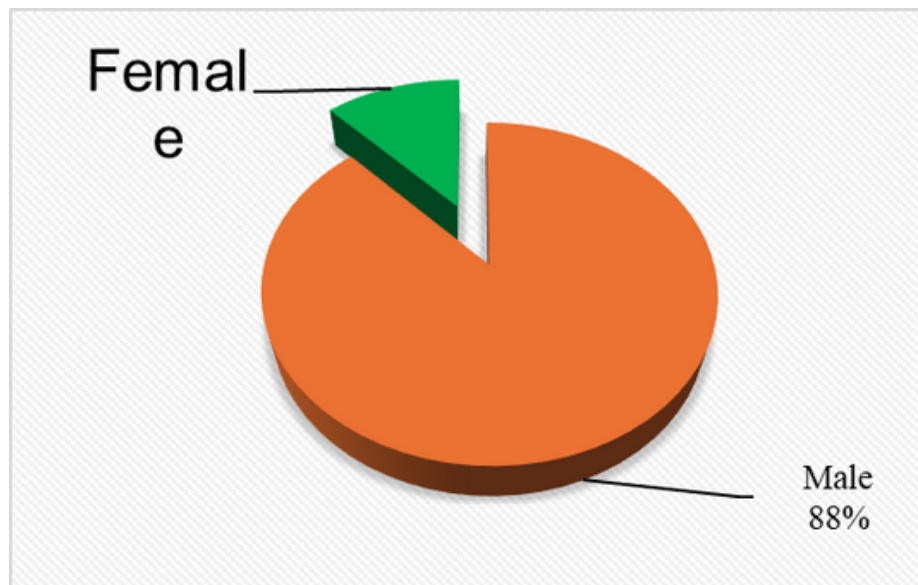
As shown in the past through IMLU's documentation, men tend to suffer more when police commit violations in situations of public order management than women. The higher percentage of men is related to the fact that men in Kenya tend to actively participate in protests compared to women. This is primarily because more men tend to attend such protests than women. This trend was noted during the Gen-Z protests just as it was during the 2023 cost of living protests. The following two figures show the analysis on abductions and arrests based on gender/sex.

Figure : Abduction cases disaggregated by sex



The sex disaggregated data also shows that more men than women were arrested during the protests. This is a similar pattern to that established in the 2017 and 2023 protests as recorded by IMLU and other human rights organizations.

Figure: Arrest cases disaggregated by sex



Support services provided by IMLU to victims and survivors

Based on its mandate, IMLU was able to provide support to the victims and survivors of the Gen-Z protests, who were subjected to arrest, extrajudicial killings, abductions, and other consequences of taking part in the Gen-Z protests. For the victims, IMLU carried out autopsies, while for those who survived but suffered injuries, IMLU provided medical services. The data below illustrates the spread of services provided by IMLU and provides a disaggregation by gender/sex.

Medical services (disaggregated by sex)

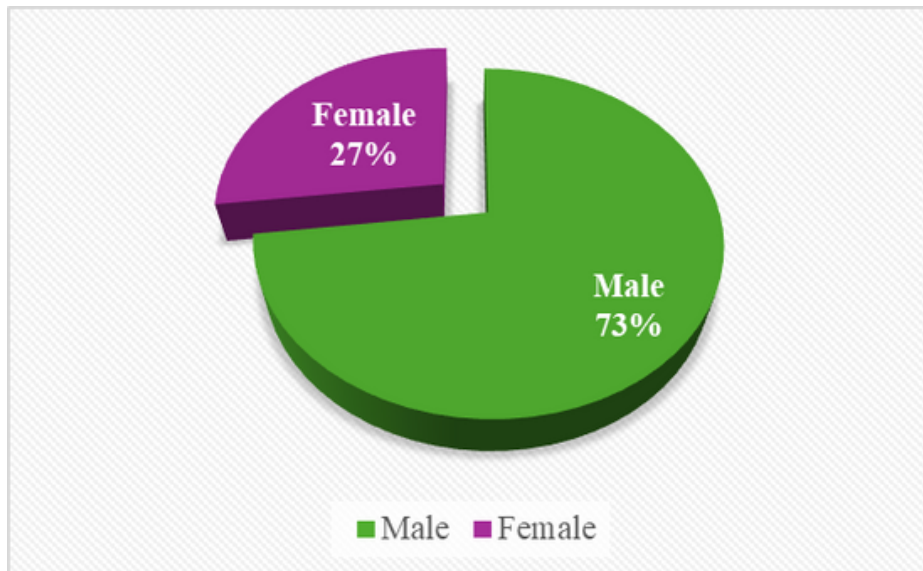
IMLU provides a range of medical services to victims and survivors of police brutality. These services include documentation of torture and other violations based on the Istanbul Protocol.^[76] The global standard against which the delivery of expert legal and medical evidence can be benchmarked in the investigation and prevention of torture. It also provides psychological assessments as part of the documentation process to establish relevant psychological impressions for purposes of treatment. These interventions are aimed at assisting survivors to overcome Post-Traumatic Stress Disorder (PTSD), depression, anxiety, low-self esteem, anger and other effects of police brutality.

[75] The unidentified are corpses of people whose identity cannot be established by the authorities such as police, and/or medical practitioners. There are important legal implications in the event of such bodies including the inability of the relatives to obtain death certificates and so on

[76] <https://www.ohchr.org/en/publications/policy-and-methodological-publications/istanbul-protocol-manual-effective-0>

The assessment indicates that IMLU provided medical support services to a total of 152 survivors of police brutality. There were more men (73%) than women (27%). This tallies with the fact that there were more men than women victims and survivors of the Gen-Z protests. However, IMLU’s attempts to intervene and provide services to the families of the women victims discovered at Kware were thwarted by the authorities.

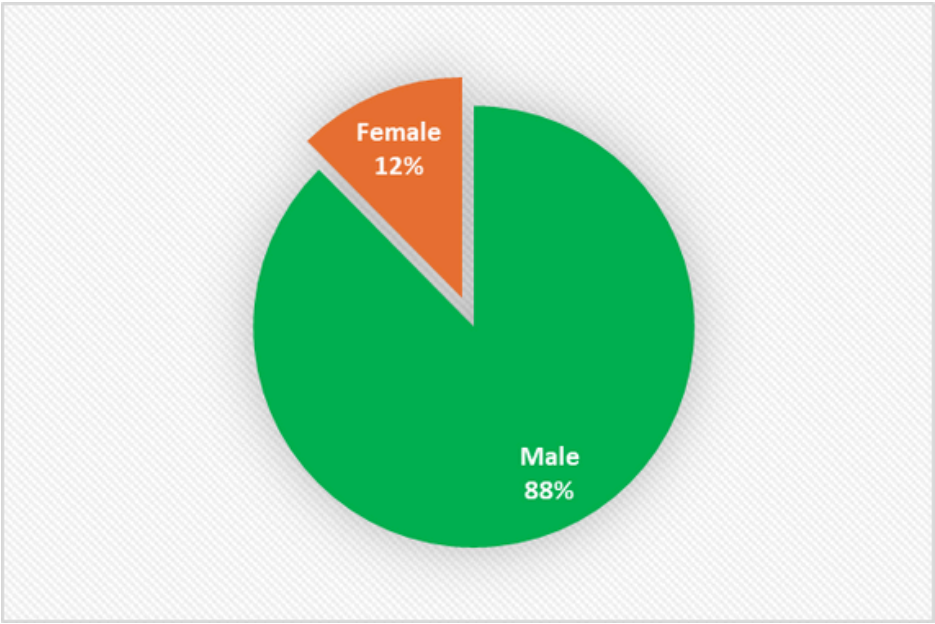
Figure: Medical services provided by IMLU (disaggregated by sex)



Litigation services (disaggregated by sex)

IMLU’s litigation services for survivors of torture and other violations of human rights range from bailing those in police detention, providing pro bono legal support for those who are charged in court, among others. Such services were provided to 171 survivors of police brutality during the Gen-Z protests. The data shows that there were more male (88%) recipients of the services than female (12%) recipients, which is in line with the fact that there were more male survivors than female survivors of the police violence. IMLU paid bail for 64 protestors who had been detained in police cells. IMLU has instituted 3 constitutional petitions.

Figure: Litigation services (disaggregated by gender/sex)



Autopsy services (disaggregated by sex)

IMLU also provided autopsy services to the families of the 48 victims of extrajudicial killings. The autopsies were conducted on 47 male bodies (97.9%) and 1 female body (2.1%). The analysis shows seven cases of multiple organ injuries (14.6%), and four (8.3%) cases of exsanguination caused by gunshot wounds from both long and close range. The multiple organ injuries were shown to have been caused by gunshots and blunt force trauma. There were also 4 cases of hemorrhage, pulmonary hemorrhage, hemorrhagic shocks, etc., multiple cases of internal bleeding causing death, asphyxia, head injuries, abdominal injuries, chest injuries, severe blood loss, etc.

The table next page shows the 48 autopsies conducted by IMLU.

	Mortuary	Name of Victim	Age	Sex
1	Bishop Okoe funeral home Thika		20 years	M
2	Bungoma CRH mortuary.		18 years	M
3	Busia County Referral Hospital, Mortuary		33 years	M
4	City Mortuary		12 years	M
5	City Mortuary		Adult	M
6	City Mortuary		Adult	M
7	City Mortuary		Adult	M
8	City Mortuary		22 years	M
9	City Mortuary		40 years	M
10	City Mortuary		Adult	M
11	City Mortuary		Adult	M
12	City Mortuary		Adult	M
13	City Mortuary		19 years	M
14	City Mortuary		26 years	M
15	City Mortuary		Adult	M
16	City Mortuary		Adult	M
17	City Mortuary		Adult	M
18	City Mortuary		Adult	M
19	City Mortuary		19 years	M
20	City Mortuary		17 years	M
21	City Mortuary		21 years	M
22	Coast General		Adult	M
23	Coast General		Adult	M
24	General Kago Thika		Adult	M
25	JOOTRH		26 years	M
26	JOOTRH		37 years	M
27	Kakamega County Funeral Parlor		33 years	M
28	Kakamega County Funeral Parlor		19 years	M
29	Kakamega County Funeral Parlor		19 years	M
30	Kakamega County Funeral Parlor		32 years	M
31	Kakamega County Funeral Parlor.		34 years	F
32	Kitui County and Refferal Hospital		32 years	M
33	KNH		Adult	M

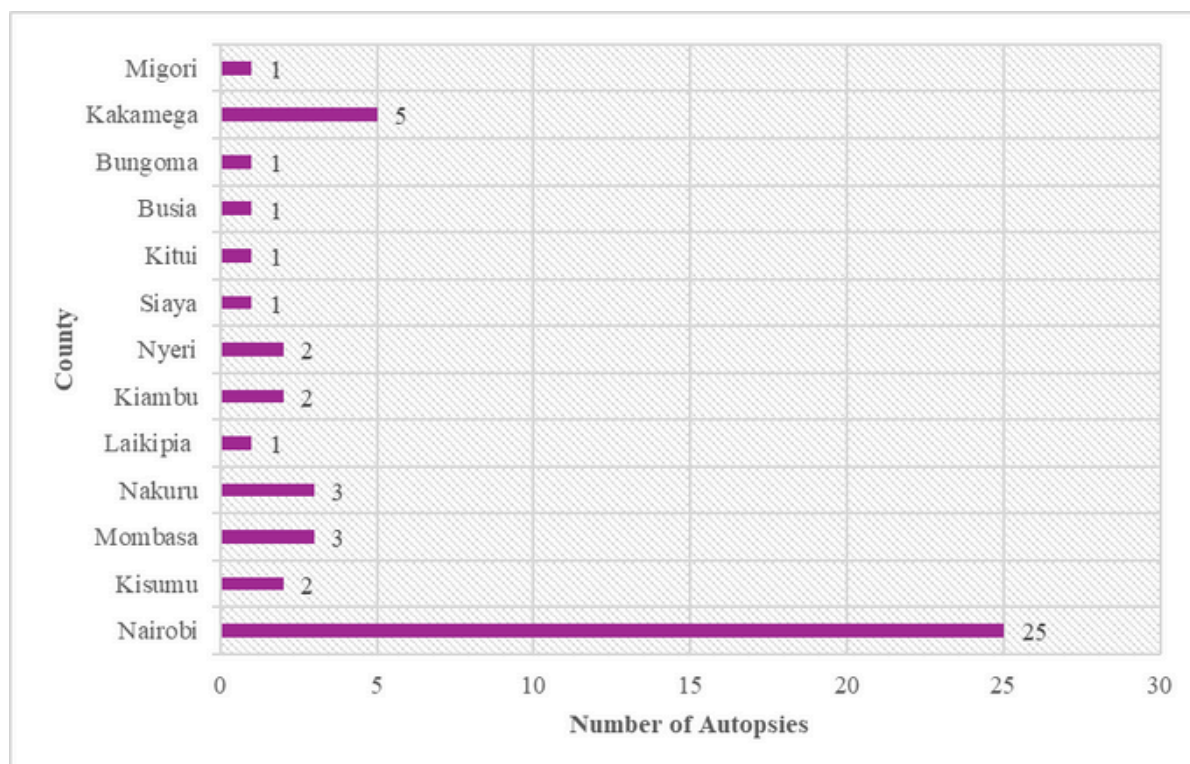
34	KNH		Adult	M
35	KNH		Adult	M
36	KNH		22 years	M
37	KNH		Adult	M
38	KNH		Adult	M
39	MP-Shah		Adult	M
40	Nakuru County Referral Hospital Morgue		19 years	M
41	Nakuru County Referral Hospital Morgue		28 years	M
42	Nakuru County Referral Hospital Morgue		25 years	M
43	Nyahururu County Referral Hospital		25 years	M
44	Nyeri County Referral Hospital		19 years	M
45	Nyeri County Referral Hospital		23 years	M
46	Pandya Memorial		20 years	M
47	Rosewood nursing home Rongo		19 years	M
48	Siaya CRH mortuary.		31 years	M

Total number of autopsies conducted: 48 (47 Male and 1 Female)

Age range: 47 were adults with 1 minor

Causes of death: gunshots, blunt force injuries, asphyxiation and drowning

Figure below shows the distribution of autopsies per county for the 13 counties covered by IMLU.



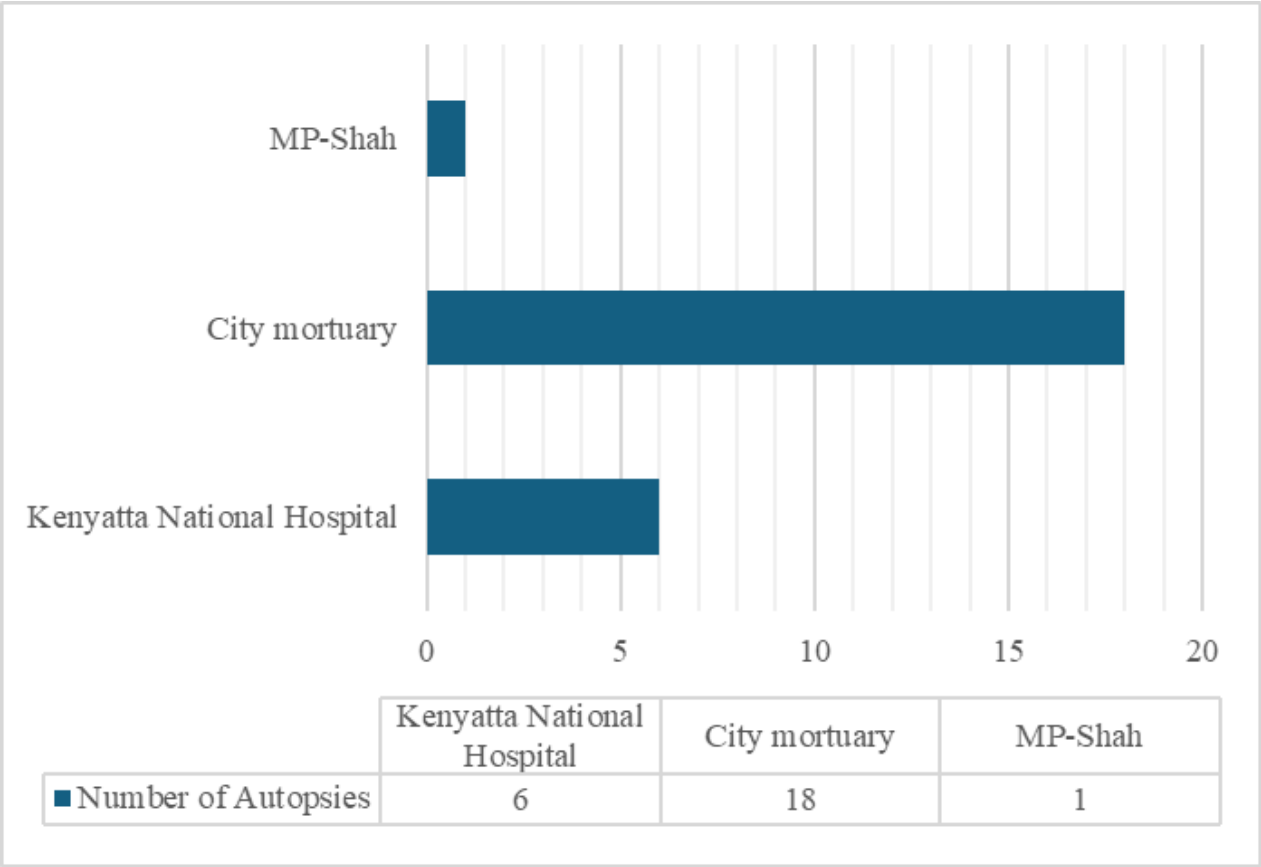
The Independent Medico-Legal Unit contracted 8 pathologists to conduct 48 (47M, 1F) autopsies in various parts of the country that included 47 adults and 1 minor aged 12 years. The main causes of death were gunshots and blunt force injuries, followed by asphyxiation and drowning. The autopsies were done as elucidated below:

Table: Autopsies conducted by IMLU at different hospitals

County	Hospital	Number of autopsies
Nairobi	Kenyatta National Hospital	6
Nairobi	City mortuary	18
Nairobi	MP-Shah	1
Kisumu	Jaramogi Oginga Odinga Teaching and Referral Hospital	2
Mombasa	Coast General Hospital	2
Mombasa	Pandya Hospital	1
Nakuru	Nakuru County Referral Hospital	3
Laikipia	Nyahururu referral hospital	1
Kiambu	Bishop Okoe Hospital (Thika)	1
Kiambu	General Kago Hospital (Thika)	1
Nyeri	Nyeri County Referral Hospital	2
Siaya	Siaya County Referral hospital	1
Kitui	Kitui County referral Hospital	1
Busia	Busia County Referral Hospital	1
Bungoma	Bungoma County Referral Hospital	1
Kakamega	Kakamega County Funeral Palour	5
Rongo	Rosewood Nursing Hospital	1
Total		48

Nairobi had the highest of autopsies performed by IMLU. They were distributed in three hospitals according to the figure below.

Figure: Distribution of autopsies at three Nairobi facilities



Conclusion

This section has detailed the findings of IMLU’s monitoring of the violations committed by police during the Gen-Z protests between June and August 2024. The violations show the same pattern as past incidents of public order management where the police applied excessive force. IMLU recorded 63 deaths as a result of the Gen-Z protests within 3 months compared to 67 deaths recorded by the organization during the entire 2023 cost of living protests.

The continued use of excessive force by the police begs the question as to whether police reforms are really producing the intended results. The similarities in the use of excessive force, leading to deaths, injuries, are a cause of worry for human rights organizations. Massive abductions during the Gen-Z protests also indicate that the police are more interested in punishing those exercising their right to protest instead of managing public order.

CONCLUSIONS AND RECOMMENDATIONS

OVERVIEW

As highlighted in the report, the killing of 63 protesters during the Gen-Z protests was essentially a continuation of the culture of impunity enjoyed by police in Kenya over the years. This culture has been sustained by a lack of accountability at both individual and institutional levels. It has also been supported by the tradition of using the police as a buffer between citizens and their demands for change on one hand, and the ruling elite on the other, to safeguard the status quo of social relationships and create conditions for exploitation of the poor and vulnerable.

The above conclusion is borne out by the fact that the police have consistently killed protesters during the last 3 electoral cycles without facing any consequences. Only recently, following a ruling by the courts, the commanders who were involved in operations in the Nyalenda area in Kisumu have been arraigned in court to face the consequences of their actions and inactions. This action comes eight years after the killing of Baby Pendo in the slum in August 2017, shortly after the general elections. And police killings do not occur only in relation to protests. In the Willie Kimani case, it was demonstrated through a court hearing how police meticulously planned and murdered lawyer Willie Kimani, his client Josephat Mwenda and taxi driver Joseph Muiruri.

More worrying is that police impunity has a longer history and connection with political imperatives of key political actors, making it not an episodic, but systemic affair. In the early 1990s, the regime of the Kenya National African Union (KANU), used the public administration and the police to disenfranchise voters in parts of the country, leading to hundreds of deaths and displacement. During the 2007/8 political rupture, the same phenomenon happened, with most of the killings being blamed on the police.^[77]

The findings of this study show that the police used their power to target protesters, killing and maiming them, instead of facilitating the protests by providing security. Their impunity was encouraged by the Cabinet Secretary in charge of Interior through pronouncements banning protests every time the protesters served notice in accordance with the law.^[78] This approach was also used during the 2023 protests to curtail the right to protest and essentially prepare the police psychologically to commit crimes against the people.

[77] See, generally, the Waki Report: https://www.knchr.org/Portals/0/Reports/Waki_Report.pdf

[78] Kindiki has no power to ban protests by opposition leaders, says Eugene: <https://www.standardmedia.co.ke/counties/article/2001477311/kindiki-has-no-power-to-ban-protests-by-opposition-leaders-says-eugene>

Just like it was the case during 2023 protests, the police in the Gen-Z scenario, used their authority and arms excessively, causing a great deal of injury both physical and mental. Reports from monitors and the media clearly show that the police management of public protests... employed excessive use of force: live ammunition, rubber bullets and teargas were used over and above the need to maintain order. The indiscriminate use of force led to children and adults being killed and injured by gunshots and rubber bullets or teargas^[79]

In addition, a review of media footage, including social media accounts, demonstrates that the protesters were not armed and therefore did not pose any threats to the police. In fact, evidence suggests that there was mobilization of violent elements to counter the Gen-Z protests in several counties including Nairobi.^[80] In various counties, groups of persons wielding “rungus” were seen patrolling the streets of major towns suggesting the use of private violence in addition to police violence in the management of public order. In the recorded incidents, the police did not seem to interfere at all with these armed men.

A review of the autopsy reports indicate that most protesters died of gunshot wounds. In fact, one of the first recorded victim of police shooting,^[81] 29-year old Rex Kanyike Masai, was shot in Nairobi on Thursday 20th June, while running away to safety from the police. Again, this is not different from the 2023 scenario in which a majority of the 67 individuals killed by police died majorly as a result of gunshot wounds.^[82]

Another significant finding was the abduction of 63 protesters, 55 male (87%) and 8 female (13%). What is significant about this finding is the fact that widespread abduction has never been a feature of police impunity in Kenya when dealing with protesters. Abductions have happened in the past, but not to the extent to which it happened during the Gen-Z protests. One of the most notable abduction was that of the “Kitengela three” - political activist Bob Njagi - and two brothers, Aslam Longton and Jamil Longton.^[83]

Also related to the above, is the common practice of police officers disguising themselves using balaclavas and face masks and using cars without number plates in their activities. The findings of this study show that the widespread use of these different disguises was meant to evade accountability, especially in cases where the police were involved in killings or abductions that led to killings. Indeed, the courts found this conduct to be against the policing standards set by the constitution and relevant legislation.

Most of the victims of police brutality were men. This was proven by the documented cases in the categories of deaths (96% male; 4% female), arrests (88% male; 12% female) and abductions (87% male; 13% women). This was also found to have been the trend in past cases of brutality. Out of the overall 298 cases of violations reported to IMLU, 88% were male, while 12% were female. There were generally more male than female victims in all categories of violations.

[79]IMLU, Death, blood and tears, op cit, p.11: <https://imlu.org/2024/02/death-blood-tears/>

[80]Pro-state goons terrorise city residents as protesters defy Ruto's warning: <https://nation.africa/kenya/news/pro-state-goons-terrorise-city-residents-as-protesters-defy-ruto-s-warning-4700460>

[81]Anger after protester shot dead at Kenya anti-tax demos: <https://www.bbc.com/news/articles/cnkk53097leo>

[82]IMLU, Death, blood and tears, op cit

[83]3 men abducted in Kitengela last month released, send message to Kenyans: <https://www.nairobileo.co.ke/news/article/17248/3-men-abducted-in-kitengela-last-month-released-send-message-to-kenyans>

CONCLUSION

In view of the foregoing analysis, this study makes the following conclusions:

1. The violation of Gen-Zs right to protest followed the same pattern of violations observed in past protests. However, there were deliberate efforts to curtail freedom of speech and expression, The use of hired goons to infiltrate peaceful protests under the protection of law enforcement officers is a worrying trend.
2. The analysis shows that the police were more interested in curtailing freedom than facilitating the protesters to enjoy their right to peacefully protest as per CoK Article 37
3. The violations, including deaths, injuries, abductions, etc., were meant to cause fear and discourage the protesters from exercising their constructional right to protest.
4. The unconstitutional deployment of the Kenya Defence Forces (KDF) to provide policing services they are ill-trained to provide was part of the strategy of intimidation. The military are deployed for the protection of territorial borders and or containment of external aggression. Homeland security management is purely and legally a responsibility of the Kenya police.
5. The use of disguises by the police, including wearing balaclavas and face masks, and using vehicles without number plates, was intended to help them avoid criminal responsibility.
6. Police impunity is impacting the obligation to reparation in general and the right to rehabilitation in particular, as provided by international law. The case of former acting Inspector General of police Mr. Masengeli to ignore court orders 7 times to answer to the case of the Kitengela three referred to above is an example of high-level impunity and lack of accountability.
7. The analysis shows the importance of focusing on the doctrine of command responsibility as a rational reaction to the politicization of the police.
8. Targeting police in junior ranks for prosecution in case of violations will only advance the cause of justice minimally because they are not in charge of the political decisions that shape police actions.



As highlighted in the report, the killing of 63 protesters during the Gen-Z protests was essentially a continuation of the culture of impunity enjoyed by police in Kenya over the years. This culture has been sustained by a lack of accountability at both individual and institutional levels. It has also been supported by the tradition of using the police as a buffer between citizens and their demands for change on one hand, and the ruling elite on the other, to safeguard the status quo of social relationships and create conditions for exploitation of the poor and vulnerable.

The above conclusion is borne out by the fact that the police have consistently killed protesters during the last 3 electoral cycles without facing any consequences. Only recently, following a ruling by the courts, the commanders who were involved in operations in the Nyalenda area in Kisumu have been arraigned in court to face the consequences of their actions and inactions. This action comes eight years after the killing of Baby Pendo in the slum in August 2017, shortly after the general elections. And police killings do not occur only in relation to protests. In the Willie Kimani case, it was demonstrated through a court hearing how police meticulously planned and murdered lawyer Willie Kimani, his client Josephat Mwenda and taxi driver Joseph Muiruri.

More worrying is that police impunity has a longer history and connection with political imperatives of key political actors, making it not an episodic, but systemic affair. In the early 1990s, the regime of the Kenya National African Union (KANU), used the public administration and the police to disenfranchise voters in parts of the country, leading to hundreds of deaths and displacement. During the 2007/8 political rupture, the same phenomenon happened, with most of the killings being blamed on the police.

The findings of this study show that the police used their power to target protesters, killing and maiming them, instead of facilitating the protests by providing security. Their impunity was encouraged by the Cabinet Secretary in charge of Interior through pronouncements banning protests every time the protesters served notice in accordance with the law. This approach was also used during the 2023 protests to curtail the right to protest and essentially prepare the police psychologically to commit crimes against the people.

RECOMMENDATIONS

The youth Bulge is a reality. The youth re awakening is a reality. The ruling class and political elite must realize that they cannot ignore the youth any longer. Our strong recommendation is that the Government must listen to its young people, act on the issues raised by young people and most importantly, include young people in all governance systems and processes. The youth must not only be seen and heard, but shape the current political context. They must be protected in every possible way, and their rights ensured. True democracy can only be achieved when young people's voices is the critical voice.

The study makes the following recommendations:

The Government of Kenya

1. Fully implement the Prevention of Torture Act and the National Coroner's Service Act to hold public officials accountable for torture and related human rights violations and ensure reparations for victims.
2. Immediately establish an independent investigative mechanism for human rights violations through the Independent Policing Oversight Authority (IPOA) and publish data on the processing of complaints.
3. Allocate resources to the Victim Protection Trust Fund and develop clear regulations to facilitate compensation and rehabilitation for victims of human rights violations.
4. Amend the Witness protection Act and the Victims Protection Act to provide for state protection of witnesses and victims of torture related violations.
5. Withdraw the Assemblies and Demonstrations Bill 2024 and instead adopt a comprehensive legal and policy framework that guarantees freedom of assembly and protects protesters against police abuse in accordance with international human rights standards.
6. Amend all relevant laws to abolish the death penalty and align Kenya with global human rights standards.
7. Expedite the ratification of Optional Protocol on the Convention Against Torture and the International Convention for the Protection of All Persons from Enforced Disappearance Office of the Director of Public Prosecutions.
8. Advocate for the setting up of the Victims Protection Trust Fund as stipulated in the Victims Protection Act of 2014; and
9. Direct the NPS to comply with the legal requirement to report all injuries caused to IPOA and other entities mandated by law so as to hasten prosecution of perpetrators of human rights violations.
10. There is need to develop a missing persons database. This will enable the country to account for all its citizens and for those missing an active database allow for efforts to keep searching for them. Closure for families is of utmost importance to enable healing.

IPOA

IPOA must be thorough, swift and prompt in undertaking investigation. There is need to boost public confidence in their undertaking by ensuring periodic dissemination of cases that have been investigated and handed over to ODPP for prosecution.

ODPP

ODPP must deliver on its mandate by prosecuting suspected cases investigating all violations perpetrated by police and fast track their prosecution.

The National Assembly

1. National Parliament should urgently repeal remaining provisions in the Penal Code restricting freedom of expression, particularly Sections 132 and 181, which contain vague and overly broad language that enables misuse against government critics and artistic expression; and
2. National Parliament should promptly amend Public Order Act 1950 and Schedule 6 (B) of the National Police Service Act which permits the police to use firearms in contexts not permitted under domestic and international law.

The National Police Service (NPS)

1. All senior police officers, including commanders who issue unlawful instructions must be held to account. Commanders should be held individually liable and under command of responsibility for human rights violations under their watch.
2. Commanders should not deploy ununiformed officers to manage protests. Un marked vehicles should also not be used.
3. The National Police Service (NPS) and Directorate of Criminal Investigations (DCI) to investigate and take necessary disciplinary and administrative actions on the officers that violate human rights policing public assemblies and demonstrations.
4. To immediately put an end to arbitrary arrests and use of excessive force, abductions and the including killings of innocent Kenyans.

Inspector General of Police (IGP) The Inspector General of Police should strengthen and enforce internal accountability mechanisms particularly the Internal Affairs Unit (IAU) and engage oversight mechanisms such as the Independent Policing Oversight Authority (IPOA) and the Kenya National Commission on Human Rights (KNCHR) including on implementing human rights-based recommendations to enhance police professionalism among other aspects of democratic policing.

Civil Society Organizations (CSOs)

There is need to elevate the bar of accountability by advocating for the prosecution of police commanders and civilian political leaders in charge of security - the precedent for this has been established in the Baby Pendo Case.

Use judicial mechanisms to compel all responsible entities like IPOA, KNCHRs, the IAU, with power to investigate and to summon witnesses, to complete investigations on the violations that took place during the Gen-Z protests with a view to providing evidence for further prosecution of perpetrators.

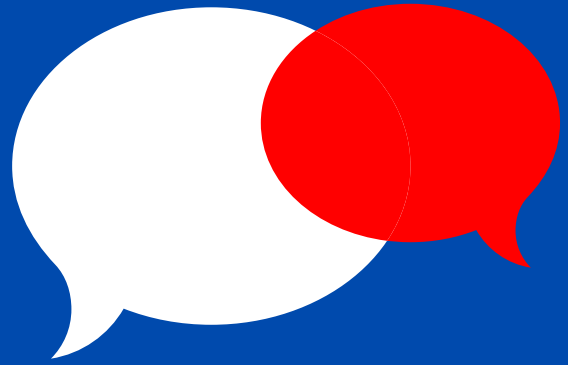
Continue documenting human rights violations whenever they occur for purposes of sustaining the quest for justice through national, regional and international mechanisms; and use the evidence gathered to demand accountability from all duty bearers, ensuring a stronger legal and policy framework for human rights protection and safeguards, as well as implementation of all recommendations made to different duty bearers in this report.

Increase collaboration among CSOs including through networks and coalitions that undertake documentation, as well as advocacy activities to sustain the quest for justice.

This report has been made possible through the courage and brevity of all those who spoke to us, reported violations, and also facilitated support to those injured and violated.

IMLU thanks all stakeholders for their unwavering support, including all members of the professional networks it works with. We extend special gratitude to all development partners who have walked and continue to walk this journey with us, as well as to our collaborating partners. Our work would not be a success if we didn't all work together.

The youth re-awakening in the country in pursuit of democracy, justice and civil and political liberties is probably the much-needed trigger for change. The youth have remained relentless, creating hope and sparking regional solidarity and active political participation and discourse on the worrying and rising authoritarianism in Africa. Through Kenya's youths organizing, we have witnessed youth in Nigeria, Tanzania, Uganda, and Gambia all rise up and speak up against dictatorship and poor governance. The youth remind us that change is possible, and the time for revolution is now. They youth have truly been an embodiment that despite all forms of intimidation, disrespect, violence and silencing, they remain unbowed and dedicated to the true liberation of Kenya.



TESTIMONIALS



“During my 32 days in captivity, I endured unimaginable hardship— isolated in a dark room, handcuffed, and surviving on minimal food. Yet, what kept me going was the hope of seeing my family again and the unwavering support from Kenyans who demanded my release. This experience reinforced my belief in the power of collective action and the urgent need to fight for justice and freedom in Kenya.

The abduction was a stark reminder of the oppressive tactics used to silence dissent, but it has only strengthened my resolve. Through the Free Kenya Movement, we continue to push for a better nation, one free from tribalism, corruption, and state-sanctioned violence. I forgive my captors, but I will not relent in demanding accountability and systemic change.

To my fellow Kenyans: our freedom is worth fighting for. The road is long, but together, we can build a Kenya that respects human dignity and the rule of law.”

Bob Njagi,
Political Activist & Leader, Free Kenya Movement

My name is Joshua Okayo, a lawyer and an advocate trainee at the Kenyan School of Law. On the 25th of June, in the morning, it was so unfortunate that [Nadia] never had the experience because that same morning, they went missing. She will tell the details. But then, being a leader in the institution, I had to take up responsibility and play a part in finding them.

I had a letter, a demand letter going out and calling for their immediate release. So they came where I live. They didn't necessarily get to the building, but they were around because when I was leaving, that is when they captured me.

They kept me for about 45 hours—without food, without water, without anything. My eyes were closed the whole time. I did not know what was happening. I did not know where I was. I can remember some faces because when they captured me, I saw some of them, but I couldn't tell afterwards what was happening.

On the 28th in the morning, I heard someone waking me up. I woke up and found so many people around me, speaking, telling stories. I got up from unconsciousness and realized there were guys around me. They started asking me questions: "Who are you? Where are you from?" At that point, I couldn't even talk coherently.

They called a boda boda rider who took me, and I started eating. After eating, I began making calls. I gave them my brother's phone number, and things started moving. The Kenya School of Law sent the Law Society of Kenya representative, who came to Murang'a. I was found near Maragua River.

After I returned, I went to the hospital. I was not content with what happened. My caretakers wanted me to be taken to another hospital to check my left arm. We went again and again, but nothing happened. The Kenya Human Rights Commission connected me to IMLU, and I was recommended for an MRI. My hand looks okay, but there's something pulling me from the inside. It's so painful.

Mentally, I don't know. I honestly can't tell.

Joshua Okayo

lawyer and an advocate trainee at the Kenyan School of Law

Following information that she was being targeted, she took precautionary measures including relocating, turning off digital devices, and operating in cash.

Despite these efforts, she was abducted on June 25th, between 3 and 4 a.m., from a friend's residence. Her captors — seven masked, armed men — forcibly entered the home, blindfolded and tied her and her host, and transported her to an undisclosed location. During detention, she was interrogated while bound and blindfolded, and though given water, was denied food.

Nadia and her friend were later abandoned in a bush, where they were found by an advocate of the High Court of Kenya and taken to safety. Through the intervention of KNCHR, Nadia was referred to IMLU, which provided her with psychological counselling.

She warns that enforced disappearances like hers are often accompanied by other human rights violations. She highlights the tragic death of Vincent Mido, who disappeared the same day and was later found deceased. Nadia is part of a team running lostinkenya.org, a platform documenting over 80 ongoing cases of enforced disappearance.

She calls for abolishing the use of plain-clothed officers and unmarked vehicles, and stresses that her captors acted like criminals, not state officers. Nadia also notes the lack of meaningful investigations despite public assurances and demands urgent state accountability to prevent recurrence.

Nadia Nthia

“My name is Aslam Longton, and I am the younger brother of Jamil. What I went through on August 19, 2024, and the 32 days that followed, has changed my life forever. I was a known frontliner in the Mandamano demonstrations. In fact, I had written a formal letter to the security agencies on August 17, 2019, requesting to lead a peaceful protest in Kitengela. My name was included among other leaders, including Bob Njagi and a few others. That letter may have been the reason I was targeted.

On the day of the abduction, I joined my brother for lunch at his house. Around 2 p.m., we left for Isinya. Just outside the gate, a white Subaru intercepted us. I immediately recognized the threat and whispered to my brother that these were DCI officers. I had a sinking feeling. Before we could react, we were dragged from the car. I was forced into the boot, and my brother was thrown into the back seat.

They took us to a location near Kitengela Police Station, but we never entered the premises. Instead, they made calls to someone they called a “superior” and then moved us to another car — a black Prado. Our handcuffs were changed. We were blindfolded, disoriented, and eventually taken to a secret facility in Nairobi.

We were held in separate rooms. On the first two days, I was with my brother. After that, we were separated. I was kept naked, sleeping on a cold floor, handcuffed to one side. We were not allowed to speak, not even to ask for water. Every time I tried to talk, I was beaten. The officer who brought us food was especially cruel — he assaulted me and told me that the pain I was feeling was for the “pain I had caused Kenya.”

We were served only cabbage. The water allowance was just 300ml per day, and it was never enough. The physical torture included beatings with a metal rod and kicks to the body using heavy military boots. At one point, I was asked where I get my funding for the Mandamano. I told them the truth — I had no one funding me. I was acting out of personal conviction, not on behalf of any group or financier.

The fear was constant. I was warned never to speak to the media or anyone about what happened, or I would be “returned” and killed. That threat still hangs over me. This is my testimony. I speak out not just for myself, but for the countless others who may have disappeared or suffered in silence. I am lucky to have survived, but justice has not yet been served.”

Aslam Longton

“My name is Jamil Longton. On August 19, 2024, I was abducted alongside my younger brother, Aslam Longton, under circumstances that have left me deeply traumatized and fearful for my life.

That day started out like any other. My brother and I had lunch at my home with our family. Around 2 p.m., we left for Isinya, but just moments after we exited our gate, we noticed a suspicious woman standing nearby. She appeared to be on a phone call, and I later came to understand she was working with the people who abducted us. She had been seen earlier in our compound, observing how we lived and what we were wearing.

As we took the first turn out of our estate, a white Subaru KCQ with a civilian number plate abruptly blocked our way. My brother recognized the people in it and said, “Those are DCI officers.” I didn’t understand what was happening at the time — I was on my phone. Later, our neighbors told us that Subaru had been parked outside for over four hours, surveilling our home.

Armed men in plain clothes pulled us out of our car. They had pistols, G3 rifles, and handcuffs. When I asked if this was an arrest, they refused to answer. I attempted to call the OCS of Kitengela Police Station, whose number I had saved. Before I could complete the call, they snatched my phone and switched it off.

They blindfolded me and tied one of our jackets around my waist. I was shoved into the back seat, while my brother was forced into the boot. The car drove for a while, eventually stopping about 20 meters from Kitengela Police Station, but we never entered the station.

They made a call to a superior officer and said, “We’ve arrested Nadim Aslam Longton.

Unfortunately, he was with his brother who tried to rescue him. We’re bringing both.”

After some time, we were transferred to a black Prado, handcuffed again, and driven to what I now believe was Nairobi. There, we were taken into a hidden facility, where we remained in detention for 32 days.

At the facility, I was stripped naked. I was not given any clothing — not even underwear. I was handcuffed to a wall, and made to sleep on a cold floor without a mattress or blanket.

For the first 24 hours, we were not fed at all. After that, we received only basic food — mainly plain cabbage — and 300ml of water per day, which had to be used for both washing and drinking.

We were regularly beaten with a metal rod, and the officers wore heavy military-style boots. The beatings were accompanied by interrogations, focused on who was funding us and our alleged involvement in the Mandamano protests. I was repeatedly told to stay silent about what was happening, or else “we will return you and kill you.”

I was innocent. I had no involvement in organizing or funding protests. I was merely trying to help my brother. Instead, I was abducted, tortured, and treated like a criminal without ever seeing a court of law.”

Jamil Longton

We take this opportunity to invite all of us to
be part of our journey and with special
thanks to IRCT and OMCT for technical
review of this report.
Our work over the years has been
supported by :



IMLU

A Society free from Torture and Related Violations



A Society Free From Torture and Related Violations

www.imlu.org
medico@imlu.org
Toll Free: 0800721401