

Policy Brief No. 2. August 2019

Policing protests in Kenya: Policy options from new research

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About this brief

This Brief draws policy suggestions from key research findings presented in the book - *Policing Protests in Kenya* published in August 2019 by CHRIPS. The full book can be downloaded from www.chrips.or.ke

Introduction

Public order policing grapples with numerous challenges that relate both to theory and practice. Public gatherings often create a tense environment especially considering the potential of disorder and violence. This presents questions on how to balance police duty to maintain law and order with that of protecting and respecting citizens' right to peaceful assembly.

Kenya has taken several steps to reform police practices to better manage protests and assemblies. The 2010 Constitution in Article 37 explicitly protects right to peaceful assembly. The National Police Service (NPS) Act 2011 along with the Service Standing Orders 2017 offer practice guidelines for conduct and limits on the use of force and weapons by the police while managing protests. The NPS Act also provides for police oversight and accountability requiring that police officers submit to the authority of the Internal Affairs Unit (IAU) and the Independent Policing Oversight Authority (IPOA) to investigate alleged misconduct and take disciplinary action against police officers within their mandates.

Nonetheless, police conduct has in many cases remained poor despite these reforms (see Ruteere and Mutahi 2019). The police still maintain the culture of excessive use of force when managing public gatherings and continue to unreasonably violate the right to assembly. These issues and challenges are extensively discussed in CHRIPS publication, *Policing Protests in Kenya*. The book presents new research and data that speaks to progress in police reforms and

grapples with complexities of policing public gatherings and protests.

This brief draws policy suggestions that emerge from this book, seeking to provide policy makers with practical solutions to some of the key challenges faced in policing of public gatherings.

Police preparedness

From their study, Ochieng and Otuya (2019) draw empirical survey data from 124 respondent police officers as well as data from key informants and focus groups showing that poor public order policing has been the result of challenges in police structure, training and resources. Eighty five percent (85%) of the police officers interviewed in a survey said they had participated in public order control while only fourteen point five percent (14.5%) had not. Of those who had participated in public order control, over seventy two percent (72%) said they have never had any other specialised training on public order control other than the initial police training. This is a major challenge since most of the training at recruitment level was generic and thus the majority of the 85% who had engaged in public order control were not adequately trained to do so.

Fifty percent (50%) of those surveyed strongly disagreed that crowd dynamics and psychology training offered during the initial recruit training are adequate. Additionally, close to seventy two percent (71.8%) strongly agreed that the training needs improvement by increasing hours of training, reviewing of the curriculum by adding more content such as human rights, group psychology, first aid and drills, firefighting, taming propaganda and passive position to cover riots.

Further, the police lack adequate and necessary equipment for use in public order control. Approximately sixty percent (60%) of the police

respondents acknowledged that equipment and materials used in police campuses were insufficient and need to be increased and updated with latest technologies. On average, public order police are armed with guns, tear gas canisters and batons, which are not always effective and leave the police with limited options. Training on the use of the equipment is also inadequate.

Policy options

1. The police should assess the training needs of police officers involved in public order control and facilitate training based on these needs.
2. Improve general public order control training given to police officers at entry level. This includes through ensuring good understanding of the law and their mandates as well as practical elements of task performance.
3. Offer consistent and specialised practical refresher training for officers specifically mandated to deal with public order control. This will increase their capacity to find solutions for expected and unexpected challenges encountered on the job.
4. Facilitate availability of less-lethal weapons and training on their use in order to reduce the odds probability of causing death or serious injury to people during management of public assemblies.

Attitudes and perceptions

In their paper, van Stapelle and Diphoorn (2019) find that police perceptions of protesters are configured by the framing of actors by the specific interactions and by the locality where protests take place. They argue that since many of the protestors are from poor neighbourhoods, there is already a negative connotation that allows police to dehumanise and deny them of their dignity. In the eyes of the police, protestors are out to rob people, shops and houses and hence there's need for police to protect 'other' citizens by violently dispersing the protests. At the same time, protestors perceive the police as being ready to use illegal and violent methods to uphold the status quo. This is consistent with Ochieng and Otuya's data showing that forty two percent (42%) of police officers strongly agreed that an aggressive tough bearing culture is more useful than a friendly courteous manner in public order control, while fifty two percent (52%) either disagreed or were neutral.

However, the research also found that nearly fifty eight percent (57.9%) of officers agree that violent response is due to risk of injury. Close to fifty seven percent (56.6%) of officers also agree that most people do not respect their authority during protests; and fifty percent (50%) agree that citizens will not trust police to work together with them to manage assemblies (Ochieng and Otuya 2019). This reflects challenges in the cultures and attitudes of police officers and points to general mistrust between police officers and the protestors. While protestors lack faith in the police ability to act lawfully and protect them, the police also do not trust the public to conduct themselves peacefully. These attitudes and perceptions influence the culture of police violence against protestors.

Policy options

1. Conduct surveys with citizens to understand their perspectives and challenges faced during management of public gatherings by the police.
2. Conduct study to understand conscious and unconscious biases held by police officers including those linked to factors like economic class and stereotypes, which may influence the culture of violence against protestors. This should then form the basis for training to address those biases.
3. Police should hold public forums to inform the general public of the expected conduct required to guarantee peaceful protests.
4. Take disciplinary measures on police officers for unlawful conduct through internal mechanisms and by reference to IPOA and IAU.

Law and practice gaps

Mungai (2019) notes that the Penal Code and Public Order Act have vague provisions on the power of police to disperse protests. This leaves security officers with wide discretion to determine what would constitute a 'clear, present or imminent danger of a breach of the peace or public order'. As van Stapelle and Diphoorn (2019) show, this power has often been used by police to unreasonably disperse protestors despite them acting peacefully.

The law also gives the police wide discretion to determine the appropriate use of force. The Service Standing Orders (Chapter 47 (1) (d)) provide that lawful use of force may be applied "to suppress or disperse a riotous mob committing or attempting to

commit serious offences against life or property.” This discretion is also given through vague expressions such as where the NPS Act (Sixth Schedule para. 1) provides that “force may only be employed when non-violent means are ineffective or without any promise of achieving the intended result.”

While Section 5 of the Public Order Act provides for collaborations between police and protest organisers in maintaining law and order, there are no clear guidelines for this. Van Stapelle and Diphoorn (2019) observe that police officers and protest organisers have poor collaborations and tense encounters that often result in organisers being held criminally responsible for other protesters’ actions. Mungai (2019) similarly addresses this challenge and finds that while the Penal Code allows issuance of dispersal orders and ‘any other orders that the police deem fit’, it is unclear whether these envision singling out persons who engage in unlawful conduct during protests and finding them individually liable.

Moreover, the requirement to notify police officers before protests has been misused to unreasonably restrict the right to peaceful assembly, treating it more like a requirement to get ‘permission’ before holding protests. Police have falsely claimed no receipt of notice to hold illegal and disperse protests. They also reject notices by, without explanation, claiming existence of a security threat; and where there are counter-demonstrations planned. This is a major challenge given that there’s no right of appeal to their decision. The notice requirement also does not foresee the holding of protests that occur spontaneously in reaction to news and where it is impractical to obtain notice. Ogeto and Wanyoike (2019) also point out that the law does not stipulate the manner through which police should treat counter-demonstrations

and spontaneous demonstrations, despite these being expected/occurring frequently and being legitimate exercises of freedom of assembly.

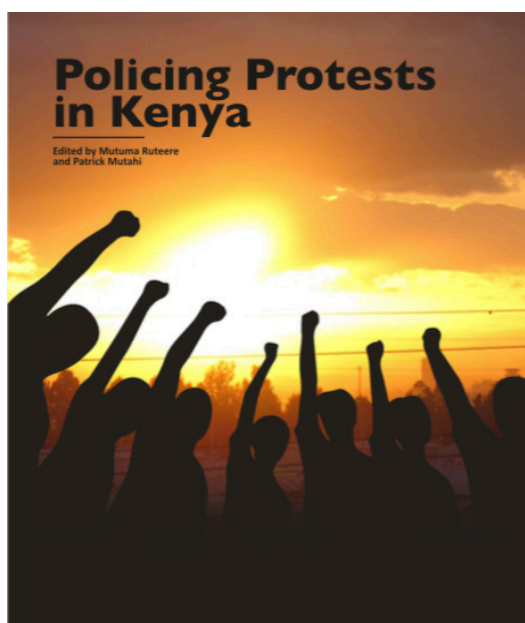
Policy options

1. Police should issue guidelines on conduct by protestors that would constitute ‘breach of the peace’.
2. The police should put in place standards guiding officers on an escalating series of actions they may take to resolve different situations of tension during protests, including the amount of force appropriate.
3. Issue practice guidelines for police collaboration with protest organisers before and during public assemblies.
4. Issue guidelines and give practical training to police officers on isolation of individuals who engage in unlawful conduct during protests.
5. Issue guidelines on how police should respond to spontaneous protests where it is impractical to obtain notice.
6. Give practical training to police officers on how to facilitate an assembly with the expectation that a counter-demonstration may occur.

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PUBLICATIONS



Rethinking Policing of Protests and Gatherings in Kenya

Dr Mutuma Ruteere and Patrick Mutahi

Police Perceptions, Attitude and Preparedness in Managing Public Assemblies

Dr Duncan Onyango and Dr Petronila Otuya

'Ready to Shoot!' Vs 'Ready to Loot! The Violent Potentialities of Demonstrations in Kenya

Dr Naomi van Stapele and Dr Tessa Diphoorn

Manoeuvring Through Legal Ambiguity: Dispersing of Unlawful Protests in Kenya

Melissa Mungai

Judiciary and Public Interest Litigation in Protecting the Right of Assembly in Kenya

Marion Muringe Ogeto and Waikwa Wanyoike

The South African Experience of Policing Public Gatherings

Dr Irvin Kinnes

Other publications on policing of protests

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Policy Brief No. 1 May 2019

Police Management of Public Assemblies in Kenya

Melissa Mungai

In this policy brief, Melissa Mungai discusses factors concerning police management of public assemblies in Kenya including Police Training, various aspects of their 'duty to facilitate', as well as the prior notification requirement.

**NEW AMENDMENT BILL
UNFAIRLY TARGETS PROTEST
ORGANISERS**

Brian Kimari

In this opinion piece published by the Daily Nation, Brian Kimari highlights the negative impacts that the amendment to the Public Order Amendment Bill 2019 would have on the right to peaceful assembly, arguing that it should not be passed.

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Comments on the Proposed Public Order (Amendment) Bill, 2019

By Centre for Human Rights and Policy Studies

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Centre for Human Rights and Policy Studies is pleased to submit its analysis on the Public Order (Amendment) Bill, 2019 which was introduced through a Special Issue of the Kenya Gazette Supplement on 15 March 2019. The amendment reads as follows:

This commentary submitted to the National Assembly analyses the Public Order (Amendment) Bill, 2019 introduced on 15th March 2019, highlighting the various human rights concerns that the Bill raises.



How should Police Officers arrest Persons with Disabilities?

In this opinion piece published in *The Standard*, Melissa Mungai observes that the Kenya police fail to appreciate the needs of persons with disabilities (PWDs) when managing protests and proposes practical solutions to build their capacity to incorporate their needs.

About CHRIPS

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