



A Society Free From Torture and Related Violations



# Freedom of Assembly in Kenya: A Fundamental Right Under Threat

Briefing note: February 2025

## About Independent Medico Legal Unit (IMLU)

Established in 1993, IMLU is a leading health, governance, and human rights Non-Governmental Organization registered in Kenya with a mandate to prevent and respond to torture and related violations.

IMLU advocates for justice, healing, and accountability for victims of torture, driven by a commitment to upholding human rights and promoting a society free from torture.

## Introduction

Freedom of assembly is a cornerstone of democratic governance, allowing individuals to express their views, advocate for change, and hold authorities accountable. Enshrined in Article 37 of the Kenyan Constitution, this right guarantees every person the ability to assemble, demonstrate, picket, and present petitions to public authorities, provided such activities remain peaceful. However, despite these constitutional protections, the Kenyan government has increasingly restricted this right through legal, administrative, and security measures. Recent protests against government policies, economic injustices, and police brutality have been met with excessive use of police force and arbitrary arrests. These restrictions not only suppress civic engagement but also weaken democracy and the rule of law.

## The 2023/2024 Crackdown on Public Protests

In monitoring and reporting torture and related violations, IMLU documented and processed 495 cases (424M, 71F) in 2023. This marked a significant increase from the 255 cases documented in 2022. Notably, 60% of the cases in 2023 stemmed from nationwide anti-government protests. Out of these, 356 were Torture, Cruel, Inhuman, or Degrading Treatment or Punishment (TCIDT), 137 cases were extrajudicial, summary, and arbitrary executions (EJE), and 2 cases were of enforced disappearance.

The 2024 Gen Z-led protests that led to 63 Extra-Judicial Executions, 89 Enforced Disappearances, and over 2,000 injuries were spontaneous occasions by the punitive Finance Bill 2024. The use of hooded men in operations, unmarked vehicles, colored tear gas, and water cannons, group abductions, and non-national police service officers including Kenya Wildlife Service (KWS) rangers, Kenya Forest Service (KFS) rangers, National Intelligence Service (NIS) agents and the military to quell protests was witnessed during the Gen Z protests.

Kenya witnessed a wave of protests driven by diverse groups advocating for their rights. Workers, including doctors, nurses, trade unions, lecturers, and teachers, took to the streets demanding better employment conditions. Environmental activists protested to defend natural resources, while anti-femicide protestors called for urgent action against gender-based violence. At the same time, the transport sector stakeholders protested against police abuse of power and the rising costs of operating their businesses. As such, the right to picket has to be safeguarded as a critical mode of voice used by Kenyans.

## The Assemblies and Demonstrations Bill: A New Threat to Freedom of Assembly

The proposed Assemblies and Demonstrations Bill 2024 has sparked significant concern among civil society organizations and human rights defenders. The Bill seeks to impose a strict notification and approval process for public assemblies, making it more difficult for groups to organize protests. It also grants law enforcement broad discretion to prohibit demonstrations based on vague security concerns. It further proposes increased penalties, including heavy fines and imprisonment, for organizers of unauthorized gatherings.

## Legal and Administrative Barriers to Freedom of Assembly

Despite constitutional guarantees, various legal and administrative measures have been used to curtail freedom of assembly in Kenya. For example, authorities invoke the Public Order Act (Cap 56) to impose unnecessary restrictions, including arbitrary denial of protest permits. Law enforcement agencies also misinterpret the Act to require prior approval for assemblies, contrary to international human rights standards.

### Excessive Use of Force:

Police frequently employ disproportionate force to disperse peaceful demonstrations, leading to injuries, deaths, and property destruction.

### Root Causes of Restrictions on Freedom of Assembly

- Institutions mandated to oversee law enforcement, such as the Independent Policing Oversight Authority (IPOA) and the Kenya National Commission on Human Rights (KNCHR), lack the power and resources to hold security agencies accountable.
- Government officials perceive protests as direct threats to their authority, leading to suppression of dissent.
- The increasing use of paramilitary units to police protests has escalated violent crackdowns.

### Impact on Civic Space and Democratic Governance

- Restrictions on assembly discourage public participation in governance and limit avenues for social and political change.
- Protesters and journalists covering demonstrations face arbitrary arrests, disappearances, and extrajudicial killings.

- The continued use of excessive force has diminished confidence in law enforcement agencies and the judicial system.

### Recommendations for Protecting Freedom of Assembly in Kenya

1. Respect and safeguard article 37 of the constitution as a fundamental right that enhances public voice.
2. Amend and or repeal the Public Order Act to align with international human rights standards and eliminate unnecessary bureaucratic barriers.
3. Advocate for the withdrawal of the Assemblies and Demonstrations Bill to prevent further erosion of civic space.
4. Hold commanding officers to account on police excesses and end impunity of police misconduct.
5. Enhance the capacity and independence of independent oversight mechanisms to investigate police misconduct during protests.
6. Enforce the implementation of the ban on the use of live ammunition, as well as less lethal weapons against unarmed protesters.
7. Strengthen the Judiciary's independence to prevent the misuse of courts for suppressing protesters.
8. Strengthen collaboration between civil society, media, and legal practitioners to document and expose violations.
9. Fully comply with the African Commission's Guidelines on Freedom of Assembly.
10. Engage with United Nations Special Rapporteurs for Freedom of Opinion and Expression to assess Kenya's adherence to international obligations.

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