

Executive summary **#FreeToProtest**

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Executive summary

Protests play an important part in the civil, political, economic, social, and cultural life of all societies. Protests can inspire positive social change, improve human rights protection, protect civic space, develop an engaged and informed citizenry, and strengthen democracy and participation. They enable people to express grievances, share opinions, expose governance flaws, and demand accountability and remedy from power holders. This is especially important where people's interests are poorly represented or marginalised. Yet governments around the world too often treat protests as an inconvenience to be controlled or a threat to be extinguished.

Kenya: Restricting the right to be heard is one of a series of research reports from our #FreeToProtest global campaign, which seeks to protect and advance people's right to protest, in line with ARTICLE 19's [Principles on the protection of human rights in protests](#). Kenya's 2010 Constitution, with its recognition and protection of the right to protest, has brought about a wave of change. Protest has acquired credibility and the intellectual power to assist citizens' dispute resolution with the State and business, including for human rights violations. Yet breaches of the right to protest persist in Kenya with State complicity.

This report finds that despite Kenya's 2010 Constitution and ratification of international and regional treaties that safeguard the right to protest, the State commonly infringes this right. The Kenyan authorities, at both national and county level, often use unnecessary or disproportionate force, including gender-based violence, as well as general obstruction and harassment, and apply archaic and restrictive laws, to discourage, prevent, or disperse protests.

The country's law-enforcement agencies do not uphold their obligation to protect the right to protest but instead are frequently responsible for unlawful conduct, including violent repression and unlawful arrests, with limited accountability when violations occur. Social status and other overlapping identity factors increase the probability of the State and police empowering or oppressing protesters.. Negative media coverage has contributed to the stigmatisation and marginalisation of certain groups of protesters and reinforced unfavourable public perceptions.

The Kenyan authorities act especially swiftly against both offline and online protests likely to embarrass the State or mobilise external pressure. Public ignorance of the legal framework impedes access to remedy and compensation when violations of the right to protest occur. The judiciary, despite recent reforms, also perpetuates the suppression of the freedom of expression, assembly, and association by upholding charges against right holders.

Summary of recommendations

ARTICLE 19 makes the following recommendations to ensure safeguarding of the *right to protest* in Kenya.

To the Government of Kenya

Legal framework and implementation

- Implement the 2010 Constitution and adhere to Kenya's international obligations regarding the right to protest.
- Amend or repeal the Public Order Act to ensure that public order management upholds the right to protest, particularly provisions under Section 5 of the Act that still require mandatory notification without clarity on acknowledgment and criminalises spontaneous protests.
- Create a safe and enabling environment for the right to protest.

Accountability processes and mechanisms

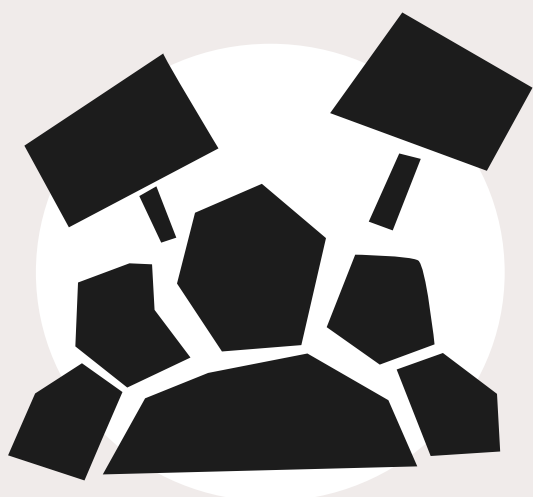
- The Independent Policing Oversight Authority (IPOA) and the Office of the Director of Public Prosecutions should investigate, discipline, and prosecute officers responsible for excessive and disproportionate use of force against protesters.
- Hold police officers accountable personally and individually responsible for use of excessive or unnecessary force during protests.
- Suspend officers allegedly responsible for violations pending investigation and prosecution.
- Ensure adequate resourcing and political support for accountability mechanisms, particularly the IPOA.
- The judiciary should uphold a progressive interpretation of the right to protest, drawing from the spirit and substance of the right in the Kenyan Constitution and in international and regional legal frameworks and guidelines.

Policing of protests

- End practices of forcefully dispersing peaceful protesters and unjustified arrests.
- Ensure training for officers in policing protests
- Avoid the use of excessive force in policing protests, issue clear orders accordingly, and punish officers who use unnecessary or excessive force.
- Protect and facilitate spontaneous as well as planned protests.
- Immediately cease the arrest and detention of individuals solely on the basis of their exercise of the right to freedom of assembly.
- Deprive no one of their liberty except in accordance with legally established procedures and international law.

To civil society organisations and protest organisers

- Conduct civic education and awareness raising on the State's obligations under Article 37 of the Constitution, the right to protest, its place in the democratic process, and available claim mechanisms.
- Institute strategic public interest litigation on a constitutional interpretation of the right to protest to enforce upholding of the constitutional right and enforcement of the law.
- Engage with the UN Human Rights Council's Universal Periodic Review (UPR) process, the African Commission on Human and Peoples' Rights, and other mechanisms to bring attention to the Kenyan government's violations of the right to protest and failure to honour past commitments.
- Seek knowledge on redress pathways for survivors of violence at protests and disseminate the information to people subjected to police violence during protests.



What can you do to get involved?

READ our country report, *Kenya: Restricting the right to be heard*, based on recent interviews, focus groups discussions, and media analysis

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REUTERS/Baz Ratner: Protesters during a demonstration against police killings & brutality, Nairobi, Kenya, June 8, 2020.



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