

Right to Protest in Kenya

Executive summary

August 2019

ARTICLE 19

EASTERN AFRICA

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Introduction

In the Right to Protest in Kenya report, ARTICLE 19 Eastern Africa examines the laws, policies and practice around the right to protest in Kenya



Executive summary

In this report, ARTICLE 19 examines the laws, policies and practice around the right to protest in Kenya. People in Kenya frequently take to the streets to protest against a wide range of issues, such as lack of access to education, sexual violence, corruption, environmental degradation, police violence and forced evictions. People are relatively well informed about their rights and steps they should take when organising a protest.

ARTICLE 19 monitored media reports of protests in Kenya between January 2018 and July 2019, and identified 152 protests. While the vast majority of these protests occur without interference by the authorities or third parties, in approximately 20% of the cases the police responded to protests in a manner that was not in line with international human rights obligations, frequently using possibly excessive force that resulted in deaths and injury. ARTICLE 19 identified that the security officials used force in 31 cases - including 18 peaceful protests in which no one appeared to engage in violence - mostly by firing tear gas and/or live ammunition. Due to the police's potentially excessive use of force and, in some instances, unlawful killings, at least 21 protesters and/or bystanders were injured and seven killed between January 2018 and July 2019. The majority of these cases were never independently investigated and victims did not receive a remedy. In other cases peaceful protesters were dispersed with tear gas, and where there were pockets of violence the police focused not on escalation or isolation of violence but rather used force against protesters.

As a consequence, many people in Kenya do not participate in protests out of fear of violence from law enforcement, other protesters or third parties. In 2018, ARTICLE 19 Eastern Africa conducted a survey into people's perceptions of the right to protest in Kenya, seven out of ten respondents said that when they hear about a protest they are afraid protesters will use violence, and 43% of respondents feared this violence could result in injury or death. In addition, nearly three out of ten respondents feared that the police would use violence.

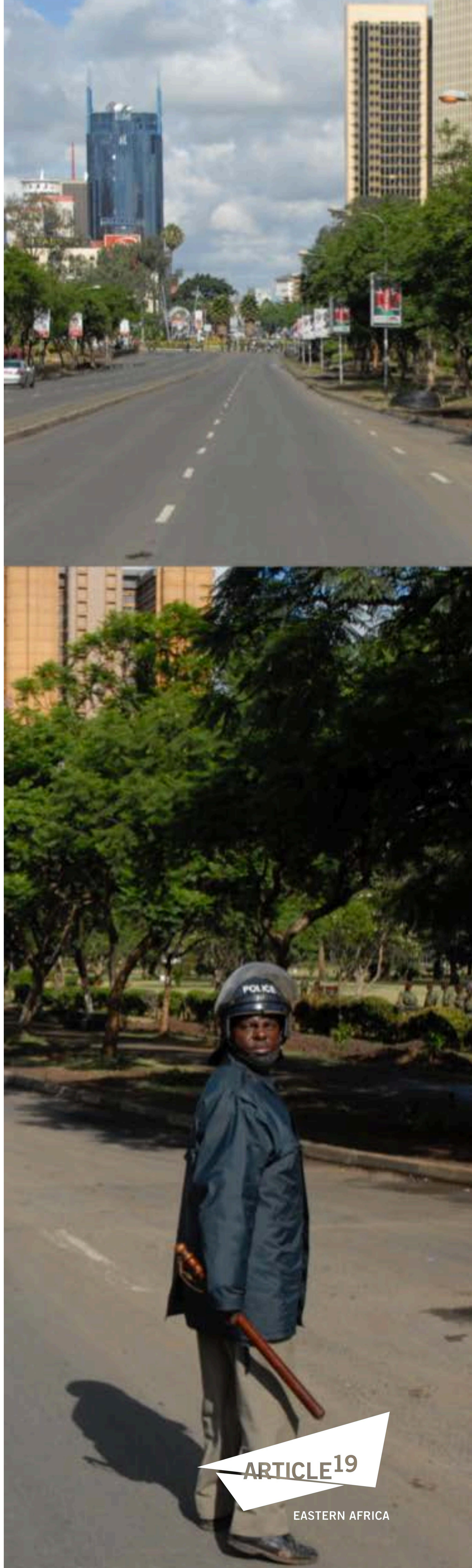
This report also shows that, while the 2010 Constitution guarantees a broad range of rights involved in protests, the applicable legislation - in particular, the Public Order Act 1950 - does not fully comply with international human right standards. For example, the legislation requires advance notification of any protest and criminalises participation in any protest organised without notification.

During the 2015 Universal Periodic Review (UPR) of Kenya's human rights record, Kenya agreed to take measures to guarantee freedom of association and assembly during the 2015 Universal Periodic Review (UPR) of Kenya's human rights record. This was also reflected in its 2016 UPR implementation plan, in which the Kenyan Government committed to review the Public Order Act and develop guidelines on peaceful assembly (among other commitments). However, to date, this is yet to happen.

ARTICLE 19 recommends a full review of domestic laws and practices around the right to protest to ensure they comply with obligations under the Constitution and international human rights law and standards. Further, ARTICLE 19 puts forward a series of recommendations for law enforcement to respect, protect and ensure the right to protest is fully realised in Kenya.

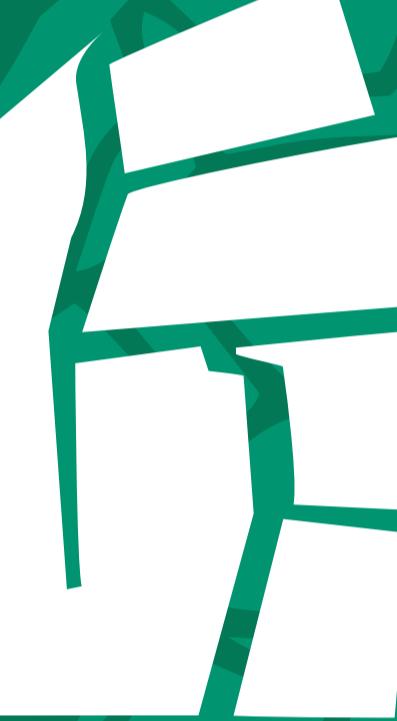
Key recommendations:

- The Kenyan Government should ensure that domestic law and practices related to the right to protest comply with its obligations under the Constitution and international human rights law and standards. In particular, it should ensure the Public Order Act, the Penal Code and related procedures are brought in line with international human rights law and standards.
- The Kenyan Government should ensure that law enforcement fully complies at all times with international human rights law and standards on policing, in particular the African Commission Guidelines on Policing of Assemblies, the UN Code of Conduct for Law Enforcement Officials, and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.
- The Kenyan Police should ensure that the public order management procedures, manuals, training and practice are reviewed and brought to compliance with the Constitution and international human rights law and standards.
- The Kenyan Government should ensure that police oversight bodies develop expertise and procure equipment to facilitate professional investigations into unlawful use of firearms, including for securing and examining potential crime scenes, ballistics and other forensic tests, and autopsies and medical examinations.
- The Kenyan government should implement its commitments to fulfil freedom of association and assembly (as articulated in the 2016 UPR implementation plan) and work closely with the UN Special Rapporteurs, including accepting and supporting their outstanding visit requests.





#FREETOPROTEST



The #FreeToProtest campaign is being launched in August 2019 to guarantee the right to peaceful protest in Kenya and challenge negative stereotypes around protests and protesters in the country. The #FreeToProtest coalition, made up of grassroots activists and civil society organisations, has been formed to reclaim our right in a peaceful, respectful and impactful way and will be running a series of digital and offline actions throughout its three-month period

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Defending freedom of expression and information

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