

# A critique of police response to the right to peaceful assembly, demonstration, and picketing in light of the 2024 Finance Bill protests

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## Abstract

*The events of June 2024 have brought to light a simmering dissent now emerging where it was once almost unheard of, among the 'Gen Z' youth. Kenyan youth have embraced their right to picket and peacefully assemble while seeking to dismantle the status quo. Yet, beneath this facade of a people's sovereignty lies a troubling reality of state repression. This paper aims to critique the inappropriate use of police force especially by using live ammunition during protests and abducting and torturing demonstrators during the 2024 Finance Bill protests, particularly in relation to the implementation of Article 37 of the Constitution of Kenya. It also affirms the role of democracy in strengthening sovereignty and empowering a people in times of dissent.*

**Keywords:** Finance Bill 2024, protests, police brutality, police response, right to peaceful assembly, Constitution of Kenya Article 37, democracy and sovereignty

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## Introduction

The concept of the right to express dissent is fundamental to democratic governance, reflecting the notion that power lies with the people. This principle is embedded in Article 37 of the Constitution of Kenya 2010, which safeguards the right to peaceful assembly, demonstration, and picketing. Protests through demonstrations play a crucial role in safeguarding human rights within a country's democracy. As a state party to the 1966 International Covenant on Civil and Political Rights (ICCPR), Kenya is required to recognise and uphold the right to peaceful assembly.<sup>1</sup> Kenya is also party to the 1981 African Charter on Human and Peoples' Rights that amplifies that every individual has the right to freely assemble with others.<sup>2</sup> However, there have been reports of non-compliance to the stated standards, particularly regarding freedom of expression and assembly.<sup>3</sup>

The exercise of the freedom and right to picket and demonstrate is not absolute as it is subject to certain restrictions that must, among other things, align with the law and be deemed necessary for maintaining public safety.<sup>4</sup> However, these limitations must be carefully enforced to ensure that there is no loophole that undermines the essence of the right itself. This was opined in the *Ferdinand Ndung'u Waititu and 4 others v Attorney General and 12 others*, where the late Justice Joseph Onguto pointed out that public demonstrations and assemblies are regulated by the Public Order Act (Chapter 56 of the Laws of Kenya) adding that it was strictly up to the protestors to ensure peaceful demonstrations. The Court also emphasised that the police had an obligation to maintain peace and order during demonstrations, protecting both participants

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<sup>1</sup> International Covenant on Civil and Political Rights, 16 December 1966, 999 UNTS 171, Article 21.

<sup>2</sup> African Charter on Human and Peoples' Rights, 27 June 1981, 1520 UNTS 217, Article 11.

<sup>3</sup> Civic Space, 'Kenya: Harmonise legal framework on free expression with ICCPR recommendations', 28 May 2021.

<sup>4</sup> International Covenant on Civil and Political Rights, Article 21.

and non-participants, ensuring security, public safety, and the observance of law during demonstrations.<sup>5</sup>

This commentary starts off with a review of the history on police conduct during public demonstrations arguing that the police misconduct specifically during protests in Kenya has been a prevalent challenge. The second section dwells on the 2024 Finance Bill protests and argues that the actions were an affirmation of the people's sovereignty. Thereafter, I will discuss police responses to the protests showing the specific police responses that are unconstitutional in nature. The fourth section discusses the Kenyan youth's fight for the democracy juxtaposed with the government's continual abnegation of democracy through police brutality.

## **A historical review of police conduct during protests**

The historical context of police responses to public demonstrations in Kenya reveals a troubling pattern of repression and violence that undermines constitutional protections. Mutuma Ruteere observes that Kenya's fledgling democratic experiment has been perpetually challenged by the problem of ineffective and unaccountable policing.<sup>6</sup> He adds that historically, the Kenyan policing paradigm has been characterised by the disproportionate use of force against citizens who are deemed subversive.<sup>7</sup>

This line of thought can be traced to the establishment of the Kenya Police in 1906, which was initially created to enforce British colonial rule. However, its organisation and structure 'mirrored military organisation', rather than that of an institution supposed to actualise peace and

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<sup>5</sup> *Ferdinand Ndung'u Waititu and 4 others v Attorney General and 12 others*, Petition 169 of 2016, Ruling of the High Court at Nairobi, 6 June 2016 [eKLR] para 38.

<sup>6</sup> Mutuma Ruteere and Patrick Mutahi, 'Policing protests in Kenya', Centre for Human Rights and Policy Studies 2019, 1.

<sup>7</sup> Ruteere and Mutahi, 'Policing protests in Kenya', 1.

order to its people.<sup>8</sup> Thus, instead of serving public interest as required, the police force often prioritised control and suppression, a legacy that seemed to linger even after independence.

The Kenyan police force also have a history of responding repressively to peaceful protests, which as Mutuma Ruteere asserts is deeply rooted in the fundamental structure of both the police force and the state itself.<sup>9</sup> Police interventions in protests having often been marked by fatalities, the use of indiscriminate force, firearm abuses, and unlawful arrests, all under the guise of maintaining law and order. In 1922, a group of Kenyan workers gathered to demand the release of Harry Thuku, who was then a political leader. By the end of the peaceful demonstrations, 100 people had been shot dead by the police for demonstrating.<sup>10</sup>

This tragic event marked one of the earliest and most brutal examples of police violence against unarmed civilians in Kenya, cementing a deep-seated mistrust in the police force that would resonate through future generations.

Political leaders have also used the police to advance their own interests, further exacerbating the problem of police brutality and impunity.<sup>11</sup> Notably, Kenya's first president, Jomo Kenyatta, was reported to having used police force to silence dissenting voices. A prime example was during the 1969 Kisumu Massacre when police fired into a crowd protesting the president's visit, killing at least 11 people.<sup>12</sup> More of the same brutality was experienced during the start of multi-partyism during the late President Moi's tenure. During protests against electoral injustices following the 2007 presidential elections, police brutality escalated dramatically. Reports indicated that over 1,200 people were

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<sup>8</sup> Joan Kamere, 'The psychology of misconduct in the Kenyan police', *The Elephant*, 3 July 2024.

<sup>9</sup> Ruteere and Mutahi, 'Policing protests in Kenya', 1.

<sup>10</sup> Gilbert Mwangi, 'Remembering Muthoni Nyanjiru and the women who helped fight colonialism', *The Standard*, 22 March 2022.

<sup>11</sup> Ruteere and Mutahi, 'Policing protests in Kenya', 1.

<sup>12</sup> Anokhee Shah, 'Reopening old wounds, the never-ending tale of police brutality', *Lacuna Magazine*, 24 March 2021.

killed during this period, with many fatalities attributed directly to police shootings.<sup>13</sup>

These repressive responses were sharply scrutinised following the violence that erupted after the 2007 presidential election results were announced. The Commission of Inquiry into Post-Election Violence (CI-PEV), found that the police's management of the 2007 demonstrations was 'inconsistent with basic legal provisions, jeopardised citizens' lives, and often involved grossly unjustified use of deadly force'.<sup>14</sup> These instances show that there has been a consistent misuse of power by the police officers, often orchestrated by the executive, at the peril of Kenyan citizens.

## **The Finance Bill, 2024 protests and a search for sovereignty**

The June 2024 protests against the Finance Bill, 2024 have exposed a troubling disconnect between Article 37's constitutional guarantee and the reality of state tyranny. Police response to these protests, characterised by excessive force, including the use of live ammunition, torture, and abductions, raises critical questions about the protection of people's liberties and the genuine exercise of sovereignty by the Kenyan people.

Introduced in the National Assembly on 9 May 2024, the Finance Bill of 2024 aimed to tax essential commodities amidst a sluggish economy.<sup>15</sup> This move was widely viewed as unfair and punitive, especially for those already burdened by the high cost of living. Randy Barnett's assertion that resistance signifies a lack of government consent is par-

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<sup>13</sup> Shah, 'Reopening old wounds, the never-ending tale of police brutality'.

<sup>14</sup> Commission of Inquiry into Post-Election Violence, the Waki Report, Part IV, 417; see also Martin Mavunjina, 'Protest in Kenya: Repressive and brutal policing has become normalised', Open Democracy, 3 December 2017.

<sup>15</sup> Power Shift Africa, 'Explainer: Finance Bill 2024 chaos. How did Kenya get here?', 28 June 2024. For a detailed view of some of the taxes proposed see, Mercy Jebaibai, 'Highway or high cost? Unpacking the implications of Kenya's motor vehicle tax reform', *Kabarak Law Review Blog*, 14 July 2024.

ticularly relevant when examining the recent protests.<sup>16</sup> The widespread demonstrations were not just a display of dissatisfaction but a profound statement by the Kenyan youth, signalling their rejection of a government policy perceived as unjust and burdensome. Beyond the desire for an end to suffering from heavy taxation, unemployment, and blocked social mobility, most Kenyan youths embraced this unity of purpose, seeing a need to address their needs in a free democratic space.

The forceful police response, characterised by violence and repression, further highlighted the disconnect between the government and the governed, reinforcing Randy Barnett's argument that true consent cannot be coerced but must be freely given and maintained through just governance.

The protests against the Finance Bill of 2024 represented a critical moment in which the youth of Kenya sought to reclaim their sovereignty and assert their rights within a system that has historically marginalised their voices through police brutality during demonstrations. This struggle for genuine sovereignty was not merely about opposing specific policies in the Bill; but it later morphed to also challenging a broader system of governance that perpetuates inequality and alienation.<sup>17</sup> In *The law*, Frederic Bastiat posits that 'men naturally rebel against the injustice of which they are victims'.<sup>18</sup> This encapsulates the essence of the struggle for genuine sovereignty; justifying inherent human response to injustice and the lengths to which individuals and groups will go to reclaim their rights and influence the systems that govern them.

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<sup>16</sup> Randy E Barnett, *Restoring the lost constitution: The presumption of liberty*, Princeton University Press, 2004, 21.

<sup>17</sup> Wycliffe Muia, 'New faces of protests - Kenya's Gen Z anti-tax revolutionaries', *BBC News Nairobi*, 20 June 2024.

<sup>18</sup> Fredrick Bastiat, *The law*, 1850, Translated from French by Dean Russell, Foundation for Economic Education, 1998, 7.

## Police responses during the Finance Bill, 2024 protests

### *Using live ammunition*

The Constitution of Kenya 2010 guarantees every person the right to picket and demonstrate and the right to life which remains inherent and can only be deprived lawfully.<sup>19</sup> However, many police officers have become oblivious to this fact, and have taken it upon themselves to shoot protesters.<sup>20</sup> On 20 June 2024, Rex Kanyike was allegedly shot and killed by a police officer during the Finance Bill protests on his way home from work.<sup>21</sup> It was reported that police fired live ammunition at protestors, killing and injuring many despite human rights groups raising concerns on the conduct of police.<sup>22</sup>

In Nairobi alone, Amnesty International reported that more than 200 individuals suffered gun wound injuries while some were referred for specialised treatment in hospital.<sup>23</sup> The Kenya National Commission on Human Rights (KNCHR) indicated to having recorded twenty-two deaths and 300 injured victims.<sup>24</sup> A young boy was also caught up in the fracas, shot eight times and killed instantly by police, as state law enforcers strived to contain the anti-finance bill protesters.<sup>25</sup> Paradoxically, the National Police Service Act decrees that a police officer shall make every effort to avoid the use of firearms, especially against children.<sup>26</sup>

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<sup>19</sup> Constitution of Kenya (2010) Article 26(3) and Article 37.

<sup>20</sup> Thomas Mukoya and Monicah Mwangi, 'One killed as Kenyan anti-government protests intensify again', *Reuters*, 17 July 2024.

<sup>21</sup> Daniel Ogetta and Winnie Onyando, 'Rex Masai: What went wrong? Mystery of night bullet that claimed young life', *Nation*, 21 June 2024.

<sup>22</sup> Deutsche Welle (DW), 'Kenya: Police fire live rounds amidst tax protests', 25 June 2024.

<sup>23</sup> Ogetta and Onyando, 'Rex Masai: What went wrong? Mystery of night bullet that claimed young life'.

<sup>24</sup> France 24, 'Kenya's Ruto says tax bill to be withdrawn after anti-protest deaths', *France 24*, 26 June 2024.

<sup>25</sup> Nyaboga Kiage, 'Anti-tax protests: Kin of boy shot 8 times in Rongai seek justice', *Nation*, 5 July 2024.

<sup>26</sup> National Police Service Act (No 11A of 2011) Sixth Schedule, B (3).

The National Police Service Act serves as a cornerstone for policing in Kenya, establishing a comprehensive legal framework aimed at transforming the police from a force into a service that is accountable, community-oriented, and respects human rights.<sup>27</sup> The Kenya police includes, *inter alia*, the Kenya Police Service, the Administration Police Service, and the Directorate of Criminal Investigations.<sup>28</sup> The Internal Affairs Unit also plays a role in police oversight.<sup>29</sup> Separately, the Independent Policing Oversight Authority (IPOA) was established under its own legislation to provide civilian oversight of police conduct, ensuring accountability and transparency in their operations.<sup>30</sup>

### *Torture and abductions*

Torture has been defined as ‘...any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person...’.<sup>31</sup> As the Finance Bill demonstrations morphed into anti-government protests, one Denzel Omondi’s body was found dumped in a quarry, Denzel Omondi was allegedly abducted by police after the finance bill protests.<sup>32</sup> In a similar case, Joshua Okayo, a student leader from the Kenya School of Law, shared a harrowing account of his abduction and torture owing to his role in the Finance Bill demonstrations.<sup>33</sup> The International Commission of Jurists – Kenya (ICJ-K) also demanded

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<sup>27</sup> National Police Service Act, Section 3.

<sup>28</sup> National Police Service Act, Section 4.

<sup>29</sup> This is through their power to investigate police misconduct and recommend action to IPOA. See Release Political Prisoners Trust, ‘Your guide to: the National Police Service Act, the National Police Service Commission Act and the Independent Policing Oversight Authority Act’, *Release Political Prisoners Trust*, June 2012, 26.

<sup>30</sup> Independent Policing Oversight Authority Act (No 35 of 2011) Section 5(b).

<sup>31</sup> Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, 1465 UNTS 85, Article 1.

<sup>32</sup> ‘JKUAT students hold demos over abduction and death of Denzel Omondi,’ *Citizen TV Kenya*, 12 July 2024, 0:01 to 0:20.

<sup>33</sup> ‘Rais wa chuo cha Kenya School of Law – Joshua Okayo, asimulia alivyotekwa nyara na polisi kwa kushiriki maandamano,’ *NTV Kenya*, 9 July 2024, 9 July 2024, 5:53 to 14:53.



and called for an end to police brutality and torture.<sup>34</sup> Additionally, the chair of the Law Society of Kenya confirmed that there had been incidents of police abducting protesters, torturing them, and holding some incommunicado for several days.<sup>35</sup>

This backdrop of police brutality raised critical questions about the facade of a people's sovereignty. While the Constitution asserts that all sovereign power belongs to the people, the violent suppression of peaceful protests suggested a disconnect between constitutional ideals and the lived experiences of citizens. As the Kenyan populace grapples with the implications of such police actions, it becomes imperative to critically analyse police conduct and the protection of civil liberties, among them being the National Police Service Act, 2011 that governs the behaviour of the police when using a firearm. In Agenda No 4 of the National Dialogue and Reconciliation Agreement, police reforms were among the long-term measures and solutions identified as needed to promote peace and reconciliation in the country.<sup>36</sup>

### **Kenyan youth exercise of democracy versus the government's continual abnegation of duty through police brutality**

For the youth in Kenya, democracy is seen to represent more than just a system of governance; it is a powerful tool for transformation and progress. It provides young people with a platform to voice their ideas, advocate for their rights, and actively participate in shaping the future of their nation. Through democratic processes, the youth can challenge the status quo, drive social and political reforms, and push for policies that address their unique challenges. As agents of change, they play a crucial role in ensuring that democracy continues to evolve, reflecting

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<sup>34</sup> Sophie Opondo, 'ICJ [sic] commands release: DCI and Police IG ordered to produce detained Finance Bill protesters', *TV47 digital*, 22 June 2024.

<sup>35</sup> X communication from Faith Odhiambo, 'Law Society of Kenya statement on the state of the nation', 25 June 2024.

<sup>36</sup> Christopher Gitari Ndung'u, 'Failure to reform: A critique of police vetting in Kenya', *International Centre for Transnational Justice*, 21 November 2017.

the aspirations and needs of future generations. Through social media, technology played a dual role in shaping the political discourse among Kenyan youth. While it served as a platform for mobilisation and expression, it was exemplified by movements like #Tribeless #Leaderless and #Partyless.<sup>37</sup>

The introduction of the contentious Finance Bill of 2024 thus provided many Kenyan youths an opportunity to exercise their right to protest from the heavy taxation imposed by the Finance Bill. Unity has been described as one of the most important aspirations of Africans especially unity across contemporary political frontiers.<sup>38</sup> And it so happened that on 18 June 2024, in a powerful display of unity, a number of Kenyan-youth in major cities, marched to the streets, peacefully demonstrating against the bill and exercising their democratic right to demonstrate and picket.<sup>39</sup> What started as anger on social media spaces – TikTok, Facebook and X – morphed into a street revolt with the youth armed with only their cell phones, live-streaming the intense confrontations with the police.<sup>40</sup> This became a defining moment to assert their voices and fight for a free democratic space. Their collective action underscoring the enduring power of peaceful protests in driving change.

The disconnect between the government's obligation to uphold democratic rights and the reality of police brutality is a critical issue that undermines the very foundations of democracy in Kenya. This is because Article 37 explicitly reflects the government's obligation to protect civil liberties. However, the persistent incidents of police violence during protests starkly contrast this constitutional promise, revealing a troubling gap between legal frameworks and their implementation.

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<sup>37</sup> Africa Uncensored, 'Kenya protests: Gen Z show the power of digital activism – driving change from screens to the streets', June 2024.

<sup>38</sup> Leslie Rubin and Brian Weinstein, *Introduction to African politics: A continental approach*, Praeger Publishers, 1977, 191.

<sup>39</sup> Constitution of Kenya (2010) Article 37.

<sup>40</sup> Muia, 'New faces of protests'.

This discrepancy manifests in various forms, including the excessive use of force, arbitrary arrests, and even torture. Such actions not only violate individual rights but also instil fear among citizens, discouraging them from exercising their constitutional rights to dissent and assemble. The brutal tactics employed by law enforcement serve to reinforce a culture of repression, where the state prioritises control over the protection of fundamental freedoms.<sup>41</sup>

Moreover, this disconnect raises critical questions about the accountability mechanisms in place for the law enforcement officers. The lack of effective oversight and the absence of stringent consequences for police misconduct contribute to a climate of impunity, where officers may act without fear of repercussions. This situation not only erodes public trust in the police but also undermines the legitimacy of the government, as citizens perceive a failure to uphold their rights.

## Conclusion

The recent protests against the Finance Bill, 2024 underscored the critical importance of upholding the right to peaceful assembly enshrined in Article 37 of the Constitution. The violent police response to these demonstrations not only violated fundamental human rights but also highlighted systemic issues within the law enforcement framework that threatened the principles of democracy and the rule of law.

It is imperative that comprehensive reforms are implemented within the police force, emphasising accountability, human rights training, and adherence to constitutional protections. When police use methods that do not mete out brutal force to protestors, Kenyan citizens can be empowered to actively participate in governance, ensuring that sovereignty truly resides with the people.

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<sup>41</sup> Catherine Wambua-Soi, 'Kenya is not asleep anymore: Why young protesters are not backing down', *Al Jazeera*, 24 July 2024.

In the end, the true measure of Kenya's democracy will be defined not by the absence of dissent, but by the strength of its commitment to justice and the unwavering belief that every voice can ignite the flame of change; while resolutely putting an end to police violence that seeks to silence the very essence of our democratic spirit.