



Independent Policing Oversight Authority

Preliminary Monitoring Report On Police Conduct During the Azimio La Umoja-One Kenya Alliance Demonstrations

08th May 2023

1.0 Introduction

The Independent Policing Oversight Authority (hereinafter IPOA or the Authority), is established pursuant to the Independent Policing Oversight Authority Act (Act No. 35 of 2011), to provide for civilian oversight over the work of the Police. Under section 6 (c and f) of the Act, the Authority is required to monitor and investigate policing operations affecting members of the public; and to make recommendations to the Service or any other State organ. In line with this mandate, the Authority monitored policing of various public assemblies organized by Hon. Raila Odinga and his fellow Azimio One Kenya Coalition members and supporters in March 2023. This report outlines the findings made so far and offers some recommendations to aid in improving policing of assemblies in Kenya.

2.0 Background

Organising protests is both a complex exercise requiring goodwill from both the NPS and the demonstration organisers. Order can only be maintained when there is mutual agreement between the NPS and the organizers. Any breakdown of this goodwill will certainly lead to confrontations and anarchy to the detriment of the image of the NPS.

3.0 Purpose

The purpose is to present this report for information and noting by the Board.

4.0 Objectives

1. To monitor compliance with applicable Human Rights Standards before, during and after the assemblies.
2. To identify gaps hindering effective and efficient policing of the Assemblies by NPS.
3. To make recommendations aimed at improving policing of assemblies.
4. To investigate alleged cases of police misconduct arising from the demonstrations.

5.0 Monitoring Methodology

This report is a compilation of various field reports prepared by the Authority's monitors across the country. The data was collected through direct observations, online observations and interviews with Police Commanders.

6.0 Complaints and Investigations Status of the Cases under investigations

NAIROBI REGION

a. Effects of police action on the demonstrations

Nature	No
Fatal shootings	5
Teargas deaths	1
Teargas injuries	5
Shooting causing injuries	4
Shooting damaging vehicle	1
Police inactions – Failure to respond	2
Police unethical actions	3
Total	21

b. County distribution

County	No
Nairobi	20
Kiambu	1
Total	21

KISUMU REGION

a. Effects of police action on the demonstrations

Nature	No
Fatal shootings	3
Shooting causing injuries	5
Teargas injury	3
Assault	1
Confiscation of property	1

Total	13
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b. County Distribution

County	No
Kisumu	11
Homabay	1
Migori	1
Total	13

Hereunder is a comprehensive update of the cases under investigations

NAIROBI REGION				
	Serialisation	Details	Occurrence	Action Taken
1.	IPOA/CMU/829/2023	Inaction by police: Investigations into police inaction when intruders invaded Northlands farm in Ruiru sub-county, Kiambu county which occurred on 27 March 2023 around 1400hrs to night time. The property belongs to H.E former President Uhuru Kenyatta's family.	Nairobi	Investigations ongoing
2.	IPOA/CMU/830/2023	Inaction by Police: Investigations into police inaction for failing to prevent unknown people who stormed the East Africa Spectre Limited which is associated with opposition leader Raila Odinga, located in South C in Nairobi's industrial area. The incident happened on 27 March 2023.	Nairobi	Investigations ongoing
3.	IPOA/CMU/853/2023	Shooting causing death: Investigations into the circumstances surrounding the fatal	Nairobi	Investigations ongoing

		shooting of Ashraf Abass aged 15 years. He was taken to KNH facility on 27/ 03/2023 at around 1700hrs. The family alleged that the deceased was shot by police at Kwa Wanga area, in Lindi Ward within Kibra constituency. The incident was reported at Kibra Police station vide OB 15/28/3/2023.		
4.	IPOA/CMU/856/2023	Shooting causing injuries: Investigations into the circumstances leading to shooting causing injury to Said Mohammed alias Omar which happened on 27/3/2023 at an unknown location within Nairobi county. He was shot on the neck area and is undergoing treatment.	Nairobi	Investigations ongoing
5.	IPOA/CMU/858/2023	Shooting causing injuries: Investigations into the circumstances leading to shooting causing injury to Shafi Yusuf Fodumula which happened on 27/3/2023 at an unknown location within Nairobi county. He is admitted at KNH with injuries.	Nairobi	Investigations ongoing
6.	IPOA/CMU/859/2023	Shooting causing death: Investigations into the circumstances leading to shooting of Kelvin Magero aged 20 years was brought to City Mortuary on 27/03/2023, The matter was reported at Kibra Police Station within Nairobi County vide OB 29/27/3/2023.	Nairobi	Investigations ongoing
7.	IPOA/INV/202/2023	Teargas injury: Investigations into the circumstances leading to the lobbying of a teargas canister by an alleged police officer	Nairobi	Investigations ongoing

		named Patel which teargas hit and injured an 8-year-old girl in Mbotela, Makongeni Ward within Nairobi Country on 20/3/2023.		
8.	IPOA/INV/197/2023	Shooting causing serious injuries: Investigations into the circumstances leading to the alleged shooting causing injury to a mechanic named Dan Ouma at Toi Market, within Nairobi county during the Azimio demonstrations on 20/3/2023.	Nairobi	Investigations ongoing
9.	IPOA/INV/1203/2023	Teargas injury: The complainant, Oscar Ochieng, alleges that during the Azimio demonstrations on 20/3/2023 at around 1200hrs, while looking for his brother and sister, he was accosted by the OCS Muthurwa Police Station, Mr Noor Mohammed who shot teargas on his face causing him grievous harm. That he sought treatment at St Bridget Catholic hospital who referred him to Nairobi Area Hospital for further treatment.	Nairobi	Investigations ongoing
10	IPOA/INV/206/2023	Police Unethical Practices: Investigations into the circumstances surrounding the lobbying of teargas canisters by police officers from KICC Police Station, under the command of the OCS KICC, to a section of Nairobi MPS and Senator Edwin Sifuna, who were demonstrating, causing them harm. The incident happened on 20/3/2023	Nairobi	Investigations ongoing

11	IPOA/CMU/776/2023	<p>Police Unethical Practices: Investigations into the circumstances whereby the police harassed the Azimio leaders by spraying water cannons and tear gas as they tried to access the CBD on 20/3/2023 within Nairobi County. That despite their calls that theirs was a peaceful procession, they were still harassed by the Police.</p>		Investigations ongoing
12	IPOA/CMU/785/2023	<p>Police Unethical Practices: Investigations into the circumstances surrounding an accident involving a police vehicle No. GKB 444 (the last digit not captured), Make- Mahindra which hit an old man on Jogoo Rd opposite Rikana, within Nairobi County on 20/3/2023. It is also alleged that the police threw teargas on the crowd that was building up and sped off after realizing that their police vehicle had knocked down the old mzee who was crossing the road.</p>	Nairobi	Investigations ongoing
13	IPOA/INV/205/2023	<p>Teargas injury: Investigations into the circumstances that led to the shooting of a boda boda rider at OTC Area, within Nairobi County on 20/3/2023. The complainant alleges that during the Azimio demonstrations, he was at OTC dropping a passenger and was also with his fellow boda boda persons, when he was shot with a rubber bullet on his mouth by a known police officer from Kamkunji Police Station. He sustained serious injuries on his mouth, lost five teeth and broke his left jaw.</p>	Nairobi	Investigations ongoing

		He sought medical attention at Ngara Dental where he was referred to Mathari hospital and later referred to Kenyatta National Hospital.		
14	IPOA/CMU/756/2023	Teargas injury: Investigations into the circumstances surrounding the shooting of seven-year Lewis Musera which occurred on 20/3/2023 in Mbotela, Nairobi County. Edith Asava alleges that her seven-year-old son, Lewis Musera was hit by a tear gas canister thrown by Police Officers on 20/03/2023 in Mbotela area during the Azimio Coalition protests. That he suffered a deep cut on the head and was rushed to Labich Hospital in Eastleigh and later referred to Kenyatta National Hospital for specialized treatment	Nairobi	Investigations ongoing
15	IPOA/CMU/870/2023	Teargas injury: Investigations into the circumstances that led to the attacking of the opposition convoy as they exited Kware Embakasi South, Nairobi County on 30/3/2023. The media managed to capture this exclusive footage of a plain cloth police officer lobbying teargas into a media vehicle. Two journalists were injured by teargas canisters.	Nairobi	Investigations ongoing

16	IPOA/CMU/871/2023	<p>Shooting causing damage to vehicle: Azimio leader Raila Odinga claimed that there was an attempt on his life during Thursday's mass demonstrations in Embakasi South after his car was allegedly shot at seven times. In a statement on his official social media pages, Raila condemned the police for using excessive force during peaceful demonstrations. Raila posted photos on his social media handles and asked Kenyans to help identify persons seen aiming at vehicles in his convoy with what looked like guns.</p>	Nairobi	Investigations ongoing
17	IPOA/CMU/883/2023	<p>Fatal Shooting: The complainant alleges that his 18-year-old son Ezekiel Makau was shot dead on 30/03/2023 at Pipeline stage, Nairobi. He informs the Authority that he reported the matter at Kware Police post and later to Embakasi Police Station. He further informs us that the body was taken to the City Mortuary and Post Mortem will be conducted on Tuesday 4/04/2023 at 9.00am. He seeks the intervention of the Authority to Investigate the matter and to be present during the post mortem.</p>	Nairobi	Investigations ongoing
18	IPOA/CMU/882/2023	<p>Shooting Causing Injuries: Japhar Abdulahi Muhammed, a Form 4 student at Gloria Secondary School was allegedly shot and injured on the knee at Fedha estate, Nairobi on 30/3/2023. The complainant is the victim's sister. Japhar left school at 1pm for her</p>	Nairobi	Investigations ongoing

		<p>aunt's and at 4 pm went to Fedha mosque. While leaving the mosque he met protestors running from police. He was shot while running for his safety. He was taken to Bristol Park Hospital in Fedha and the bullet removed. On 31/3/2023 the OCS Embakasi Police Station was called to take the removed bullet but the family had a push and pull at the hospital with the officer and IPOA was called to intervene. The OCS took the bullethead.</p>		
19	IPOA/CMU/903/2023	<p>Teargas death: IPOA on its own motion picked a complaint for investigations where a new born allegedly died due to suffocation after a teargas canister was lobbed into their house in Kibera during the 30/03/2023 demonstrations. The parents of the deceased baby said the new born developed breathing difficulties after police lobbed teargas into the house on Thursday, March 30. The new born died sometime in the evening, and the body was transferred to the City mortuary as the family plans for his burial.</p>	Nairobi	Investigations ongoing
20	IPOA/CMU/902/2023	<p>Shooting causing death: Investigations into the circumstances surrounding the death of Derrick Nyamwange which occurred on 30/3/2023 at around 6:30pm. The father to the deceased stated that his 21yr old son was shot at Jacaranda Gardens on 30/03/2023 at around 6.30pm by a police officer during the</p>	Nairobi	Investigations ongoing

		demonstrations, was rushed and died while undergoing treatment at Mama Lucy Hospital.		
21	IPOA/CMU/860/2023	Shooting causing death: Investigations into the circumstances surrounding the death of Julius Odour which occurred at an unknown place within Nairobi County on 20/3/2023. The body was brought into the facility by police officers from Kibra Police station, vide GKB 376T. The family is in touched with IMLU for PM arrangement.	Nairobi	Investigations ongoing
22		Death by Suspected Police Action: 19-year-old Jamleck Mwanza died while undergoing treatment at Kenyatta National Hospital from what doctors diagnosed as a brain haemorrhage due to head injuries he allegedly sustained on 30 th March, 2023.	Nairobi	Investigations ongoing
KISUMU REGION				
1.	IPOA/INV/186-2023	Shooting causing injury: Ngugi Ranson was reportedly shot and injured by anti-riot police officers while in the house in Maseno on 20 th March 2023 hence sustaining injuries on the left arm	Kisumu	Investigations ongoing
2.	IPOA/INV/189-2023	Fatal shooting: William Mayange was shot dead by police officers at Maseno on 20 th March 2023 during Azimio demonstrations	Kisumu	Investigations ongoing

3.	IPOA/INV/217-2023	Unlawful confiscation of property: The complainant alleged that on 20 th March 2023 while riding his motorcycle in Kisumu Town, he was stopped by police officers on patrol. The officers seized his motorcycle Reg. no. KMFW 886S after unsuccessfully demanding for a bribe for riding during demonstrations. He has searched the motorcycle in vain.	Kisumu	Investigations ongoing
4.	IPOA/INV/220-2023	Assault: George Ouma was reportedly assaulted by police officers at Rubis Petrol Station in Kachok area within Kisumu County on 20 th March 2023. He sustained injuries.	Kisumu	Investigations ongoing
5.	IPOA/INV/222-2023	Shooting causing injury: Brian Carlos Oduor was shot and injured on 21/3/2023 by police officers in Maseno. He sustained injury on right upper limb.	Kisumu	Investigations ongoing
6.	IPOA/INV/230-2023	Fatal Shooting: Joseph Oduor was reportedly shot dead by police officers on 27 th March 2023 at Kondele during Azimio Maandamano.	Kisumu	Investigations ongoing
7.	IPOA/INV/231-2023	Shooting causing injury: Gregory Odhiambo and Pius Oguna were reportedly shot and injured in Rongo by police officers on 27 th March 2023. The two sustained injuries on the thigh and left leg respectively.	Migori	Investigations ongoing

8.	IPOA/INV/232-2023	Shooting causing injury: Denis Ochieng was allegedly shot and sustained chest injuries by police officers on 27 th March 2023.	Kisumu	Investigations ongoing
9.	IPOA/INV/235-2023	Fatal shooting: Erick Okello reported that a student was reportedly shot dead at Kondele and the body taken away by the police officers.	Kisumu	Investigations ongoing
10.	IPOA/INV/236-2023	Teargas injury: Spenser Obado aged 24 years was reportedly shot with a rubber bullet on the gluteal region while in Kondele.	Kisumu	Investigations ongoing
11.	IPOA/INV/237-2023	Teargas injury: A form three student was shot and injured on the head by a rubber bullet in Rachuonyo North within Homabay County while on his way home from School.	Homabay	Investigations ongoing
12	IPOA/INV/260-2023	Teargas injury: Carol Favor was hit with a teargas canister on 30 th March 2023 during Azimio demonstrations. The victim suffered aspiration pneumonia.	Kisumu	Investigations ongoing
13	IPOA/INV/261-2023	Shooting causing injury: James Okoth was shot and seriously injured on his left arm on 30 th March 2023 during the demonstrations. The victim is currently hospitalized at JOOTRH.	Kisumu	Investigations ongoing

8.0 Findings from the Monitoring Exercise

1. **Public pressure on IPOA:** The Authority identified possible reputational and credibility risk to its image following public demand for premature media statements or press briefings before the conclusion of the due process of efficacious investigations.
2. **NPS conduct before the AZIMIO assemblies:** Using the Public Order Act, the NPS declared the Azimio protests unlawful even before they happened. Article 37 envisions that a demonstration has to happen before determination can be made as to whether it is peaceful. The NPS arrested 50 university students on 18/03/2023 who gathered at Chester House in support for Azimio demonstrations. This declaration established a basis for defiance and the consequent confrontations witnessed during the demonstrations.
3. **NPS conduct during and after the protests:** The NPS violated Articles 10, 37, 239(3) and 244(c) of the constitution in handling the Azimio protests. For instance, by stopping the Azimio team from exercising their right to picket the NPS failed the constitutionalism test under Article 37 and 10. In so doing, the NPS violated Article 244(c) which directs it to comply with Constitutional standards of human rights and fundamental freedoms.
4. **Use of force:** The use of force by the NPS though restrained compared to historic public order management operations, still fell short of the principles of legality, precaution, necessity, proportionality, non-discrimination and accountability. The NPS used batons, water cannons, tear gas, live bullets, and rubber bullets to manage the public. This triggered panic, chaos and opportunistic crimes.
5. **Public order management:** The following incidents point to police inaction or failure to perform their duties in a professional manner:
 1. Failure to facilitate and secure property besides non-protestors during the Azimio assemblies.
 2. Failure to engage with assembly organizers for mutual solutions to be found and exercised.
 3. Failure to prevent destruction of property in Kisumu and Nairobi on 20th and 21st March 2023.
 4. Failure to prevent destruction of property in the Northlands Estate in Ruiru, Kiambu County on 27/03/2023.
 5. Failure to prevent destruction of the Spectre International in Nairobi County on 27/03/2023.
 6. Failure to prevent torching of a mosque, church and a primary school in Kibra on 27/03/2023.
 7. Failure to protect journalists during the assemblies-Citizen TV journalists were attacked in Kibra on 27/03/2023.

- 6. Lack of training:** NPS preparation for use of crowd control tools including water cannons and tear gas was inadequate to the situation's demands. In some instances, teargas canisters fired by the NPS did not detonate. These canisters fell in the hands of the public who threw them back to the police officers.
- 7. Injuries to police officers and damage to State property:** A total of 31 officers were reportedly injured during violent confrontations witnessed during the demonstrations. A press statement released to the media on 21/03/2023 indicated that 7 police officers were injured in Nyanza while in Nairobi, 24 Police officers were injured and 10 Police vehicles damaged.¹
- 8. Tooling:** This was noted as inadequate. Not all officers were equipped with shields, helmets and body armour resulting in injuries suffered by some police officers.
- 9. Uptake and implementation of IPOA recommendations:** Over time, IPOA has made recommendations to the NPS following historic monitoring of public order management by the police. IPOA noted and commends the deliberate uptake of the use of rubber bullets as opposed to the use of live ammunition as recorded in previous public order management operations.
- 10. Police preparedness for crowd control for spontaneous assemblies:** Police were not fully prepared to handle the mammoth crowds as witnessed in Kisumu and Nairobi. NPS poor planning and coordination was evident in Maseno (20th & 21st March 2023) where a neighbouring police station failed to assist another in a timely manner because they fell under different jurisdictions. Consequently, the police were overwhelmed resulting in destruction of property and theft.
- 11. Identification of Officers:** NPS officers did not display their nametags/Service numbers as envisaged by Appendix 31 and Cap 43 Para. 1(2) of the National Police Service Standing Orders (SSO).
- 12. Traffic Management:** NPS failed to direct traffic especially motorists on safe/alternative routes leading to vehicles being destroyed.
- 13. Coordination between Azimio and NPS:** The Azimio leadership were arrested /or cordoned off in certain zones making it impossible to protest peacefully. Both the NPS and the Azimio team failed to dialogue towards de-escalation of the tensions.
- 14. Use of colonial Public Order Act:** The NPS used the archaic colonial public order act to justify curtailing of article 37 rights. This should be amended to be in line with the Constitution.
- 15. Perception of the NPS as partisan:** Protesters viewed the Police to be partisan and predisposed towards the ruling government. This jeopardised the police reputation and further exacerbated the anarchy.

¹ Office of the Inspector General, National Police Service Press Statement dated 21st March 2023

- 16. Show of might:** The NPS deployed horse borne officers besides equipping officers with water cannon tanks, batons, tear gas canisters and body armour. Threatening body language, confrontational appearances or the display of weapons or other equipment such as riot gear in a way that could be perceived as intimidating to organizers and participants of an assembly should be minimised.
- 17. Arrests:** The NPS made various arrests including those of the Azimio leadership. The arrested persons were either released on cash bail or charged in court as required by law. No complaint was lodged with the Authority by the arrested people.
- 18. Transfer of senior police officers:** The Inspector General of Police effected senior police officer transfers in the midst of protests.² He transferred 5 Sub-County Police Commanders within Nairobi and also in Kisumu. This is contrary to recommendations made by IPOA in relation to impromptu transfer of senior police officers during police operations.
- 19. Institutional complaints against the conduct of police officers:** The Authority noted the assault against journalists by both the NPS and also by criminals. IPOA further received complaints from the Media Council of Kenya and the Editors Guild on the attack of journalists. These complaints have been prioritized for investigation.
- 20. Criminal elements infiltrating demonstrations leading to destruction and public disorder:** It was observed that sections of the public took advantage of the chaos arising from the demonstrations to engage in mugging, destruction of property and pillaging.

9.0 CONCLUSION

Though the findings and analysis to some level attribute the witnessed loss of lives, destruction of property, chaos and anarchy during the Azimio demonstrations to Police action and inaction, circumstances and proportionality on the use of force by the NPS will be best determined clearly upon the conclusion of the ongoing investigations and on a case-by-case basis.

10.0 RECOMMENDATIONS

From the findings of this report the following is recommended:

1. **Amendment of the Public Order Act:** This Act was used by the NPS to justify violations of constitutional provisions on human rights. The National Assembly of Kenya should therefore amend this Act to align with the intentions/provisions of the Constitution.

² Kilimani, Embakasi, Dagoretti, Central, Njiru (Kayole).

2. **Compliance with constitutional Provisions during Assemblies:** The NPS is urged to comply with provisions of Articles 10, 37, 239 and 244 of the constitution while policing assemblies. Non-compliance will attract defiance and disorder.
3. **Police Training:** The NPS to inculcate continuous training of officers in use of public order management tools and equipment including teargas and water cannons to ensure they are properly used without causing injury and falling in the hands of civilians as was witnessed with teargas canisters.
4. **Police Tooling:** The NPS should ensure uniformity in tooling of its officers who participate in policing assemblies. This report noted that some officers had the full assembly kit while others had none. This left officers without the full kit vulnerable to injuries resulting from projectiles pelted by protesters. It was also noted that tear gas ran out leaving the Police officers exposed in several instances in Kisumu and Migori Counties.
5. **Traffic advisories:** The NPS to offer timely publicized and physical traffic advisories during assemblies in order to protect motorists from getting into conflict zones.
6. **Identification of Officers:** The NPS to ensure that deployed officers are identifiable by prominently affixed nametags and Service numbers. This will enhance transparency and accountability of NPS officers.
7. **Dialogue with assembly organisers:** The NPS to ensure effective and timely communication with assembly organisers to ensure adequate security for all. Decisions reached should be based on mutual understanding between the NPS and the organisers as envisioned by the law.
8. **Lawful demonstrations and picketing:** Protesters should demonstrate peacefully and should not be armed nor violent.³ They should avoid damage to public and private property.

³ Article 37 COK 2010, Section 6 of the Public Order Act