

Assessing the legality of arrests in Kenya: A critical analysis of police conduct

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Abstract

This study examined how Kenyan police officers execute the law when making arrests, paying particular attention to constitutional rights and documented instances of unauthorized arrests. It makes the assumption that police personnel frequently violate the law, resulting in a large number of unauthorized arrests that erode public confidence in the criminal justice system and law enforcement. The study used a qualitative methodology that included police records, court documents, media article observations and narrative analysis. While media pieces offer timely reflections of public debate, narrative analysis offers rich insights into individual experiences, despite the potential biases and limitations of these sources. According to the findings, there were a lot of complaints about police activities, especially in big cities, with infractions like unlawful detentions and enforced disappearances. The Kenya National Human Rights Commission (KNHRC) and the Independent Policing Oversight Authority (IPOA) have released reports that show concerning patterns, such as an increase in kidnappings connected to police activity. The general public strongly opposes unauthorized arrests due to worries about power abuse and a lack of accountability. The study emphasizes the necessity of reforms to improve police adherence to the law and rebuild public trust in the judicial system. All things considered, the study advances knowledge of the nuances of Kenyan law enforcement procedures and highlights how crucial it is to protect human rights when conducting policing.

Keywords: Independent Policing Oversight Authority (IPOA); National Police Service (NPS); National Police Service Commission (NPSC)

1. Introduction

The police compliance with the law when making arrests in light of constitutional rights is the sensitive issue. Looking into documented instances of illegal arrests in Kenya to find trends and conditions, and assess how these incidents affect public confidence in security forces and the criminal justice system. According to the study's hypothesis, Kenyan police officers frequently make unauthorized arrests that violate constitutional rights because they don't always follow the law. These incidents have a detrimental effect on the public's confidence in law enforcement and the efficiency of the criminal justice system. According to Article 49(1) of the Kenyan Constitution [1], an individual who has been arrested is entitled to "promptly be informed, in a language that the person comprehends, of the reason for the arrest."

It is unlawful to confine a person without supplying that person with the reasons for arrest. There are instances the arresting authority such as the National Police Service can arrest a person without a warrant according to section 58 [2], if there are reasonable grounds to believe that a person has committed or is about to commit an offense. Article 49(1)(f) [1] states that an arrested person must be brought before a court as soon as reasonably possible, but not later than 24 hours after being arrested, or if the 24 hours end outside ordinary court hours, the end of the next court day. Section 36A (1) [3]. Further, an arrested person has a right to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling factors not to be released under Article 49(1)(h) [1]. These reasons/factors fall under section 123A [3]. They are: nature or seriousness of the offense; the character, antecedents,

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associations, and community ties of the accused person; the defendant's record in respect of the fulfillment of obligations under previous grants of bail and the strength of the evidence of the accused having committed the offense.

Additional criteria for determination whether to grant bail are listed [4]. They include: The likelihood of the accused failing to attend court proceedings; the likelihood of the accused committing, or abetting the commission of, a serious offense; the likelihood of the accused endangering the safety of victims, individuals, or the public; the likelihood of the accused interfering with witnesses or evidence; and the public interest in detaining the accused person in custody. The Kenyan laws are elaborate on the protection of the rights of an arrested person which include not compelling that person to make confession or admission that could be used in evidence against them under article 49(1)(d) [1].

2. Materials and methods

This study took qualitative approach where research methods for qualitative research approach used Narrative analysis and observational analysis by the media. Police reports, media articles and court documents provided the background information regarding reported cases of unlawful arrests. Despite the information sources being real, there would be likelihood of shortcomings of the information sources such as subjectivity, generalizability, biasness, lack of depth, source reliability and limitation in scope. However, Narrative analysis offers detailed insights of the experiences of the participant. Narrative analysis offers holistic understanding or comprehensive view of how individuals perceive meaning of their experiences. Media Articles offers access to current events which are timely about ongoing issues making them valuable and fitting the context. Analysis of media articles allows public discourse thus revealing societal attitudes and concerns. Lastly, this approach was cost effective. Having stated the rights of an arrested person, the subsequent section dealt with the results of this study

3. Results and Discussion

This section presents the answers to research objectives. The analysis of whether police officers in Kenya do adhere to legal standards and procedures during arrests, particularly in relation to rights outlined in the Kenyan Constitution. The Performance Report of January-June 2024 [4] reports that IPOA received 1943 complaints from the public relating to police operations and detentions. The report says Nairobi City had the highest complaints followed by Mombasa, Eldoret, Kisumu and Nakuru with 876, 255, 207, 189 and 117 cases respectively. Complaints reported modalities were Walk-ins, Letters, center calls, e mails, telephone, own motion and social media were 705, 384, 287, 189, 173 and 41 respectively. It reports tremendous achievements but highlighted challenges it experiences which affect negatively their operations. They included: inadequate funding, non-cooperation by some witnesses and NPS officers besides parallel investigations between the Authority and DCI.

The nature of complaints processed among them were enforced disappearances (11), Cash-bail complaints (30), violation of rights of arrested persons (53), death in police premises (33) among others. There is a sharp contrast with cases of unlawful arrests as reported by Kenya National Human Rights Commission (KNHRC) as at 26th December, 2024 [6]. The report says "There have been thirteen (13) more cases of abductions or enforced disappearances in the last three (3) months bringing to eight-two (82) the total cases since June 2024." The KNHCR condemns the illegal arrests which are synonymous to abductions characteristic of torture, cruel, degrading and inhuman treatment: a non derogable right.

The second objective sought to examine reported cases of abductions and unlawful arrests in Kenya, identifying patterns and the circumstances under which these incidents occur. Human Right Watch published [6] that "On June 31, a preliminary report of the state funded Kenya National Commission on Human Rights (KNCHR) said that police ... abducted another 66 people. Bodies of people showing signs of torture continued to turn up in rivers, forests, abandoned quarries, and mortuaries. The authorities have yet to investigate or prosecute anyone for these crimes."

The same report with headline 'Statement on the Protests against Abductions and Enforced Disappearances in Kenya' authored by Daniel Mule on 30 December 2024 puts police officers at the center of accusations of unlawful arrests and abductions. The most recent report was published on 17th June, 2025. It is quoted thus 'A key highlight in today's protests in Nairobi was the massive deployment of masked hired goons in motorbikes who patrolled the streets as they brutalized the protestors and innocent Wananchi with tyre whips, wooden bars and other crude weapons. It goes further to castigate the police officers who conceal their vehicle registration numbers and faces with masks and hoods rather than be in official uniform and remain identified at all times. Quote 'Further, most of the police officers concealed their vehicle registration numbers and faces with masks and hoods in contravention of a High Court ruling last year that requires all police officers assigned to handle protests to be in official uniform and remain identifiable at all times.'

The latest of the unlawful arrests was reported by Kenya National Commission on Human Rights [7]. The second paragraph continues: The Commission condemns the arrest of protestors including four Human Rights Defenders in Mombasa despite being peaceful and having duly notified the police in line with the law. The commission calls for immediate and unconditional release of the protestors. The KNCHR commends the majority of the protestors for being peaceful despite attacks and provocation by the police and hired goons.

There is no doubt that unlawful arrests are taking place as reported by government agencies. The last objective of the study sought to evaluate how instances of unlawful arrests and abductions affect public trust in law enforcement and the overall criminal justice system in Kenya. Kenyans strongly disapprove unlawful arrests conducted mostly by the police. The public condemns this potential abuse of power; abuse of rule of law upon activists and individuals criticising the government. Kenyans' cries for respect for human rights, due process and accountability is are relentless.

4. Conclusion

This study draws attention to important concerns about Kenya's high rate of unauthorized arrests and police compliance with the law. The results show a significant gap between constitutional rights and real police operations, with multiple documented infractions eroding public confidence in law enforcement. Unlawful arrest and kidnapping trends, especially during protests, point to structural issues that require immediate change. The public's overwhelming condemnation of these acts reflects a larger call for human rights and accountability. Law enforcement organizations must closely follow the law and increase operational transparency if they hope to reinstate public trust in the criminal justice system.

Assuring that police actions comply with constitutional demands also requires constant observation and impartial supervision. A just society where people feel safe and protected by the rule of law must be fostered by addressing these challenges.

References

- [1] The Constitution of Kenya 2010
- [2] National Police Service Act
- [3] Criminal Procedure Code
- [4] Independent Policing Oversight Authority of Kenya (January-June, 2024)
- [5] Kenya National Commission on Human Rights (KNHCR, 2024)
- [6] <https://www.hrw.org/world-report/2025/country-chapters/kenya>
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