

‘Ready to Shoot!’ Vs ‘Ready to Loot! The Violent Potentialities of Demonstrations in Kenya

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Introduction

On 9 August 2017, a day after Kenyans cast their vote, the first author received a gruesome photo from a human rights activist in Mathare¹⁷ depicting the body of a young man whose head had been completely bashed in. A second later, the female activist sent a picture of a protester near Number 10, a neighbourhood in Mathare, at Juja Road and another one of a police officer in riot gear approaching her (the activist) as she tried to document what was happening. During a later phone conversation, she explained that Opposition supporters, mostly neighbours and friends in Mathare, had gathered at different spots to discuss their concerns over alleged irregularities in the process of vote tallying by the Independent Electoral and Boundaries Commission (IEBC). According to the activist, police in riot gear had been waiting in lorries by the roadside and as soon as they got wind of these small groupings, went into Mathare to disperse them by force. In the chaos that followed, one police officer allegedly broke a door to a house, whereas two others started hitting people with huge pieces of wood, wounding several and killing one. Her narration was corroborated by several eyewitnesses during later interviews conducted in November 2017.

This incident is one of the many that occurred during the presidential election of 2017, which included a first round of general elections on 8 August and a repeat presidential election on 26 October. This election period was marked by tremendous political uncertainty on numerous levels, displayed by recurring protests and use of force by police officers to quell these and other forms of public gatherings. Several reports written by various human rights organisations have extensively documented the cases of police violence across the country (Amnesty International and Human Rights Watch 2017). In Mathare alone, the Mathare Social Justice Centre (MSJC) documented over 20 people killed by suspected police officers and an even higher number injured.¹⁸ From these deaths, the killing of the 9-year-old Stephanie Moraa by a stray bullet while playing at the balcony of her house received a lot of attention,¹⁹ yet many cases, such as the one discussed above, received little or no attention. Given this high number of injured and killed persons during the election period, the congratulatory signal issued to the police by President Uhuru Kenyatta, on 30 November 2017 angered many human rights organisations and some Kenyans. Marked as a ‘confidential’ signal, the President commended the police for being “firm” and for acting “professionally” and “in accordance with the law” (Agutu 2017).

¹⁷ This is an informal settlement located in North East part of Nairobi.

¹⁸ Internal report by MSJC to the EU Election observers, which was presented by Kinuthia Mwangi and the first author to the chair of the observers in Brussels on September 2nd 2017.

¹⁹ See: <https://www.nation.co.ke/counties/kisii/Stephanie-Moraa-parents-want-justice-for-her-shooting/1183286-4209244-14ywwtr/index.html> (Accessed May 2019).

This laudatory message and its accompanied support among police versus the outcry by local activists and some Kenyans point towards a deep incongruence between perceptions and experiences of that period and the way that the Kenyan security officers addressed the unrest. Furthermore, this disparity extends beyond extraordinary times such as elections, but also shapes everyday policing in Kenya.

Despite the fundamental changes that have taken place in Kenya since implementation of the 2010 Constitution, especially pertaining to police reforms, public protests and demonstrations remain violent in nature. Use of force often leads to the death of citizens at the hands of the police, such as the killing of a female protestor in March 2016 during a spontaneous protest at Juja Road (Mathare) against corruption within the National Youth Service (NYS).²⁰ A more recent example is the protest that accompanied Raila Odinga's return to Kenya in November 2017 during which police killed five protestors (Reuters 2017).²¹ In this paper, we argue that a fundamental contrast between two main perspectives on responsibility, namely that of protestors and police, create space for violent potentialities during public gatherings. These different perspectives are shaped by discourses, experiences and expectations with regard to citizen rights, obligations and the meanings of the current social order, which together set the stage for repressive policing structures.

Protesters we interviewed mostly blame police officers for being 'ready to shoot' and either inciting violence during a demonstration or responding to minor incidents with excessive violence, which then triggers a response among some of them, and so forth. As a result, during the preparation for a demonstration, organisers often implement certain mechanisms to mitigate these potentialities to avoid police harassment of citizens who are exercising their constitutional rights to protest. Such mechanisms may entail attracting public attention to the event through the use of social media (see more below). Police officers, in turn, also anticipate violence during a demonstration. In the eyes of many officers, demonstrations are opportunities for criminals who are 'ready to loot' and these must be suppressed through (excessive) force. Police officers interviewed and observed during our research commonly blame protestors for lacking discipline to control themselves, hence the need to be reinforced with violence. Although responsibility for ensuring that demonstrations are conducted in a non-violent manner may (logically) be perceived to be the responsibility of the National Police Service (NPS) as part of public order management, many Kenyan police officers during interviews felt that citizens are equally or even more responsible for ensuring peaceful protests. Parties thus have different ideas about responsibility and easily blame one another when violence occurs, which further consolidates existing social divides.

In this chapter, we argue that in order to improve public order management in Kenya, these contrasting views on responsibility must be unpacked and addressed. To exemplify

²⁰ Interview with two anonymous activists in Mathare on 31 March 2016.

²¹ In this article, we follow popular distinctions between demonstration and protest, given that many Kenyans use demonstration when it is planned way in advance and protest when it is more impromptu, but our focus lies with demonstrations. However, we use the term 'protesters' to describe participants in both.

this, we will draw from ethnographic fieldwork conducted by both authors on different but complementary research projects on policing and security in Nairobi. As part of a wider research project on community organising and urban marginality (with a special focus on security), the first author explored activism against police violence and conducted ethnographic research for a total of nine months in different urban settlements in Nairobi, and with a wide range of activists, between July 2016 and February 2019. Accordingly, she has been intimately involved in supporting the organisation of various demonstrations and protests by different social justice centres in Nairobi, such as the Saba demonstration on 7 July 2018.

The second author focused on understanding the various mechanisms that exist to monitor police behaviour and the actors involved in this process. In addition to other qualitative methods, such as participant observation, the author conducted approximately 180 interviews with a wide range of research participants, such as police officers, human rights activists, lawyers and members of civil society. In addition, after formal permission was obtained from the Inspector General's office, the author conducted a total of 75 formal interviews with police officers in Nairobi between June and August 2018. These 75 interviews were conducted at police headquarters and across six police divisions/sub-counties and at fourteen stations/posts. The sample for officers was mainly selected by the officers in charge and as a result, most of the officers were men of higher-rank (Inspector and above) from the Kenya Police Service (KPS). Combined, the analyses made here are thus based on qualitative data collected through interviews (both open-ended and semi-structured) conducted with protestors and police officers and via personal observations made while attending and/or participating in demonstrations and other gatherings between 2017 and 2018.

In the first two sections of this paper, we will outline some of the conceptual debates around public order policing and explore the concept of violent potentialities in police-citizen interactions. In the third and fourth sections, we present two empirical cases of demonstrations that centred around the use of force by police officers. The first — “Stop Killing Us!” — was directed at the killing of protestors. It took place in October 2017 and resulted in the use of force (tear gas) by the police. The second — “Saba Saba March for Our Lives” — took place in July 2018 and was organised by a coalition of social justice centres against extra-judicial killings and other human rights violations. Social justice centres from Mathare, Dandora, Kayole, Githurai, Mukuru, Kiambiu and Kamukunji combined their efforts in the Social Justice Centres Working Group (SJCWG). Later, after the Saba Saba demonstration took place, other social justice centres also joined this working group. The demonstration eventually turned out to be peaceful despite looming violent potentialities. By discussing these two different demonstrations, we can explore how police violence was triggered or prevented and provide insights into the constraints and possibilities on both sides to realise peaceful demonstrations. In the concluding section, we discuss the crucial need to realign perspectives as a way of eliminating or minimising the violent potentialities that precipitate during demonstrations in Kenya and may lead to violent disruptions of public order from both sides, that is, police and protestors. We argue that such realignment is crucial to ensure more peaceful demonstrations in the future, and essentially, contribute to more democratic policing styles.

Public Order Policing

The policing of public order, or public order policing, remains the fundamental role of the police. Despite the increasing pluralisation of policing (Jones and Newburn 2006) and the increasing militarisation of policing, the police, albeit in different forms and styles, continue to act as the universal prime custodians for ensuring order during public gatherings and events.

Public order policing remains an extraordinary form of policing due to its distinctiveness from the more mundane or 'normal' policing (Waddington 2007a: 4). Firstly, everyday policing generally involves several officers (and very often only one or two) who patrol areas and approach citizens as individuals. Public order policing, in contrast, entails the deployment of numerous officers to deal with many individuals. Secondly, in contrast to fighting crime, which is directed against the 'criminal other' and thus generally perceived to be a good 'thing', public order policing is not as straight forward, as is very often directed at a collective of active citizens who are not necessarily criminal or deviant. Thirdly, while most policing practices go unnoticed and are thus invisible to the public eye, public order policing very often happens under the public gaze due to media attention. With all these factors combined, public order policing is an exceptional type of policing and cannot be compared to everyday patrols and crime investigations. It is also for this distinctiveness that in many parts of the world, police forces have dedicated anti-riot units or squads, often known as riot police, whose sole mandate is to address public gatherings, such as the South African Public Order Policing (POP) Unit (Marks 2017). In Kenya, the General Service Unit (GSU) is the specialised anti-riot unit in terms of training, even though other types of police officers are at times deployed to supplement the GSU numbers. Similarly, it clarifies why many countries have implemented specific legislation to outline the legal fundamentals and boundaries of public order policing.

The reality is that many public gatherings occur in a peaceful manner, yet the focus – both in academic scholarship and media discourse – lies with disorder, whereby gatherings are defined as riots and associated with mayhem (Waddington 2007a). The word 'riot' is regularly used in France, while, as argued by Body-Gendrot, it is often inappropriate and insufficient in explaining certain phenomena (2007). In South Africa, the idea of the 'mob' is frequently conjured (Buur 2009; Cooper-Knock 2014) to describe violence-prone gatherings, which reinforces the image of mobs as frantic forms of dissent staged by angry youth. One could argue that recent global events have brought the potential violent nature of public gatherings to the fore. Consider the numerous eruptions of violence in anti-globalisation demonstrations throughout the past decade (Waddington 2007b; Juris 2005) -- the Gezi park demonstrations in Istanbul in the summer of 2013, the Standing Rock protests against the expansion of a pipeline in 2016 in the USA, and more recently, the 'yellow vests' in several parts of Europe, to name a few examples. Combined, this demands a revisiting of how to frame and analyse such events.

Perhaps the most interesting dimension of public gatherings is that there is always a potentiality for violence, as we will discuss in more detail in the next section. It is precisely this dimension that has been the scholarly focus within the policing literature, in which studies have centred around the question of why some episodes result in the use of violence and why some do not, very often drawing from psychology to understand group crowd behaviour (see Waddington 1989; Reicher et al 2007). In turn, emphasis has been placed on understanding and developing the most appropriate tactics, strategies, and equipment to effectively deal with violent demonstrations. Amongst this vast literature, the most well-known explanatory model is the Flashpoints Model (Waddington 1989), which identifies how the combination of various levels — structural, political/ideological, cultural, contextual, situational, and interactional — can result in degrees of confrontation. Both praised and critiqued, the model has acted as a conceptual lens to analyse and clarify the outcome of public gatherings and the manner in which they are policed. In this paper, we will not zoom into this model, but rather argue that these various levels intersect in the construction of sharply contrasting narratives that in turn determine the space for violent potentialities of public order policing in Kenya.

Police Reform in Kenya

Similar to other parts of the world and the East African region (Baker 2015), Kenya has faced issues of public order policing for decades, dating back to colonial rule when protests were associated with political dissent and were met with excessive force by the police. Since independence, riots have not been absent in Kenya's politics and often go hand in hand with political events and presidential elections. A salient example is the multi-party protests and demonstrations of the early 1990s (Throup and Hornsby 1998). Yet, it was after the 2007-2008 Post-Election Violence that the government emphasised more than ever the need for urgent change in public order management and policing in general given the widespread outrage over the security services' response to the protests (Ruteere 2011; Osse 2014).

Alongside the new Constitution of 2010, numerous reforms have been implemented to transform the NPS. Key among these is the entry into force of the NPS Act of 2011, which entailed transforming the Police Force into the Police Service and wholly restructuring it, including its command structures. An array of other initiatives were also implemented, such as the creation of new training curriculums, the revamping of national-based community policing efforts, and more recently, the introduction of new police uniforms (Hope 2015; Kivoi and Mbae 2013; Osse 2014; Skilling 2016).

A key part of the police reform project has been the establishment of two oversight bodies to monitor police (mis)conduct. For internal oversight, the Internal Affairs Unit (IAU) was set up under Section 87 of the NPS Act. The IAU is responsible for handling police (mis)conduct internally; its main goal is to receive and investigate complaints against police officers, and these complaints can come from both the public as well as police officers themselves. For external civilian-led oversight, the Independent Policing Oversight Act of 2011 established

the Independent Policing Oversight Authority (IPOA). IPOA is an independent State institution that is required to investigate police misconduct, especially deaths and serious injuries caused by the police, review the functioning of internal disciplinary processes, monitor and investigate policing operations and deployment and conduct inspections of police premises.

IPOA is thus required to investigate police operations, including the conduct of officers during public gatherings. During 2012-2018, IPOA monitored a total of 151 police operations, of which 60 were episodes of public order management. This amounts to 39.7 per cent of all operations, and exceeds all other operations, such as traffic management and police recruitment (IPOA 2018). From these operations, IPOA also produced two in-depth reports on the anti-IEBC demonstrations²² between April and June 2016 and the 2017 election period.²³

The main objective of police reforms is to transform the culture and mind-set within the NPS, which would result in more democratic, accountable and inclusive forms of everyday policing. Although some of the dimensions target public order policing, it seems that public order management has been largely overlooked. The Public Order Act Cap 56 is the most crucial legislation and outlines the legal framework and provisions under which public meetings and processions can occur. Many of the provisions overlap with the NPS Act and the National Police Service Standing Orders (SSOs), such as the restriction on the use of force by police during demonstrations to exceptional circumstances. In particular, the legislation ensures that firearms may only be used to save or protect life or in self-defence against imminent threat to life or serious injury. Yet, despite the Public Order Act, a clear policy on public order management is urgently needed, as outlined by IPOA in their End of Term Report (IPOA 2018:130-131). In that report, they highlight the need for “a policy on public order management, where management of right to assembly, demonstration, picketing or presentation petitions to public authorities’ fails” (IPOA 2018:130). In 2019, however, this recommendation by IPOA is not yet followed through, forcing police officers to rely “on the Public Order Act and the Public Order Management as laid out under Chapter 58 of the SSOs to manage the public, almost repetitive of the NPS Act, Sixth Schedule” (IPOA 2018: 131).

In addition, IPOA also identified the urgent need to “establish a comprehensive training on public order management with reference to other international standards” (Ibid). The oversight body proposed that this training should be mandatory to all police officers although at the time of writing (early 2019), this had not been developed. Another recommendation focused on visibility and transparency. “During the public order management, assigned officers should have prominently displayed means of identification including visible name tags, number of the officer, even on their helmets. Rule 10 of Part A of the Sixth Schedule to the NPS Act, 2011 requires that “[a] Police officer in uniform shall at all times affix a name

²² These demonstrations were largely organized by the Coalition for Reform and Democracy (CORD) and aimed at disbanding the establishment and operations of the Independent Electoral and Boundaries Commission (IEBC). This was based on the assumption that the IEBC had failed to oversee fair and credible elections and between April – June 2016, numerous demonstrations were held.

²³ Both reports can be found on IPOA’s website: <http://www.ipoa.go.ke/other-documents/>

tag or identifiable Service number in a clearly visible part of the uniform” (Ibid), yet this too, had not been enforced by early 2019.

This shows that despite the legislative changes that have aimed to transform police culture, there is still much room for improvement for public order policing in Kenya. One explanation often given for the lack of such improvement is the persistent politicised nature of policing and the claim that the police protect the regime and interests of political elite rather than citizens in general (Hills 2007). According to Baker (2015), the political nature of a regime largely determines “how much force it is prepared to use in any given circumstance” (Ibid: 369), hence decisions regarding police violence are largely political. Ruteere (2011) has nuanced this claim by providing insight into the relative autonomy of police in Kenya — for instance when compared to the army. Yet, this does not withstand the fact that the contemporary political environment in Kenya does give rise to a police whose central mandate seems to be to exert control through violence and intelligence gathering so as to intimidate, coerce and eliminate perceived threats to the established social order. The legitimating discourses underlying this social order configure particular violent potentialities on both the side of police and of protestors that emerge and interact during protests and demonstrations, as we discuss in the following section.

Violent Potentialities in Police-Citizen Interactions in Kenya

Building on Vigh’s conceptualisation of ‘negative potentiality’ (Vigh 2011), violent potentialities denote the future violent effects that in/visible agents and social forces are perceived as being capable of producing. In Vigh’s discussion of negative potentiality, the agents or forces are considered invisible “because the complexity and simultaneity of relations and associations is simply too dense for full overviews to be gained and clarity achieved, making uncertainty and opacity foundational aspects of the social condition” (Vigh 2011: 94). Yet in the context of encounters between police and citizens during demonstrations in Kenya, a particular configuration of visibilities and invisibilities emerge and together constitute violent potentialities. Imagined invisible yet dangerous agents and forces are inscribed in the visible bodies of both police and protestors, and the vital conjuncture (Johnson-Hanks 2005) of their temporal and spatial interactions may or may not culminate in direct acts of violence (Galtung 1996). The potentiality hence relies on circumscribed orientations into the future by actors, which also inform their particular readings of bodies, practices and situations in the moment of an event. Such orientations and readings are configured by the temporal and spatial convergence of discursive and material conditions, including the framing of actors, by the specific interactions between actors and by the locality where protests take place.

The framing of the actors involved, that is, the protestors and police, derive from dominant discourses on order and disorder and revolve around citizenship and belonging. Direct acts of violence that threaten bodies and the bare life of bodies (Bay 2006) arise from “routine violence” (Pandey 2006), such as exclusion mechanisms in society. In- and exclusionary

aspects of notions of citizenship and belonging in Kenya are based on specific ethnic, age, class and gender configurations which for instance frame urban poor young men as ‘thugs’ (van Staple 2016) and police as ‘beasts’.²⁴ These framings inform legitimating discourses of escalating and excessive direct acts of violence, such as the police violence described in the introduction. The concept of routine violence allows a focus on the violence of routine political practices – the drawing up of political categories and the writing of national histories – and on the discursive, socio-economic and political conditions that allow and legitimise the ‘undisguised’ state violence and its ‘routinisation’ in everyday life (Pandey 2006). Routine violence, as it is described by Pandey, is the violence “written into the making and continuation of contemporary political arrangements, and into the production of majorities and minorities” (Ibid: 1).

The discursive and material conditions that make police violence possible during demonstrations are enmeshed in specific power relations between the state and its citizens in Kenya and in the concomitant exclusion mechanisms at work. Hence, these must be part and parcel of any analysis of the violent potentialities anticipated by both protesters and police and how these shape the potential for violence before, during and after particular events. The readiness of police to use violence in these contexts also speaks to broader understandings of the function of force as part of the police mandate.

In Kenya, the police are widely distrusted (Kagari and Thomas 2006) and imagined to protect the interest of the wealthy few (though majority in terms of power) against the grievances and demands for political changes harboured by diverse minorities (though majority in terms of numbers). Police violence during demonstrations is set against a backdrop of rampant unlawful police killings in Kenya. The persistent use of illegal force by police against citizens (Jones et al 2017; MSJC 2017; van Staple 2016) reveals the extent to which a propensity for excessive (and often illegal) violence is a structural part of policing practices. This violence is often legitimised by police through ascribing the ‘thug’ (or terrorist) label to the victimised dead or injured, often without tangible evidence and, in some cases, even with witnesses countering such claims. However, as noted, these labels are not only deployed to legitimise violence but also shape expectations prior to and particular perceptions of events by police on the ground and in the moment of demonstrations. Hence, the discursive power of these labels feeds into certain discourses and expectations on the side of the police and inform particular practices during a demonstration.

Relevant for our discussions here is the way in which the ‘thug’ label casts young, poor, urban men protestors as potential ‘looters’, and are deemed to take advantage of demonstrations to rob people, shops and houses. While demonstrations are indeed sometimes sites of petty crimes,²⁵ this generalisation is deeply problematic and dangerous. What’s more, instead of arresting specific suspects, police use excessive and illegal violence on not only suspects but also protesters in general to quell the problem of petty crime. This does not

²⁴ During several discussions between the first author and residents of Mathare, Dandora and other Nairobi ghettos (and over many years of ethnographic research), people often described police as *wanyama* (the Swahili word for beasts).

²⁵ Interview with Saba Saba protest organisers on 2 July 2018.

resonate in any way with the laws described in the previous section.

To illustrate the readiness of police to use illegal force on suspects, three people were killed in Mathare during the post-election chaos in August 2017 depicted in the first vignette, after allegedly stealing a TV set in Mathare and getting caught red-handed by a well-known police officer who immediately shot them all dead on the spot.²⁶ A second witness later shared on the same incident in November 2017: “They (referring to the three murdered friends), were shot, right there; shot in the back.” Instead of arresting the suspects and taking them to court, the police shot the three who were trying to run away. They had already put the TV they had stolen down on the ground before trying to make their escape. Based on these and other experiences with the excessive and often illegal use of violence by police, protesters harbour stereotypical notions about officers as trigger-happy and thus as “ready to shoot”. This, in turn, also informs particular expectations and readings of events. The mutually dehumanising effects of such dominant narratives, casting particular groups of citizens as ‘thugs’ and ‘looters’ and police as ‘beasts’ and ‘shooters’, adds to anticipations of violence. The violent potentialities from either side build up in advance to and during demonstrations because of the uncertainty inherent in the political act itself.

The anticipation of violence is further reinforced by differences in the way the political act of demonstrating is considered by both parties and the uncertainty these divergences brings forth. To the police, demonstrations present disruptions in public order that aim to traverse and (potentially) destabilise the very social order they are trying to protect, whereas protesters perceive demonstrations as a moment to push for durable change of this order. Accordingly, a protest to the latter constitutes a moment for the oppressed minorities, granted by the Constitution, to voice their discontent with current State-citizen relationships. Temporal disruptions of public order are thus believed by them as critical to effect such change in the social order in the long-run, and they are legitimised by the protesters’ call on existing legal frameworks and dominant ideas of public participation in Kenya (Ghai 2008).

Likewise, police also draw on the law to justify their often-violent attempts to maintain public order, and it is not uncommon for legal arguments from opposing sides to offset one another. Protesters in Kenya draw on Article 37 of the Constitution, which states that “every person has the right, peaceably and unarmed, to assemble, to demonstrate, to picket, and to present petitions to public authorities”. Yet the police claim a duty as law enforcers to protect people’s lives and property as stated in the NPS Act (see also IPOA 2018: 131). Nevertheless, these legal arguments are further complicated by the contemporary rhetoric of public participation, which alongside democratic ambitions also favours a neoliberal tenet (Ong 2006) and in Kenya also builds on domestic ideas of ‘self-help’ and ‘pulling together’ (‘harambee’ in Kiswahili) (Widner 2002; Haugerud 1995). On the one hand, the current discursive frameworks of public participation in Kenya encourage citizens to participate in democratic processes, which include making their voices heard through protests and demonstrations, yet on the other hand, this language squarely rests on citizen

²⁶ Interview with an eyewitness, Mathare, on 3 November 2017.

responsibility and thus opens up space for the State to bestow citizens themselves with the responsibility to protect public order during such moments. In other words, democratic space, even if enshrined in the Constitution, is granted only to responsible citizens, as long as it does not transgress boundaries of (a certain) social order. So, the narratives of public participation are inherently ambiguous and expose unease between certain laws and what the police are supposed to do (Garriot 2013; Horneberger 2010; Baker 2015). At the same time, it provides police with a justified language to give back responsibility for public order management to citizens. The apparent contradictions that ensue contribute to uncertainty and may eventually also lead to violence.

The above alludes to the police's claim on having discretionary powers to translate laws to their own partialities at a time when protesters in Kenya increasingly emerge as 'contenders for power' (Hope 2015). Citizens' space for public participation is enhanced not only by the 2010 Constitution, but even more so by growing access to political knowledge, networks and alternatives through the Internet and global organising, all of which challenge the rather authoritarian State run by wealthy elites (Baker 2015). The Kenyan police may react as representatives of the State (instead of protectors of citizens) but also as an authoritative entity mandated by the State but with some measure of autonomy (Ruteere 2011), and from these positions, have been observed by the authors to impart conditions that force cooperation from the protesters. What this cooperation entails precisely may vary per situation, but mostly revolves around public responsibility to maintain public order. The underlying narrative, which delineates the reaction of the police to protest organisers, holds that it is in their power to approve or dismiss a notification of a pending demonstration—even if this is legally untenable in many cases. Indeed, the right to freedom of assembly and protest is not absolute but comes with conditions regarding purpose, organisation, security issues, and so forth. In light of this, the fact that the protestors have no right to appeal a cancellation or denial of a notice expands the discretionary powers of the police who have been observed by the authors to take advantage of this by referring to a perceived threat to deny permits to protests. This raises all sorts of questions that remain unanswered following the lack of procedures to challenge such decisions. For instance, what kind of threat? Or, why not just address the threat and let the protest proceed?

According to most of the police officers who were interviewed, citizen responsibility for public order was one of the main signs of the readiness of protesters to comply with 'the law' without further stipulating an exact law. Many of the organisers and protesters involved in the Saba Saba demonstration expressed that it felt as if they had to comply with the same order they aimed to demonstrate against — especially, given that this was a demonstration against police brutality. Hence, the narrative of citizen responsibility at the centre of dominant narratives on public participation provides the police with an opening to simultaneously allow police violence to occur and shift blame to protestors in case of any such violence. Any skirmish during the demonstration, even if unrelated to the protest itself, may be regarded as a breach of the conditions upon which the police allowed the demonstration to take place in the first place, and would instantly invite violence from them. Hence, the police language of citizen responsibility tweaks the original intentions of

the dominant public participation discourse. From the police perspective, this reduces the constitutional right to demonstrate into a privilege, and approval to demonstrate depends on many often impossible conditions that are determined by a reluctant police force.

However, there is more to it. The excessive and illegal use of police violence in Kenya can also be grasped as attempts to quell deep uncertainty about the growing tensions between State power and citizen unrest. Disruptions of public order happen perpetually every day, yet they especially consolidate during events such as demonstrations and become specifically embodied by the protesters. In any State that is increasingly challenged by informed citizens and calls for change from many different sides, such demonstrations present moments to assert State power and hold together the current social order (Comaroff and Comaroff 2016; Fassin 2013). Thus, a protest sets in motion all kinds of chaotic possibilities, triggering deep uncertainties among police whose job it is to ward off such chaos. On the protesters' side, uncertainty is often embraced for it holds possibilities of political expansion. Uncertainty to police, especially in Kenya, denotes loss of control and threatens their very position in society. The ensuing fear by Kenyan police is managed through the almost ritualistic ceremonies that precede the event of any demonstration (such as the notification process discussed below). Similarly, during the event, any 'provocation' to their position as police is met with excessive violence whose ultimate aim is to restore certainty. Police consider the visible disruption of order, constituted by the act of demonstrating, as akin to a wild fire that needs to be contained immediately before it spreads and becomes uncontrollable and irreversible. However, violence often begets violence, and the overreaction by police to minor incidents during demonstrations may be taken as evidence of State oppression and fuels violent reactions in the spirit of demanding for change (Paret 2015), while others may take advantage of the ensuing chaos to steal and engage in other prohibited acts. The escalation of violence is often attributed to the disorder of the "crowd". However, the above reveals that it is critical to explore how violence is actually produced in these contexts, when and by whom.

Hence, we argue that the violent potentialities of demonstrations commence way in advance and take shape during the production and perpetuation of routine violence (Pandey 2006) and the desire to maintain a specific social order. In the following analysis of two empirical cases, we explore further how discursive frames, experiences and expectations, from the perspectives of protesters and police, interact and produce violent potentialities. In the first case, these culminate in direct acts of violence by the police, whereas in the second case the protesters succeed in mitigating the violent potentialities emerging on both sides and the demonstration proceeds peacefully. Exploring these two cases will help to tease out the constraints and possibilities on both sides to realise peaceful demonstrations.

‘Stop Killing Us!’ Demonstrating against the Killing of Protesters²⁷

As discussed in the introduction, the election period of 2017 was marked by tremendous unrest and political uncertainty, and the death of protesters across the country was a clear manifestation of this. Many human rights activists felt an urge to speak out against the killing of protesters and on 17 October 2017, a demonstration was organised by photojournalist and activist Boniface Mwangi and his initiative, ‘Team Courage’. The demonstration entailed a march from the Freedom Corner in Uhuru Park towards the office of the Inspector General (IG) of the NPS. The demonstration was communicated through various social media and Mwangi, being a local celebrity, was able to create quite some media hype around the event. Following the conventions of previous demonstrations, the organisers used a network of civil society organisations and social media to mobilise support. A ‘Protest Code of Conduct’ and ‘Safety Protocol’, which detailed possible eventualities and appropriate responses had been posted online earlier.

Before the demonstration, the second author inquired among governmental officials and other activists about the safety of the event, especially considering the levels of violence employed during previous protests. All of them reacted with the same sentiment: This demonstration would surely not be violent. This expectation was based on 1) the content of the demonstration, that is, against police violence, and 2) due to Mwangi’s high-profile status and thus the amount of media attention it would receive. As a female activist said: “There will be a lot of press and high-profile people there, so the police won’t act out”.²⁸

In the morning, many people gathered at the offices of Pawa 254, an artists’ collective, to collect their T-shirts and placards for the event. And before they headed out, Mwangi instructed everyone that this was a peaceful march that was apolitical. This was not about the election, but it was about demonstrating against the killing of protesters and their constitutional right to protest. He repeated this several times, urging everyone that any form of violence would not be tolerated, and his claims were met with loud cheers from the group of approximately 30 protesters. (Interestingly, two police officers later shared with the first author that they indeed had expected violence due to the political tense moment and that the demonstration was held in the city centre and as such more in public view than if the demonstration would have taken place in the city’s outskirts. Even if in retrospect, this sheds some light on why the police may have been a bit more anxious and alert).

The protesters then walked in unison, adorned in branded black and white T-shirts. They carried placards and held red roses and wooden crosses that bore the names of the people

²⁷ This account is primarily based on personal observations by the second author. Additional details of the event were compiled from interviews with other participants and the personal account of Boniface Mwangi, publicly available on his own website, was also consulted, <https://www.bonifacemwangi.com/the-day-i-was-shot/> (Accessed 3 January 2018).

²⁸ Informal phone conversation with female activist working for a justice centre based in Nairobi, 16 October 2017.

whose lives had been taken by the police. After marching onto Kenyatta Avenue shortly after, they immediately spotted an Administration Police (AP) vehicle with six officers. As they continued to walk, the AP vehicle came towards them and one of the members of Team Courage stopped to talk to the officers. More policemen surrounded the demonstrators and then a female officer stood in front of them, on the pavement, instructing them not to proceed further. Some people tried to negotiate with the police and then Mwangi, holding a large dummy bullet, also arrived and addressed the officers. He showed the female officer in charge their written notification, thereby providing proof that he had alerted the relevant authorities to this planned demonstration and thus had abided by the law. Yet the commanding officer informed him that the IG, Joseph Boinett, had issued orders for all of them to be dispersed.

For about 10 minutes or so, the protesters shuffled around, unsure what was being said and would happen. In the meantime, another police vehicle also arrived at the scene and stood behind the protesters, encircling them. At this point, the negotiations turned into loud exchanges and Mwangi kept shouting: “There is no need for this, we are allowed to demonstrate, it is our right!” In return, the officers continued to demand that they leave and end the march. Within seconds, the female officer in charge unleashed a tear gas cartridge into Mwangi’s chest, forcing him to drop onto the ground. Shots continued and the protestors dispersed. Shortly after the police retreated and it seemed as if nothing had happened on that corner of Kenyatta Avenue. Yet the protesters were not defeated. Although they were never able to reach Freedom Corner, which was surrounded by officers in riot gear and where other protesters had gathered in the hope of joining them, various members congregated back together and took the demonstration to other parts of the city centre, such as Jevanjee Gardens, while they were continuously followed by the police.

The incident received quite some media attention and the following week, the IG was interviewed on KTN News.²⁹ During this interview, he claimed not to have seen the live footage and firmly stated that: “Boniface did not comply with the law. The Public Order Act requires that before you stage a demonstration, or a procession for that matter, you have to notify the officer in charge of the nearest police station and he did not do that”. The female interviewer counter-claimed that Mwangi had done so and photos of the letter were shown on the screen, yet the IG said that the letter was “misdirected” and that the proper procedure was not followed. It was for this reason that the demonstration was unlawful and thus not permitted to take place.

Regardless of whether or not Mwangi’s letter reached the appropriate commanding officer, this issue — of notifying the relevant authorities — is a recurring one when organising demonstrations. A common issue voiced by police officers, both those operating at police stations and those at high-ranking positions at headquarters, is that protesters do not abide by the law and fail to properly notify them about a demonstration. Many officers highlighted that it is not only about formally accepting a letter, but also about providing

²⁹ The news interview can be viewed here: <https://www.bing.com/videos/search?q=stop+killing+us+boniface+mwangi&view=detail-&mid=24BF072A0E1D7C7B0FD424BF072A0E1D7C7B0FD4&FORM=VIRE>, accessed January 3rd 2019.

permission for it to occur. According to a very high-ranking officer, “an OCS is allowed to decline if there is a reason for this”. He further elaborated that this reason does not need to be shared with the public for security concerns. Police officers thus feel a certain responsibility and entitlement to deny citizens the right to assembly on the ground that this will jeopardise the safety of other citizens and thus, the police mandate of maintaining public order. In the eyes of protesters, this gives police officers endless opportunities to refuse demonstrations, even when letters are formally accepted and permitted, as can be seen in the following example of a peaceful demonstration.

Saba Saba: Peacefully Demonstrating against Extra-Judicial Killings

On 7 July 2018, a network of social justice centres in Nairobi organised a demonstration against police killings, using the hashtag #SabaSabaMarchforOurLives. Against all expectations, this march proceeded without violence. Taking a closer look at the run-up to and at the event itself and its aftermath from the perspectives of the organisers and participants will allow us to tease out several key strategies the protest organisers deployed to mitigate potential police violence.

The idea to organise a protest on the historic Saba Saba day (‘seven seven’ in Kiswahili referring to 7 July 1990) was developed by several grassroots social justice centres. The protest was triggered by the consistent lack of effective redress for the families of victims from mandated governmental and non-governmental organisations and the urgent need for a collaborative grassroots approach to stop police violence against ghetto residents, especially against young and poor men.³⁰ A month before the day of the march on Saba Saba, the SJCWG launched a month of community dialogues during a press conference held at the MSJC in Mathare slums. The press conference and dialogues were the first two strategies to assuage violent potentialities and pre-empt direct acts of violence by police. The statement presented a united front of social justice centres and the press publicity helped to gather national and international support.

The community dialogues that were held in the month before #SabaSabaMarchforOurLives in Kayole, Kamukunji, Dandora, Mathare and Githurai had two objectives: 1) to raise awareness among residents about the Saba Saba demonstration and mobilise their support; and 2) to document and investigate cases of police violence. These cases were presented during the actual demonstration. These activities prior to the 7 July 2018 demonstration were accompanied by a rigorous social media campaign aimed at countering the dominant narrative on police violence in particular against suspects of crime — which still gathers some support from the wider public in Kenya. These dialogues and concomitant social media helped the centres to keep the public eye on the preparations for the march. One of the organisers said to the first author that this served to caution police against obstruction of the preparations and also helped to deter police violence on the day itself. While

³⁰ July 7th was chosen as a suitable date for the protest march because it commemorates July 7th 1990 when protesters in Kenya demanded multiparty democracy and called for free and fair elections. Their efforts led to a constitutional change in 1991 through the repeal of Section 2a, which paved the way for multiparty elections in 1992.

preparing for the demonstration, the organisers talked constantly about the imminent threat of police violence. Their premonition was informed by personal experiences with police intimidation and violence. Many of them had experienced detention without charge, abduction and torture and had been otherwise threatened by police.

Another important strategy to mitigate violence both in the run-up to and during the event included the formal notification of police about the pending demonstration and related activities, such as the community dialogues. One group of activists went to Pangani police station to notify the Officer Commanding the Station (OCS) but was met with open hostility. At first, the OCS did not want to receive the letter. This, however, did not deter the activists. One of them told the OCS that he did not have to receive it, but the witnesses present would be able to verify that the police at this particular station had been notified according to the 'law' (that is, the Public Order Act, see above). Therefore, he argued, the protest organisers had complied with the law and would thus go ahead with the demonstration regardless of how the notification was (or was not) received. This angered the OCS who shouted back that the demonstration "supported gangsters" and that "thieves would only come and steal during the demonstration". He threatened the activists by avowing that if anything happened on the day of the demonstration, the police would have to "intervene" and it would be "upon them". The OCS then clearly indicated that the protest organisers were responsible for public order and that the police in riot gear would be on stand-by in case anything happened.

The organisers who went to Kayole police station encountered even more difficulties. The police officers present (the OCS was absent during the first visit) refused to let them in. They went back the next day and the next. Each time, the OCS was absent and the activists were not allowed to enter the premises to hand over the notification letter. The Kenya National Commission for Human Rights (KNCHR) had to intervene by accompanying the team to physically hand over the letter to the OCS who reluctantly accepted the notification and expressed similar sentiments as those uttered by the Pangani OCS.

These rather tense encounters with the commanding officers from these police stations worried the organisers and highlighted the need for further assurance that the police would permit the demonstration to take place. The march was to start at different neighbourhoods, including Kayole and Githurai, before joining together at Juja road where MSJC is located and continuing together to the historic Kamukunji grounds. Hence, permission from different commanding officers was considered vital. The opportunity to gain support from higher-up arose two days before the march, namely during a consultative forum meeting of the Multi-agency Taskforce meeting organised and chaired by the Ministry of Interior. This meeting was a spin-off of the National Policing Conference that had taken place on 17 April 2018 and had the primary mandate of bringing various policing parties together. The conference was an initiative of Cabinet Secretary Fred Matiang'i, who proclaimed that the various parties, both within and outside the police, needed to work together in a more harmonious way. This included civil society and human rights organisations which had been invited to the conference and asked to present their views. One of the action points of the conference was the creation of a 'multi-agency taskforce' to address issues in

a collaborative way. The meeting on 5 July was thus a means of discussing pressing matters and public demonstrations was one of them. Yet, in the agenda, the issue was framed as: “Misconduct by public during demonstrations and other forms of protests”. This suggested that misconduct was performed by the ‘public’ and not by the police. This provoked a tense discussion between the various parties; the civil society members felt that blame was unjustly being placed on protesters, thereby ignoring the crucial role of the police, while the government and police representatives repeatedly emphasised the violent tendencies of demonstrations. One of the latter even stated: “When people go for demonstrations, they go to destroy property!” The prevalence of conflicting perceptions and the centrality of responsibility therein were all too palpable during this meeting.

At the end of the meeting, a round of ‘any other business’ was provided and one of the key organisers of the Saba Saba march took this chance to invite all the participants, including the high-ranking police officers, to attend the march. He then handed over a petition about police killings to the chair and asked another activist to take a photo of this moment, stating that he “needs evidence” and “must be accountable to the community”. Everyone laughed and clapped. During informal discussions later, many shared how this was a pivotal moment; a very high-ranking person from the Ministry of Interior had formally accepted the petition, and there was evidence of this! The participants hoped that this would trickle down to the police stations and ensure a peaceful Saba Saba march.

Yet, a day before the demonstration, when they were busy preparing for the march, they heard rumours that the police would not allow the marches to join together at Juja Road. Immediately after receiving these rumours, some of the organisers called police officers they knew personally to verify this information and all expressed fear of police violence. The social media team started tweeting for support, and other activists called their contacts in non-governmental organisations to help verify this information and in case it turned out to be true to see how this obstruction could be solved. Around 10 o’clock in the evening, it was still unclear whether the march would take place.

Early next morning, the protesters gathered to further prepare for the march. Among the growing crowd ready to march, several well-known plain-cloth police officers walked around and talked to some of the key organisers. Fear of police obstruction and ensuing violence still gripped the few organisers who observed the police officers with apprehension, but they hid their concerns from the participants. By now, most of the participants walked around proudly sporting T-shirts and banners accusing the police of unlawful and lethal violence while intermingling with police without their knowledge. As the crowd grew thicker, more police gathered, some with and some without uniform, but most visibly carrying walkie-talkies and guns.

In the days before the march, the coalition of social justice centres had taken a last but key precaution by installing a team of marshals with high-visibility jackets to organise security during the walk. The marshals were young members from the different centres who together had prepared a plan to keep order among the marchers and prevent violence

by participants. The team leader later shared:

“It was hectic. I knew of the threat. Will we even be able to reach Kamukunji? What if thieves come in and try to provoke the police? They [police] were all around us. They were ready to fight us, upon the slightest provocation. Most were visible, but in between some were also invisible, but we know them.”

When the march reached Amana petrol station along Juja Road, some participants started shouting directly at the police in uniform that they had to stop killing their friends. The marshals intervened immediately and pushed the boys to the front to keep an eye on them. The team leader recounted:

“We know ourselves, we know the thieves among us, also the boys who are so angry and hard core because the police kill them, we know how to treat them, make sure they don’t provoke. It was hard work, but we told these boys to shout yes but not go to one police or another and start offending them one on one. That would cause chaos.”

The marshals ran up and down to keep the marching crowd of over a thousand participants in order. A group of 20 at the front constantly had to bring the demonstration to a standstill by locking their arms and kneeling on the ground the moment people walked too fast. Speed was considered dangerous as another marshal detailed: “When they [protest participants] start running up and down, shouting, the next thing you see is them throwing stones. That anger is real. People are angry. But then police will come and shoot tear gas, even live bullets. We need to protect them.” Indeed, the marshals exerted great effort in maintaining a sense of calm to protect the crowd against the police during the march.

When the crowd reached Kamukunji grounds, the participants cheered and walked all over the field as if to claim it as theirs. The field was lined with police in riot gear and with guns. Interestingly, most of them were seated calmly observing the incoming mass of people, with their guns resting on their knees and their riot shields placed besides them. The marshal team leader later explained: “When we saw the police just seated there, like they were protecting us, it was great. They did not do anything, because we did not provoke them. And when we reached the ground, other big people had joined us, like Mutunga (Ex-Chief Justice Willy Mutunga). We kept order, so police could not fight us, now they were just there to protect us.”

Throughout the rest of afternoon, the celebrations continued. The afternoon was filled with talks given by invited guests, such as the former Chief Justice, Esther Passaris, the Nairobi Woman Representative in Parliament, and other representatives from the different justice centres. In between, everyone was entertained by musicians and dances from members of the various communities, and there was a photo exhibition of the various people that had died due to police violence. The mood of the entire afternoon was inspirational and hopeful, despite the numerous armed police officers standing and sitting on the periphery of the grounds, observing all that was happening. As the event came to a close, the officers also slowly went back to their respective police stations.

Concluding Observations: Realigning Perspectives

This paper aims to reveal the crucial need to realign the perspectives of both police and protestors as a way of eliminating or minimising the violent potentialities of demonstrations in Kenya and ensuring more democratic and peaceful ones. The urgency for this was again underscored by a recent protest held on 27 December 2018 in response to the killing of Carlton Maina by police in Kibera. Ostensibly without reason, the protest of over a hundred participants was dispersed by police using teargas. Later, one of the organisers shared with the first author that a police officer present had told her that the protest had been illegal because the organisers had not followed due procedure. According to her, the police officer had alluded to a lack of approval by police. So again, the notification procedure in practice seems opaque and pliable to interpretation and this grants police unrestricted powers. Subsequently, only a vague reference to ‘security’ serves as sufficient reason to deny citizens the right to protest. Yet, the perspectives on both sides differ profoundly on what such a notification legally entails. Does it include reception or also police approval? The latter interpretation, of course, raises great concerns when considering demonstrations against police violence.

The mutual dehumanisation, that is, pitting ‘thugs’ and ‘looters’ against ‘beasts’ and ‘shooters’, needs further attention and must be embedded in these ideas. The generalisations on both sides engender violent potentialities that can only be diminished through great effort, as evinced on the side of the protestors before and during the Saba march. Both cases reveal a police ready to use violence at the slightest provocation — as shown during the demonstration organised by Boniface Mwangi. Conversely, the laborious mitigation strategies deployed by the Saba Saba march organisers reveal the extent of responsibility they are willing to take to ensure the safety of participants. The same does not seem to apply to the police who are nevertheless mandated by law to manage public order during such events. The differences in perspectives on responsibility, and thus ownership, of public order during demonstrations centre mainly around the manner in which demonstrations and protests are perceived on both sides; namely as a right (protestors) or as a privilege (police). As a result, protestors may even resort to circumventing the actual police to try and get permission and support from higher up, as illustrated by the Saba Saba march organisers. However, this strategy is contingent on too many eventualities to inform long-lasting modes of realising peaceful demonstrations. More so, this again points at the lack of willingness on the side of the police to engage protestors in constructive ways and collaborate with them to ensure the safety of participants, police and bystanders alike.

Combined, the analyses shows that realising peaceful demonstrations and protests is not just about transforming cultures within police institutions, an issue widely discussed among policing scholars, but perhaps it is even more about realigning perspectives with those of citizens and about policing and the maintenance of order more generally. Although changing the institutional culture of the police is crucial, without a shared understanding of demonstrations and a readiness to unpack and counter violent potentialities, such efforts remain futile.

What's more, public order policing is often considered distinct from ordinary and everyday policing, yet there are also certain parallels that need to be taken into account. The violent potentialities that inform everyday policing, with extra-judicial killings as an extreme example, cannot be seen as wholly separate from the violent potentialities that emerge in the event of public order policing. Both are guided by experiences, expectations and stereotypes, such as those that are ascribed to the 'thug', that shape and legitimise direct acts of violence by police. A re-alignment may offer an excellent opportunity to develop a clear policy on public order management in Kenya.

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