

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI
MILIMANI LAW COURTS
CONSTITUTIONAL & HUMAN RIGHTS DIVISION
PETITION NO. OF 2023

1

IN THE MATTER OF ARTICLE 10, 19, 20, 21(1), 22(1), 23(1) & (3),
73(1),(2)(b),(c),(d),(e)165(3)(a),(b),(d)(i), (ii), 232, 238(a),(b) & 244 OF THE
CONSTITUTION

=AND=

IN THE MATTER OF CONTRAVENTION OF FUNDAMENTAL RIGHTS
AND FREEDOMS UNDER ARTICLES 26(1),(3), 27(1),(2),(4), 28, 29(c),(d),(f),
31(c), 35(1)(a),(b),(3), & 37 OF THE CONSTITUTION

=BETWEEN=

1. KENYA HUMAN RIGHTS COMMISSION
2. MUSLIMS FOR HUMAN RIGHTS (MUHURI)
3. KHELEF KHALIFA.....PETITIONERS

=VERSUS=

1. THE INSPECTOR GENERAL OF THE NATIONAL
POLICE SERVICE
2. INSPECTOR GENERAL JAPHET KOOME
3. THE INDEPENDENT POLICING
OVERSIGHT AUTHORITY (IPOA)
4. THE HON. ATTORNEY GENERALRESPONDENTS

=AND=

1. THE DIRECTOR OF PUBLIC PROSECUTIONS
2. KENYA NATIONAL COMMISSION
ON HUMAN RIGHTS (KNCHR)
3. INDEPENDENT MEDICO-LEGAL
UNIT (IMLU).....INTERESTED PARTIES

NOTICE OF MOTION

(Pursuant to Articles 23(3)(c) and 35(1) & (3) of the Constitution And Rules 19 and 23 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013

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TAKE NOTICE that the Honourable Court shall be moved on the _____ day of _____ 2023 by counsel for the petitioners/applicants for Orders

THAT:-

1. An order do issue compelling the Respondents and the 1st and 2nd Interested Parties jointly and/or severally to furnish the Applicants/Petitioners and to produce and furnish this Honourable Court with post mortem reports, a report/s of investigations, inquiries, disciplinary proceedings, administrative actions and prosecutions over incidents of police shootings that led to the deaths of the thirty three (33) deceased persons in the annex to the supporting affidavit herein (marked KK3) during the August 2017 public demonstrations/protests in Nairobi following the announcement of results of presidential election of August 2017.
2. An order do issue compelling the Respondents and the Interested Parties jointly and/or severally to furnish the Applicants/Petitioners with and to produce before this Honourable Court all files, reports, books, papers, letters, electronic mail (email) and other writings and documents and any other form of evidence in any medium, including but not limited to films, photographs, videotapes, broadcasts or any other recording in their custody, possession or power relating to police shootings that led to the deaths of the thirty three (33) deceased persons in the annex to the supporting affidavit herein (marked KK3) during the August 2017 public demonstrations/protests in Nairobi following the announcement of results of presidential election of August 2017.
3. A conservatory order do issue for the preservation of all the materials in prayers (1) and (2) above and for the retention and custody of the same by and/or subject to the direction of this Honourable Court.
4. Costs of this application be provided for

WHICH APPLICATION is based on the grounds THAT:-

- i) Despite formal requests the Respondents have refused to furnish the 3rd Applicant/Petitioner and the general public with information of any investigations, inquiries, inquests, prosecutions and/or any actions undertaken regarding the matters complained in the application and the petition as required of them by Article 35(1) and (3) of the Constitution.

- ii) The Respondents and the 1st and 2nd Interested Parties have constitutional and statutory duties to investigate, document and to render reports and to prosecute the culprits of crimes committed herein as claimed by the Applicants/Petitioners.
- iii) The 3rd Interested Party has a self-imposed objective and public duty to investigate, document and to render and publicize medico-legal reports on claims of torture and other forms of ill-treatment and brutalities perpetrated by state/public officials including police officers such as the claims of the of Applicants/Petitioners herein.
- iv) It is in the interest of saving judicial time and fair administration of justice that the materials and information sought herein be availed to the Applicants/Petitioners before the Respondents are called upon to defend or make replies to the substantive petition and before the petition is heard.
- v) It is in the interest of justice and fairness and in the public interest that the materials and information sought be preserved by this Honourable Court or upon directions of this Honourable Court.

AND THE APPLICATION is further supported by the annexed affidavit of KHELEF KHALIFA and such other grounds as shall be canvassed by counsel at the hearing.

DATED AT NAIROBI THIS 12th DAY OF September 2023

MBUGUA MUREITHI & CO.
(ADVOCATES FOR THE APPLICANTS/PETITIONERS)

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6

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PETITION NO. OF 2023

IN THE MATTER OF ARTICLE 10, 19, 20, 21(1), 22(1), 23(1) & (3),
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=*VERSUS*=

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2. KENYA NATIONAL COMMISSION
ON HUMAN RIGHTS (KNCHR)
3. INDEPENDENT MEDICO-LEGAL
UNIT (IMLU).....INTERESTED PARTIES

AFFIDAVIT

I, KHELEF KHALIFA, a resident of Mombasa whose address of service for purposes of this Petition is care of M/S MBUGUA MUREITHI & CO. ADVOCATES, P.O. BOX 52969 – 00200 NAIROBI do hereby make oath and State as follows:-

1. THAT I am a male adult aged 74 years' old, a citizen of Kenya by birth and the 3rd Applicant/Petitioner herein.
2. THAT am a former Commissioner of the 2nd Interested Party herein the Kenya National Commission on Human Rights (hereinafter "the KNCHR") and currently a member of the Board of Directors of the 2nd petitioner Muslims for Human Rights (hereinafter "MUHURI") a human rights non-governmental organization based in Mombasa that was founded in 1997 with the objective of promotion, protection, advancement and enjoyment of human rights and fundamental freedoms by all.
3. THAT I am hence competent to swear this affidavit on my own behalf and on behalf of the 2nd Applicant/Petitioner MUHURI and I am duly authorized to swear this affidavit on behalf of the 1st Applicant/Petitioner Kenya Human Rights Commission (hereafter "KHRC"). Annexed hereto marked "KK1" is a true copy of the authority given to me by the 1st Applicant/Petitioner KHRC.
4. THAT I vividly recall that the announcement of results of the presidential election on 11th August 2017 by the Chairman of the Independent Electoral and Boundaries Commission (IEBC) was followed by public protests and demonstrations in several parts of the country and especially in Nairobi.
5. THAT on 12th August 2017 the 2nd Interested Party herein the KNCHR released a press statement expressing concern at the incidents of violence surrounding the protests and especially the use of force and firearms by police officers in purported response to the protests. Annexed hereto marked "KK2" is a true copy of the press statement by the 1st Interested Party the KNCHR dated 12th August 2017.
6. THAT I vividly recall that at the time of the protests there was widespread news, media reports, information and reports from human rights monitors of the 1st and 2nd Applicants/Petitioners, the 2nd and 3rd interested parties, human rights activists and defenders to the effect that in responding to the said protests/demonstrations police officers used excessive, brutal and lethal force of firearms by shooting to death or causing the death of at least thirty three (33) people in Nairobi who were either demonstrating and protesting against the announced results, or who were simply in their homes or while going about their daily businesses. Annexed hereto marked "KK3" is an annex table of the thirty three (33) deceased persons killed as aforesaid.

7. THAT as the protests were going on I was informed by one Kamanda Mucheke, a Deputy Director of the 2nd Interested Party the KNCHR and I verily believe to be true that he had in the exercise of the constitutional and statutory mandate of the 2nd Interested Party to investigate and document incidents of human rights violations in the country, visited the Nairobi City Mortuary and ascertained the presence of numerous bodies of people whom the mortuary attendants confirmed had been brought by the police who indicated that they had been killed during the protests.
8. THAT postmortems conducted by the government pathologists on the bodies at paragraph 7 above confirmed that majority of the deceased persons had died from bullet wounds.
9. THAT the killings of the 33 deceased persons at paragraph 6 above were researched, investigated and documented by various local and international human rights non-governmental organizations including the 3rd Interested Party herein IMLU, and jointly by Amnesty International and Human Rights Watch.
10. THAT pursuant to paragraph 9 above the 3rd Interested Party IMLU provided independent pathologists who participated at the postmortems of the bodies of the said deceased persons and compiled the postmortem reports while Amnesty International and Human Rights Watch documented the killings in a joint detailed report on violations committed by security agents during the 2017 elections entitled; "*Kill those Criminals.*" Annexed hereto marked "KK4" is a true copy of the joint report of Amnesty International and Human Rights Watch.
11. THAT in February 2017 the 3rd Respondent IPOA published a monitoring report on conduct of the police during public protests and gatherings against the Independent Electoral and Boundaries Commission (anti-IEBC protests) between April and June 2016 in which the 3rd respondent found the police to have unlawfully caused injuries, deaths and abused their power of the use of force and firearms in responding to the protests. Annexed hereto marked "KK5" is a true copy of the report of IPOA.
12. THAT I verily believe that the unconstitutional and unlawful brutal force and lethal use of firearms by police officers against the public during the anti-IEBC protests as documented by the 3rd Respondent IPOA was the unheeded precursor to the unchecked brutal force and use of firearms that was unleashed on the public during the August 2017 protests against the results of the presidential election leading to the death of the thirty three (33) deceased persons herein.
13. THAT I know for a fact that articles 20(1), 21(1), 29(c), 238(2)(a),(b) and 244(a) and (c) of the Constitution and the Sixth Schedule to the National Police Service Act, read together, outlaw the use of lethal violence by all including police officers.

14. THAT despite the local and international publicity, public outrage and public interest generated by the wanton killing of the thirty three (33) deceased persons herein by police officers, my co-petitioners and I are not aware of any investigations or any remedial actions whether disciplinary actions or criminal prosecutions that have been initiated/recommended by the 1st to 3rd Respondents herein or undertaken by the 1st Interested Party as per the Constitution and the applicable statute laws.
15. THAT my co-Petitioners and I were and still are deeply concerned by the failure, refusal and neglect of the 1st to 3rd Respondents to take any remedial measures under the Constitution and the applicable laws to vindicate the numerous constitutional rights of the 33 deceased persons herein including their sacrosanct right to life and the sure potential of the inaction breeding and encouraging a culture of impunity.
16. THAT consequent to paragraph 15 above, acting on my instructions, on 24th January 2023 my then advocates M/s Otieno Ogola & Co. Advocates wrote a request to the 3rd Respondent for information on the status of investigations into the said killings by police officers, and copied the request to the Commission on Administrative Justice (hereafter "the CAJ") responsible under the law for enforcing such requests. Annexed hereto marked "KK6" and "KK.7" are true copies of the request for information and the follow-up letter of the CAJ to the 3rd Respondent, respectively.
17. THAT not having received a response from the 3rd Respondent IPOA, on 5th April 2023 my then advocates M/s Soweto & Co. Advocates wrote a reminder to the 3rd Respondent IPOA on the request for the said information, and copied the reminder to the CAJ. Annexed hereto marked "KK8" is a true copy of the reminder.
18. THAT on 12th April 2023 the 3rd Respondent IPOA eventually wrote to my then advocates M/s Soweto & Co. Advocates in answer to the request for information and the 3rd Respondent confirmed that it is seized of only fifteen (15) of the said killings but refused to furnish me with the status of investigations based on prior conditions of confidentiality, privacy and consents from the victims. Annexed hereto marked "KK9" is a true copy of the said response of the 3rd respondent IPOA inclusive of the list of deceased persons.
19. THAT I verily believe that in placing prior conditions of confidentiality, privacy and consents from the victims before it can release the requested information to me, the 3rd Respondent IPOA acted unreasonably and set inapplicable conditions under the Constitution and statutes that are subservient to the public interest imperative for disclosure of such information involving gross violations of the Constitution and the Bill of Rights and commission of serious crimes of mass or large scale murders.
20. THAT subsequent to receipt of the said response from the 3rd Respondent IPOA, upon my instructions, on 26th July 2023, my advocates on record herein wrote a

request to the 1st Respondent copied to the CAJ seeking for information on the status of investigations into the killings by police officers of the eighteen (18) deceased persons whose killings the 3rd Respondent had indicated it is not seized of. Annexed hereto marked "KK10" and "KK11" are true copies of the said request for information and the follow-up letter of the CAJ to the 1st Respondent, respectively

21. THAT there being no immediate response from the 1st Respondent to the request at paragraph 20 above, on 15th August 2023 my advocates on record wrote a reminder to the 1st Respondent on the requested information. Annexed hereto marked "KK12" is a true copy of the reminder.
22. THAT on 15th August 2023 the 2nd Respondent in his capacity as the 1st Respondent responded to the requests at paragraphs 20 and 21 above and refused to furnish the me with any information on the status of investigations of the killings of the eighteen (18) deceased persons alleging that the cases of the eighteen (18) deceased persons were under investigations by the 3rd respondent. Annexed hereto marked "KK13" is a true copy of the response of the 1st respondent.
23. THAT consequent to paragraph 18 above the 3rd Respondent IPOA did not disclose nor furnish to me any information regarding the number of cases that it might have recommended to the 1st Interested Party DPP for prosecution out of the 15 cases of killings by police officers that the 3rd Respondent has admitted of being seized of.
24. THAT consequent to paragraph 22 above the 1st and 2nd Respondents did not disclose any remedial action taken against culpable police officers regarding the killings of the eighteen (18) deceased persons at paragraph 20 above as was required of the 2nd Respondent then as the police commander of the City County of Nairobi.
25. THAT to date my co-Applicants/Petitioners and I are not aware of any lawful justification given by any of the Respondents for the killing of the thirty three (33) deceased persons herein by police officers using lethal violent force of firearms and other weapons or causing their deaths.
26. THAT I verily believe that the disclosure of the information sought herein is in the public interest, is necessary for the effective prosecution of the petition herein and the disclosure will narrow down the issues to be ultimately canvassed in the petition saving time for the Court and the parties.
27. THAT I swear this affidavit in support of the application herein for interim orders of disclose of information.

28. THAT save for the information given to me the sources whereof are fully disclosed hereinabove the facts deposed to herein are true and within my own knowledge and belief.

SWORN at NAIROBI by the said
KHELEF KHALIFA

Khelef Khalifa

this *12th* day of *September* 2023)

BEFORE ME:-



A COMMISSIONER FOR OATHS

DRAWN & FILED BY:-

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14

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4. THE HON. ATTORNEY GENERALRESPONDENTS

This is the exhibit marked... *12/1*
Annexed to in the Affidavit/Declaration
Of... *Khelef Khalifa*
Sworn / Declared Before me this... *12th*
Day of... *October* 20... *23*... at... *Nairobi*
in the Republic of Kenya
.....
Commissioner for Oaths

=**AND**=

1. THE DIRECTOR OF PUBLIC PROSECUTIONS
2. KENYA NATIONAL COMMISSION
ON HUMAN RIGHTS (KNCHR)
3. INDEPENDENT MEDICO-LEGAL
UNIT (IMLU).....INTERESTED PARTIES

CONSENT AND AUTHORITY TO ACT

I, DAVIS MALOMBE of Post Office Box Number 41079-00100 NAIROBI, as the Executive Director of the 1st Petitioner herein KENYA HUMAN RIGHTS COMMISSION (KHRC), on behalf of the Board of Directors of the 1st Petitioner herein the KHRC, do hereby consent and authorize the 3rd Petitioner herein KHELEF KHALIFA to execute all affidavits and pleadings and to do anything that requires to be done in the Petition herein on behalf of the 1st Petitioner herein the KHRC.

I further confirm that this authority and consent has been freely and voluntarily given by me on behalf of the Board of Directors of the 1st Petitioner herein the KHRC without any misrepresentation or coercion and this authority and consent is intended to be fully binding unless revoked by the 1st Petitioner herein the KHRC.

DATED AT NAIROBI THIS 12th DAY OF September 2023



DAVIS MALOMBE

(EXECUTIVE DIRECTOR – KENYA HUMAN RIGHTS COMMISSION)

DRAWN & FILED BY:-

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Email: *medico@jmlu.org*



Press Statement

12th August 2017

Status Update on Developing Post Election Human Rights Violations

This is the exhibit marked... KK2
Annexed to in the Affidavit/Declaration
Of... Philet Khalita
Sworn / Declared Before me this... 12th
Day of... September 20... 23 at... Nairobi
In the Republic of Kenya

Commissioner for Oaths

1. Introduction:

The Kenya National Commission on Human Rights (KNCHR) is deeply concerned by the turn of events immediately after the announcement of the presidential results yesterday by the Chairperson of the IEBC where violence erupted in some areas. We however, note that this was not widespread as many Kenyans continue to maintain peace and calm as they have since the electioneering process began.

We would like to appreciate the people of Kenya for the way they have exercised their patriotism through the vote, count and as they waited patiently for the final announcement. As we have noted before, the KNCHR has been and continues to monitor the 2017 elections including the post-election scenarios. The Kenyan citizens have continued to exhibit civility during the voting process and did indeed come out in large numbers and exercised their democratic right to political participation. It is also important to note that the IEBC worked tirelessly around the clock to ensure that this process was fast, seamless and accurate despite the growing pressure around them. One of the issues that has arisen during this process is in respect to the tallying and transmission of the results especially after the contestation of the presidential results outcome.

The People's Response:

The Kenya National Commission on Human Rights is however concerned that while a majority of the people have begun going back to their usual routines, a few pockets of unrest have emerged. KNCHR wants to remind Kenyans that while the right of citizens to express themselves through picketing and demonstrations under Articles 37 and 38 is Constitutional, the same must be done within the rule of law. That means as members of the public you MUST respect and uphold other people's dignity, life and property. Destruction or theft to property is illegal. We have learnt that this has taken place in parts of Gatwekera in Kibra and Kawangware 56. We should not allow any sort of hooliganism in the name of picketing.

The Security Response:

Equally, the security personnel are also mandated within the law under Article 244 to protect the right to life, property and human rights of all. They are allowed to contain any unruly protestors with dignity, within the rule of law and with reasonable force.

The KNCHR has noted that there are ongoing security operations since last night in various parts of the country. This has affected places like Nyalenda, Manyatta, Nyamasaria, Mambo Leo, Kondele in Kisumu, Migori, Bondo, Migosi and the Nairobi informal settlements which include Mathare (4A and No. 10), Dandora, Kibera, Lucky summer, Huruma.

We are however concerned by a number of human rights violations that have been brought to our attention through our various human rights monitors around the country. KNCHR has so far documented the following cases of gross human rights violations;

1. Right to Life

KNCHR has established that 24 people have lost their lives between 8th and today and this can be directly linked to the post-election environment. Specifically, these cases indicate that the casualties were felled by bullets and the same has been corroborated by family and community members who have indicated that they were killed during the protests which broke out in various parts of the country. KNCHR has established that loss of lives attributed to cases of police using live bullets in these places;

1. Nairobi City	17
2. Homabay	2
3. Kisumu	1
4. Migori	2
5. Siaya	2
Total	24

KNCHR appeals to the Inspector General and the Ag. Cabinet Secretary in charge of Internal Security to reign in the security personnel to forthwith and ask the officer in charge of operations to direct their officers stop the use of live ammunition against citizens. KNCHR also urges IPOA and the ODPP fully investigate the cases and ensure that officers involved are held to account.

2. Use of excessive force and misuse of firearms

KNCHR has confirmed that contrary to the sentiments made earlier today by the Ag. Cabinet Secretary in charge of Internal Security, the security personnel deployed to quell unrest in various parts of the country have been using excessive force, which is unlawful and unacceptable. While the Media has exercised self-censorship, it is worth noting that there are many cases of brutality being meted by the police on civilians and as a national agency charged with the mandate of protecting human rights, we want to condemn this.

Through our monitors' and reliable partners from different parts of the country, KNCHR can confirm that there has been use of excessive force and misuse of firearms by the police in dealing with the members of the public who are exercising their right to peaceful assembly as enshrined in Article 37 of the Constitution.

KNCHR has information about two people who have suffered gunshot wounds and have been treated at Russia hospital (Jaramogi Oginga Odinga Teaching and Referral Hospital) in Kisumu and five people are being treated for wounds inflicted by blunt objects at the same hospital. This has further spread to peoples' homes, including Nyamasaria, Nyalenda and Mowlem in Kisumu, where there are allegations of police forcefully entering into people's homes and beating them up as well as threatening them with rape and demanding money in exchange for their freedom. The forceful entry has further been reported in Nairobi regions of Kibera and Mathare where the GSU have been reported as the main culprits.

Police harassment has also been reported in other regions of Nyanza, including Migori where those that have been injured are currently being treated at Oruba Nursing Home Hospital and Tabaka Mission Hospital.

KNCHR also regrets and strongly condemns attacks on its monitors who have been engaged in monitoring the unfolding human rights situation.

3. Right to Property

KNCHR notes with concern the destruction of private property by both civilians and allegedly by security personnel in the course of their duty. These include an attack on Equity Bank at Kibera and looting of small scale businesses in the same region and in Dandora.

KNCHR notes that it is illegal to destroy property whether public or private. At the same time, KNCHR reminds the security personnel that they have a primary duty to protect property and any action contrary to this is unprofessional and illegal.

Conclusion

KNCHR appeals for calm and reminds Kenyans that the rule of law and human rights have not been suspended during this period. Specifically, vulnerable groups including the elderly, women, children and persons with disability must be protected. This is because the environment makes them more vulnerable to violence, including sexual and gender based violence.

As a Commission, during our preliminary report of the election observation process, we stated that the first part of the election process was generally well-managed by the IEBC. We held, and still continue to hold that in line with the election law, all Form 34As and Form 34Bs must be uploaded by the IEBC on their public portal. The availability of all these Forms will enable us to conclude our report as to the overall credibility of the just concluded presidential poll. Up to now, the IEBC has not uploaded any Form 34Bs and neither have they uploaded all the Form 34As on their public portal. We urge the IEBC to move with speed and upload these Forms in line with the relevant election laws.

KNCHR will continue to monitor the situation and asks members of the public to report any human rights violations through our toll-free number, 0800 720 627 or SMS 22359

.....
Ms Kagwiria Mbogori
Chairperson
Kenya National Commission on Human Rights

Appendix 1: Table of confirmed Deaths alleged perpetrators During Post - Election Violence in Nairobi , 2017

No.	Name	Location	Date	Description of violation	Status
1.	Francis Njuguna, 31 Years old	Kariobangi, Nairobi	August 11, 2017	Shot dead	Body found at City Mortuary
2.	Vincent Omondi Okebe, 27 Years old	Dandora, Nairobi	August 11, 2017	Shot by Police	Died at Kenyatta National Hospital
3.	Thomas odhiambo Okul, 26 Years old	Dandora, Nairobi	August 11, 2017	Shot Inside his gate By Police	Died Instantantly
4.	Kevin Otiwn, 23 Years old	Dandora Nairobi	August 12, 2017	Shot Outside his gate by Police	Died on his Way to the Hospital
5	Vitalis otieno, 24 years Old	Dandora Nairobi	August 12, 2017	Died of shock	Died in his House
6.	Sammy Amira Loka, 45 Years old	Kawangware stage Two, Nairobi	August 9, 2017	Hit by a teargas canistar-inhaled teargas	Died at KNH on August 10, 2017
7.	Lilian Khavere, 40 Years old, 8 months Pregnant	Kawangware no. 56, Nairobi	August 9, 2017	Teargassed fell and trampled by crowd	Died at KNH
8.	Festo Kevogo, 33 Years old	Kawangware no. 56, Nairobi	August 12, 2017	Shot through the head by Police	Died on his way to the hospital
9.	Melvin Mboka Mwangitsi, 19 Years old	Satelite, Kawangware, Nairobi	August 9, 2017	Shot dead by Police	Body traced at KNH mortuary
10.	Paul Mungai, 33 Years Old	Kawangware no. 56, Nairobi	August 12, 2017	Shot in the abdomen by Police in his house	Died from internal bleeding at KNH
11.	Zebedeo Mukhala, 42 Years old	Kawangware no. 56, Nairobi	August 12, 2017	Shot in the leg, fell and trampled by crowd	Died at Mbagathi hospital on August 14, 2017
12.	Violet Khagai, 43 Years old	Kawangware stage Two, Nairobi	August 12, 2017	Hit by teargas and inhaled pepper spray	Died on way to hospital
13.	Eric Kwama 30 years old.	Kawangware stage Two, Nairobi	August 10, 2017	Hit by teargas fired at close range, inhaled pepper spray	Died at KNH
14	Nelvin Amakove 30 years old	Kawangware no. 56, Nairobi	August 11, 2017	Cought up in riots, shot in the back while running away	Died instantly body traced at KNH

This is the exhibit marked KK3
Annexed to in the Affidavit/Declaration

Of Zebedeo Mukhala

Sworn / Declared Before me this 12th

Day of September 20, 2017 at Nairobi

in the Republic of Kenya

Appendix 1: Table of confirmed Deaths alleged perpetrators During Post - Election Violence in Nairobi , 2017

15.	Suleiman Khatibu, 25 years old Tanzanian national, employee of San Valencia restaurant in Karen	Kinyanjui area, Wanye, near Kawangware, Nairobi	August 11, 2017	Hit in the chest by Teargas fired in close range, bled through mouth and nose	Died at KNH on August 18, 2017
16.	Jeremiah Maranga, 50 years old G4S employee	Kawangware no. 56, Nairobi	August 11, 2017	Beaten by Police and left for dead, body soaked in blood	Died of internal bleeding and severe organ damage while waiting for treatment at KNH
17.	Benson Wandera, 47 years old	Kinyanjui area near Kawangware, Nairobi	August 11, 2017	Shot daed by Police	Buried in western Kenya Busia county
18.	Silas Owiti Lebo, 18 years old	Mathare 4A - C area, NAirobi	August 12, 2017	Beaten by police	Died on admission to hospital
19.	Bernad Okoth Odoyo 25 years old	Mathare 4A, Nairobi	August 9, 2017	Shot in the back	Died instantly at no. 10.
20.	Victor Okoth Obondo 2 years old	Mathare 4A, Nairobi	August 9, 2017	Shot at the back	Died instantly at no. 10.
21.	Wiliam Waka 45 years old	Mathare North, Nairobi	August 9, 2017	Shot in the chest	Body taced at city mortuary
22.	Boniface Ochieng Owino, 31 years old	Mathare, Bondeni area., Nairobi	August 12, 2017	Shot in the chest	Died instantly along Juja road
23.	David Owino, 28 years old	Mathare, Bondeni area., Nairobi	August 12, 2017	Shot in the chest	Died instantly along Juja road
24.	Stephanie Moraa Nyarangi, 9 years old	Mathare North, Nairobi	August 12, 2017	Shot in the chest	Died instantly on Balcony
25.	Christopher Samwell Mutua, 32 years old	Mathare North, Nairobi	August 13, 2017	Shot in the chest at close range	Died instantly near his house
26.	Fanuel Muruka Amule, 30 years old	Mathare North, Nairobi	August 12, 2017	Shot in the chest	Body traced City Mortury
27.	Raphael Ayieko 17 years old	Babadogo, Kasabuni area, Nairobi	August 12, 2017	Shot in the back	Died instantly
28.	Privel Ochieng Ameso, 18 years	Babadogo, Kasabuni area, Nairobi	August 12, 2017	Shot at back of neck and in the hip while on his knees	Died Instantly.

Appendix 1: Table of confirmed Deaths alleged perpetrators During Post - Election Violence in Nairobi , 2017

29.	Shaddy Omondi Juma, 17 Years old	Babadogo, Kasabuni area, Nairobi	August 12,2017	Shot dead while on his knees	Body traced to city mortuary with five bullet wounds
30	Geoffrey Onacha, 34 years old	Kibera, Nairobi	August 10,2017	Shot Dead	Body traced at city mortuary
31.	Sharon Imenza, 10 year old daughter of Geoffrey Onacha above	Kibera, Nairobi	August 11,2017	Collapsed and died upon seeing father's body	Collapsed
32.	Henry Onyango Matete	Kibera Olympic area. Nairobi	August 12,2017	Beaten by police	Died a day later at Muthaiga hospital
33.	Michael Owino, 28 years old	Kibera Olympic area. Nairobi	August 12,2017	Shot dead and body taken away I body bag.	Boy yet to be found.
34.	Between 17 to 27 unconfirmed cases from various parts of Nairobi	Kawangware, Kibera, Mathare, Dandora	August 9 to 13	Allegedly shot by police	Did not document for various reasons - families and witnesses not willing to speak



“Kill Those Criminals”

Security Forces Violations in Kenya's August 2017 Elections

Handwritten notes:
 1. The 1st ballot marked KKK4
 2. Marked in the 1st ballot
 3. Of. Khelef Khalef
 4. 5th ballot marked 12th
 5. 13th
 6. 23
 7. The Republic of Kenya
 8. CS Commissioner's Office





This is the exhibit marked... *KKA*
 Annexed to in the Affidavit/Declaration
 Of... *Shahab Khalifa*...
 Sworn / Declared Before me this... *1st*...
 Day of *September* 20... *23*... at... *Nairobi*
 in the Republic of Kenya

[Signature]
 Commissioner for Oaths

“Kill Those Criminals”
 Security Forces Violations in Kenya’s August 2017 Elections

AMNESTY
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HUMAN
RIGHTS
WATCH

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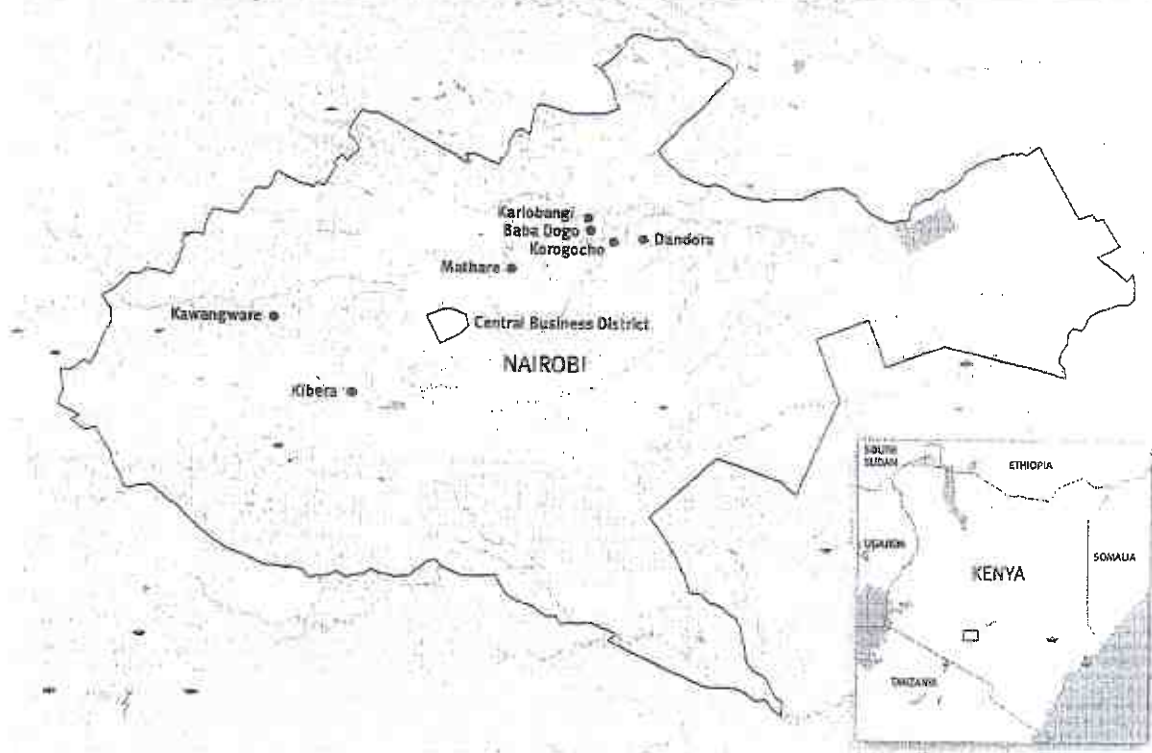
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Map of Nairobi

Map of Nairobi: Informal Settlements where HRW and AI documented Police Killings



Acronyms and Abbreviations

AP:	Administration Police, one of two branches of National Police Service
AfriCOG:	Africa Centre for Open Governance
ATPU:	Anti-Terror Police Unit
CPJ:	Committee to Protect Journalists
GSU:	General Service Unit
ICCPR:	International Covenant on Civil and Political Rights
IEBC:	Independent Electoral and Boundaries Commission
IMLU:	Independent Medical Legal Unit
IPOA:	Independent Policing Oversight Authority
KHRC:	Kenya Human Rights Commission
KYSY:	Kura Yangu Sauti Yangu, a group of NGOs monitoring the 2017 general election)
NASA:	National Super Alliance coalition, a coalition of opposition parties
OCS:	Officer Commanding Station

Executive Summary

On August 8, 2017, Kenya held presidential elections in which the incumbent, Uhuru Kenyatta was re-elected amid allegations of electoral fraud. The vote, which has since been annulled by Kenya's supreme court following the opposition's legal challenge, was also marred by serious human rights violations, especially in opposition strongholds in Nairobi, western Kenya and Coast.

This report, based on research conducted by Amnesty International and Human Rights Watch between August 9 and September 12, 2017 focuses on events in Nairobi's informal settlements (Mathare, Kibera, Babadogo, Dandora, Korogocho, Kariobangi and Kawangware) in the aftermath of polling and the announcement of results on August 11. Demonstrations documented in this report were spontaneous and most of them were differing in degrees of violence. Responding to violence and looting is challenging, but the Kenya police have trained for this, and, as this report indicates, have shown, in some areas that they can do it lawfully, without loss of life. This report describes policing patterns in response to protests and violence in the informal settlements and documents a wide range of human rights violations including unlawful killings, excessive force and beatings.

At least 33 people were killed in Nairobi alone, most of them as a result of action by the police and therefore warranting investigation by either the Independent Policing Oversight Authority, a special commission or by parliament. Twenty-three, including children, appear to have been shot or beaten to death by police. Others were killed by tear gas and pepper spray fired at close range or trampled by fleeing crowds, and two died of trauma from shock. Two others were stoned by mobs. We received unconfirmed reports of another 17 dead in Nairobi. Added to the 12 killings at the hands of police documented by Human Rights Watch in western Kenya, and five additional killings confirmed by the Kenyan National Human Rights Commission, the national death toll could be as high as 67. Hundreds of residents have suffered severe injuries including gunshot wounds, debilitating injuries such as broken bones and extensive bruising as a result of the police violence.

In many opposition areas Kenyan authorities deployed large numbers of paramilitary units: General Service Unit (GSU) police, Administration Police (AP), and units from Prisons, Kenya Wildlife Service and National Youth Service ahead of the polling, in

anticipation of potential violence. These heavy deployments fueled political tensions ahead of the vote and exacerbated the unrest that followed the announcement of the results in which security forces sometimes used unlawful, excessive force to disperse protests, shooting and beating to death people on the street and in house-to-house searches. They used live ammunition, tear gas and pepper spray and beat residents with batons, often under cover of darkness.

The government's own National Contingency Plan for the August elections refers to "hotspots" that police publicly named, where they assessed that violence was most likely. The hotspots were all opposition strongholds in ethnic majority Luo and Luhya areas, creating the impression of an ethnic and political dimension to the excessive police action that followed the poll. Residents in these areas told Human Rights Watch and Amnesty International that they believed they were being punished for the way that they had voted. Indeed, police statements to witnesses suggested the same. In many areas, police attacked crowds rather than controlled them and conducted punitive raids into people's homes as they pursued youths who had thrown rocks at them.

However, in Kariobangi and Korogocho, researchers found that local police commanders chose not to deploy paramilitary reinforcements, opting instead for community policing methods and dialogue with protesters. Here, prior relationship building efforts between police chiefs and community leaders proved successful and, save for a few injuries, there were no deaths.

Police and paramilitary reinforcements also suppressed reporting on the violence and the gathering of evidence of human rights violations. Officers destroyed cameras and phones, beat photographers, arrested journalists and threatened human rights defenders, hampering the collection of evidence. Moreover, in many cases, victims and family members did not report violations and deaths because they feared retribution from police. The Kenya Police and the Cabinet Secretary for the Interior have denied reports of excessive force and unlawful killings by police and, at time of writing, were not cooperating with the Independent Policing Oversight Authority (IPOA), a civilian police accountability institution.

Kenya has a long history of political violence, impunity for high-level perpetrators, and mistrust of the police. The September 1 ruling of the Supreme Court annulling the flawed

election has not calmed political tensions. With the incumbent President Kenyatta publicly criticizing the judiciary for the ruling, and the opposition refusing to participate in the election unless certain conditions are met, the stakes are high for the revote. On October 10, leading opposition candidate, Raila Odinga, announced withdrawal from the October 26 elections, creating uncertainty over the repeat poll.

As the country prepares for a fresh election, whether it takes place on October 26, 2017 or at a later date, authorities should ensure the police refrain from the violations that undermined the aftermath of the August poll. They should condemn violations that occurred, establish an independent judicial inquiry to examine the role of the police in responding to the August election violence, support the Independent Policing Oversight Authority (IPOA) in investigating all cases of killing by the police and excessive use of force, publicly encourage all victims of police violence to come forward and submit complaints to IPOA, commit to prompt and effective investigation and prosecution of officers reasonably suspected of responsibility for criminal acts, and commit to ensuring reparations, including adequate compensation, for victims and their families.

Recommendations

To the National Police Service

- Urgently review all allegations of unlawful use of force resulting in killing and injury and refer all cases to the Independent Policing Oversight Authority (IPOA) for further investigations and prosecution.
- Fully co-operate with IPOA by sharing necessary files and responding to requests for interviews.
- Implement all recommendations made by IPOA in its investigations to date to ensure that officers and commanders implicated in unlawful use of force are held to account.
- Remove, discipline and prosecute all officers found to have violated human rights including provisions of the National Police Services Act.
- Review police standing orders or operating procedures on riot control to align them with both Kenya's constitution and international standards on police use of force.
- Ensure that all future police deployments and operations, including during the expected repeat elections, are lawful.
- Take concrete steps to strengthen community policing initiatives across Kenya, including by refraining from visible deployment of large numbers of police and other security forces in neighborhoods.

To the National Police Service Commission, Independent Policing Oversight Authority and Kenya National Commission on Human Rights

- Urgently and thoroughly investigate the unlawful police use of force during the 2017 post-election period and ensure that all those found to have violated the law are held to account, including by referring cases for prosecution in proceedings which comply with international law and standards on fair trial, without recourse to the death penalty.
- Seek the assistance of the Office of the President in obliging the police to co-operate with ongoing investigations and request appropriate resources from government and donors to carry out the same.

To the Office of the President and the Government of Kenya

- Publicly acknowledge and condemn the unlawful police use of force in Nairobi and western Kenya.
- Direct police and other relevant state agencies such as IPOA to urgently investigate killings by police and use of excessive force in Nairobi and Nyanza during post-election protests.
- Direct police to cooperate and support with information and other relevant material all necessary investigations into police conduct during the 2017 post-election period.
- Establish an independent judicial commission of inquiry to examine the activities of the police in responding to protests following the controversial poll of August 8, 2017.

To Parliament

- Establish a parliamentary inquiry into the excessive use of force by the police in responding to protests after the August 2017 general election.
- Consider adopting a motion to compel the government of Kenya to ensure thorough criminal investigations into the abusive police response following August elections and to refer cases for prosecution in proceedings which comply with international law and standards on fair trial, without recourse to the death penalty.

To Donor Coordination Group on Police Reform (Particularly the United States, United Kingdom and Sweden)

- Condemn rights violations committed following the August election and urge police, ahead of the re-run, to comply with international law and international standards on law enforcement, in particular to exercise restraint in any use of force.
- Consider a substantial expansion in support for community engagement methods and modules in police training.
- Continue to support IPOA politically and financially.
- Urge IPOA to thoroughly and promptly investigate all cases of police killings and beatings in Nairobi and western Kenya following the August election, and to ensure reparation, including adequate compensation, for the victims.

Methodology

This report is based on interviews conducted in some of Nairobi's informal settlements between August 9 and September 12, 2017. Researchers and consultants for Amnesty International and Human Rights Watch interviewed 151 victims, witnesses, health workers, journalists, activists, diplomats, police officers and family members of people killed during the post-election violence in Nairobi, in English, Kiswahili and Dholuo.

In all cases of death reported to the researchers, researchers obtained the name of the deceased, spoke to relatives and witnesses, and in most cases viewed hospital, post-mortem or mortuary records, or the corpse to confirm deaths.

Interviewees shared their testimonies voluntarily, without payment, often despite fear of police or government reprisals. For this reason, the names of interviewees have been kept confidential except where they explicitly asked to be mentioned by name or where they agreed to identifying characteristics, title, office and so on.

In each location, researchers visited the local police posts and police stations. In Kariobangi and Korogocho, local commanders were willing to meet and talk with us. In all other places local commanders referred us to divisional command and ultimately to the police spokesman who refused several requests for an interview.

Amnesty International and Human Rights Watch wrote to the Inspector General of police detailing our concerns and requesting a meeting but, as of time of publication, we received no response.

I. Policing protests – Kenya’s Obligations Under International Law and Standards

This report describes numerous instances where the police and security forces used excessive force in response to the protests and violence following the elections, in violation of Kenya’s obligations under international law and international law enforcement standards. Protesters engaged in looting, violence and throwing rocks at police, however, the response by the police in many areas was excessive. This report includes cases of unlawful killing by the police in violation of the right to life, beatings in violation of the prohibition on torture and other cruel, inhuman or degrading treatment or punishment, and attempts by authorities to obstruct reporting of those violations, in violation of the right to freedom of expression.

Kenya's obligations to respect and protect the right to life and other rights

Kenya’s obligations under international law (including under the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples’ Rights) to respect and protect the right to life and to ensure that no one is arbitrarily deprived of life¹ include preventing arbitrary killing by its police and other security forces, and ensuring that if it occurs the victims have access to a remedy and reparation, and that the perpetrators are held accountable. International law also absolutely prohibits torture and other cruel, inhuman or degrading treatment.² Kenya also has obligations to respect and protect the rights to freedom of expression, including the right to seek, receive and impart information, and peaceful assembly,³ encompassing peaceful protests, and to ensure that its police and security forces do likewise.

Obligations and responsibilities of police and law enforcement agents

The obligations and responsibilities of police and other security forces which derive from these and other international law obligations are set out in international standards on human rights in the context of law enforcement adopted by the United Nations, notably

¹ ICCPR Article 6; African Charter Article 4.

² ICCPR Article 7, African Charter Article 5.

³ ICCPR, Articles 19 and 21; African Charter Articles 9 and 11.

the UN Code of Conduct for Law Enforcement Officials (UN Code of Conduct) and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (UN Basic Principles). With regard in particular to the policing of protests, these international law obligations and law enforcement standards are encapsulated in the Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa (Policing Assemblies in Africa) adopted in 2017 by the African Commission on Human and Peoples' Rights.

If people commit acts of violence or other lawbreaking, the police and other security forces have a responsibility as far as possible to prevent violence and other illegal acts and arrest lawbreakers, and protect lives and safety of people affected. In doing so they are required to respect and protect human dignity and maintain and uphold the human rights of all.⁴ They are required to seek to avoid the use of force and as far as possible apply non-violent means before resorting to the use of force, which they may use only if strictly necessary – that is, if other means remain ineffective or without any promise of achieving the law enforcement objective.⁵ If the use of force is unavoidable they should use it with restraint and proportionately to the seriousness of the offence and the law enforcement objective; minimize damage and injury and respect and preserve human life, and ensure that those injured or affected receive assistance and medical aid as quickly as possible.⁶

Firearms only as a last resort to protect life

In particular, and crucially, international law and standards are clear that the use of firearms may only be permitted in very narrow circumstances, as a last resort. Police must not use firearms except in defense of themselves or others against the imminent threat of death or serious injury, to prevent a particularly serious crime involving grave threat to life, to arrest or prevent the escape of someone presenting such a danger and resisting their authority, and only when less extreme means are insufficient to achieve this; they should always give an effective prior warning of their intention to shoot, unless that would put themselves or others at risk of death or serious harm.⁷ This principle applies at all times including in demonstrations or protests which have turned violent; firearms should not be used as a tool for dispersing protests, shots fired into the air or other

⁴ UN Code of Conduct Article 2.

⁵ UN Code of Conduct Article 3; UN Basic Principles, Principle 4; Policing Assemblies in Africa, Guideline 21.1.

⁶ UN Basic Principles, Principle 5. Policing Assemblies in Africa, Guideline 21.2.2.

⁷ UN Basic Principles, Principles 9 and 10; Policing Assemblies in Africa, Guideline 21.2.3.

warning shots should not be used, and indiscriminate discharge of firearms into a crowd is a violation of the right to life.⁸

Non-lethal weapons

Governments and other relevant authorities should ensure that law enforcement officials are equipped with a range of less-lethal weapons to allow for a differentiated use of force and firearms, with a view to restraining the use of means which can cause death or injury; they should also be equipped with self-defensive equipment such as shields, helmets, and other protective gear to decrease the need to use weapons of any kind.⁹ Less-lethal weapons for crowd control should only be used when there are legitimate grounds for the use of force, and only when their use is necessary and proportionate and in circumstances when other less harmful means have been attempted and found to be ineffective or will be ineffective under the circumstances.¹⁰

Policing demonstrations and protests

In respect of protests and demonstrations in particular, law enforcement agencies should establish systems for a collaborative and inclusive communication with all stakeholders, and the response of law enforcement officials to issues arising during protests should give priority to de-escalation tactics; if violence occurs they should differentiate between individual and group behavior, and where specific individuals are identified as acting in an unlawful or violent manner, should focus on removing from the group or arresting those individuals.¹¹ Deployment of law enforcement officials in demonstrations or protests should take into account the potential adverse influence that the visible appearance of police and security officers can have on the way in which events develop; generally, they should be deployed only in minimum numbers necessary to ensure the protection and safety of those involved, and take a graduated approach to any increase of visible policing numbers; they should always wear visible individualized identification (name or a unique number).¹²

⁸ UN Basic Principles, Principle 14; Policing Assemblies in Africa, Guidelines 21.2.3, 21.2.4, 22.6.

⁹ UN Basic Principles, Principle 2; Policing Assemblies in Africa, Guideline 21.3.1.

¹⁰ Policing Assemblies in Africa, Guideline 21.2.6.

¹¹ Policing Assemblies in Africa, Guidelines 6.2, 11, 13, and 20.

¹² Policing Assemblies in Africa, Guideline 14.

Accountability

Authorities should establish effective reporting and review procedures for all incidents where police use firearms or where people are injured or killed as a result of any police use of force, with prosecution authorities in a position to exercise jurisdiction in appropriate circumstances.¹³ Arbitrary or abusive use of force and firearms by law enforcement officials must be punished as a criminal offence under the law.¹⁴

Commanders should be held responsible if they know, or should have known, that law enforcement officials under their command have resorted to unlawful use of force and firearms, and they did not take all measures in their power to prevent or report such use.¹⁵

¹³ UN Basic Principles, Principles 22, 6 and 11(f); Policing Assemblies in Africa, Guideline 24.

¹⁴ UN Basic Principles, Principle 7.

¹⁵ UN Basic Principles, Principle 24; Policing Assemblies in Africa, Guideline 5.2.

II. Background

Other than the 2002 poll, every election in Kenya since the introduction of multi-party politics in 1991 has been marred by unrest, particularly the 2007 poll when over 1,100 people were killed in post-election violence and 660,000 were displaced.¹⁶ That history still weighs heavily on Kenyan society.¹⁷ The justice that was promised to victims never arrived, despite the 2010 constitution, the Waki Commission of Inquiry into the violence, the Truth Justice and Reconciliation Commission, and the involvement of the International Criminal Court.

Impunity for that violence, as well as the failure of national reconciliation efforts, have contributed to grievances and poor relations with police, particularly among communities that support the opposition. The informal settlements where the majority of abuses documented in this report occurred are populated by mostly ethnic Luo and Luhya communities that have traditionally supported Raila Odinga.

Conditions in these informal settlements, also known as slums, which host 2.5 million of Nairobi's 3.1 million population are among the worst globally. The people living there have inadequate access to social services, water, housing and employment; typhoid and cholera are common, rates of infant mortality and teenage pregnancy are high and unemployment runs at around 50 percent.¹⁸ The slums are also especially affected by ill-treatment by the police: patterns of extrajudicial executions by various units of police have been extensively documented.¹⁹ In the informal settlements the police are generally

¹⁶ Human Rights Watch, "Ballots to Bullets: Organized Political Violence and Kenya's Crisis of Governance," 2008, <https://www.hrw.org/reports/2008/kenya0308/> and, Human Rights Watch, "High Stakes: Political Violence and the 2013 Elections in Kenya" 2013. (Accessed September 25, 2017).

¹⁷ Amnesty International, "Crying for Justice: Victims' perspectives on justice for the post-election violence in Kenya," 2014, <https://www.amnesty.org/en/documents/afr32/001/2014/en/>. (Accessed September 25, 2017).

¹⁸ Amnesty International, "How the Other Half Lives: Nairobi's Slum-Dwellers, Kenya," 2009 <https://www.amnesty.org/en/documents/afr32/006/2009/en/> see also <http://www.kibera.org.uk/facts-info/>. (Accessed September 25, 2017).

¹⁹ Mathare Social Justice Centre, "Who's Next? A participatory action research report against the normalization of extrajudicial executions in Mathare," 2017, <http://www.matharesocialjustice.org/who-is-next/>. (Accessed September 25, 2017).

not seen as guardians of law and order but, as many witnesses told researchers, they are instead perceived as oppressors.²⁰

Unsurprisingly, it was precisely these areas that the police identified as “hotspots” prior to the 2017 election: Mathare, Kibera, Kariobangi, Korogocho, Kawangware and Dandora.²¹ Police predicted where anger and protest at the election result would erupt, based on low-income neighborhoods where the majority ethnic group tends to support the opposition, as well as on their own record of policing in these communities.²² As both residents and police told researchers, they believed that it would be almost impossible for the police to deploy in the slums in large numbers without encountering serious resistance; their very presence would be a provocation.²³

²⁰ Amnesty International and Human Rights Watch interviews, Nairobi, August 2017.

²¹ The Standard, “Kenyans Apprehensive as Police Map Out Poll Hotspots,” July 16, 2017, <https://www.standardmedia.co.ke/article/2001247711/kenyans-apprehensive-as-police-map-out-poll-violence-hot-spots>. (Accessed September 25, 2017).

²² Ibid.

²³ Amnesty International and Human Rights Watch interviews, Nairobi, August 2017.

III. Killings and Other Abusive Policing in Nairobi Following the Election

President Uhuru Kenyatta of the Jubilee party ran against opposition leader Raila Odinga and his National Super Alliance coalition (NASA) in the presidential race of the August 8 general election.²⁴ The pre-elections period was marked by allegations of fraud and the murder of Chris Msando, the Chief Technology Officer of the Independent Electoral and Boundaries Commission (IEBC). A post-mortem found that he had been tortured prior to his death. In the days after the poll, the Kura Yangu Sauti Yangu (KYSY) coalition of election observers and the opposition coalition, NASA began to report irregularities in the presidential election. Forms used to tally results were slow to trickle into the national tally center.

Protests first erupted in some areas of Nairobi and Kisumu following Odinga's August 9 press conference alleging the hacking of IEBC servers and irregularities in the tallying of results. After the IEBC declared Kenyatta the winner at 10.30pm on August 11, angry demonstrations began in opposition strongholds, informal settlements in Nairobi and across western Kenya and Coast province and lasted for several days.²⁵ On August 16, Odinga announced that NASA would challenge the results in court and on September 1, the Supreme Court ruled that the election had been marred by irregularities sufficient to compromise the integrity of the process, and ordered a fresh presidential poll within 60 days.

Patterns of police deployment and excessive use of force following the vote

Even before election day, security forces deployed around some of Nairobi's many informal settlements. The police and paramilitary presence, at the entrance to slums and the junctions with main roads, appeared to be designed to stop protests – and the

²⁴ There were eight presidential candidates in the August 8 election, but the race was widely seen to be between the incumbent President Uhuru Kenyatta and the leading opposition candidate, Raila Odinga. The other six presidential candidates included Dr Ekuru Aukot, Prof Michael Wainaina, Cyrus Jirongo, Joseph Nyagah, Abduba Dida and Japheth Kavinga; <https://www.capitalfm.co.ke/news/2017/05/iebc-clears-8-presidential-candidates-august-elections/>.

²⁵ Jubilee supporters also went out to the streets that night, celebrating Uhuru Kenyatta's win. Police did not disperse those celebrating the incumbent president's win.

expected attendant violence – from spreading beyond the slums. Witnesses told researchers that police wore green uniforms and riot gear shields, helmets and carried batons, suggesting they were prepared for situations where they would use force. In the days after polling, police informed health providers working in the slums to expect a heavy ‘crackdown’ a term usually understood to be a punitive raid.²⁶

On August 9 and 10, soon after Raila Odinga made an announcement alleging irregularities in the vote, demonstrations and riots began in opposition areas in Kawangware and Mathare. Angry protesters burned tyres and shops belonging to Kikuyus, the ethnic group that was largely supportive of Uhuru Kenyatta, a Kikuyu, barricaded roads and often taunted police.

Demonstrations intensified and spread to the other slums – Kibera, Dandora, Babadogo, Kariobangi, Korogocho – after the IEBC declared Uhuru Kenyatta the winner on the evening of August 11. Riots erupted through the night and police continued to clash with protesters across Nairobi during August 12 and 13.

In Kawangware, Mathare, Babadogo, Kibera and Dandora police actively confronted protesters, breaking up gatherings with tear gas, pepper spray from water cannons, truncheons and live ammunition – sometimes firing into the air but also directly aiming at individuals and as well as firing randomly into crowds and residential areas. In Kawangware, Mathare, and Dandora, police unlawfully killed protestors and engaged in running battles with residents for several days, pursuing protestors into alleyways and homes where fleeing youths were then shot or beaten.

In total, in the period covered in this report, at least 23 people appear to have been shot dead by police, three beaten to death, and three died of asphyxiation from tear gas and pepper spray, two trampled to death, and two of physical and psychological trauma.

Residents and human rights activists told researchers of another 17 cases of deaths resulting from police actions in informal settlements in Nairobi. Witnesses and human rights activists told researchers of at least four bodies that they said they saw being

²⁶ Human Rights Watch interview, Nairobi, August 2017.

removed by police in Kibera,²⁷ the identities of the victims and where they are currently located are unknown. Dozens of others suffered gunshot wounds and severe injuries due to police beatings.

At least two people were killed by armed gangs which clashed along ethnic political lines in Mathare and Kariobangi. Others were injured as a result of violence by armed gangs. The combined statistics of health providers for Eastlands and Kibera stands at 333 people treated for injuries, including gunshot wounds and beating.²⁸ Scores of victims of such violence are now either permanently or temporarily disabled, unable to work and provide for their families in precarious economic circumstances where they were often living hand to mouth.

In some cases, our research suggests that police may have been overwhelmed by violence directed at them and may have used firearms in circumstances that met the criteria for lawful self-defense or defense of others against an imminent threat of death or serious injury. But every instance of such use of firearms by police should be subject to an independent investigation to scrutinize whether it was lawful in terms of domestic and international law and standards.²⁹ But in most cases documented by Human Rights Watch and Amnesty International, police appeared to have shot at protesters or others who, even if some of them may at some point have been engaged in violence or other unlawful acts, did not pose a direct threat to life, often shooting them in the back, or in apparently punitive raids into the slums, pursuing people who had thrown stones at them. Such use of firearms by police is a violation of the right to life.

Remarks made by police during many beatings suggested victims were being punished for the way that they had voted, or because of their ethnicity. One man in Mathare told researchers that GSU police beat him saying: "You people will know the government is not yours... You can call your Baba (Raila) to come and help you."³⁰

²⁷ Human Rights Watch and Amnesty International interview with human rights activist, Kibera, September 1, 2017; interview with two witnesses, Kibera, September 29, 2017.

²⁸ See press statements of Kenya Red Cross and MSF as well as Amnesty International interviews with health providers in Kibera, September 2, 2017.

²⁹ See Chapter 1, above.

³⁰ Human Rights Watch interview, Mathare, August 23, 2017.

Unlawful killings

While police undoubtedly faced violent crowds, the use of lethal force was frequently unlawful.

On Saturday August 12, in Mathare, police officers in GSU uniform beat two men to death during these house to house operations in pursuit of youths whom they alleged to witnesses had thrown stones at them.³¹ In one case, according to relatives of the victim, eight police officers stormed into the house of **Silas Owiti Lebo**, kicking the door open, and beating him and his friend with batons and gun butts.³² They hit Lebo on the head with a baton repeatedly as he cried for mercy on the floor, and shouted that they were “just doing the job for which they are paid,” said Lebo’s friend who survived the beating.³³ A relative who was present screamed at the police to stop and said when they left Lebo was “unconscious with blood pouring from his ears.”³⁴ Lebo was admitted in the Intensive Care Unit at Kenyatta National Hospital but died on the morning of August 13.³⁵

In Mathare on August 13, a nine-year old school girl, **Stephanie Moraa Nyarangi**, was shot dead while standing on her balcony. Residents and neighbors told researchers that policemen on the street deliberately shot at the balcony where children were watching the clashes below “Other girls on the balcony ran inside and told us that police were aiming at them. Stephanie was standing at the railing. I heard a shot and saw that the bullet had hit her and went through to hit the wall,” a witness told researchers.³⁶

On August 9, **Bernard Okoth Odoyo**, 25, a carpenter, and **Victor Okoth Obondo** aka **Agwambo**, 24, who were close friends who lived close to each other in Mathare 4A, were among four people shot dead around 9p.m. as a combined team of security officers fought off demonstrators at Number 10 area, according to relatives and eyewitnesses.³⁷ An eyewitness said the police at Number 10 area were clearly overwhelmed by protestors

³¹ Ibid.

³² Human Rights Watch interview with witnesses and relatives of victims, Mathare 4A – C area, August 23, 2017.

³³ Human Rights Watch interview with victim and witness of the beating, Mathare 4A – C area, August 23, 2017.

³⁴ Ibid.

³⁵ Human Rights Watch interview with relative of victim, Mathare 4A – C area, August 23, 2017.

³⁶ Ibid.

³⁷ Human Rights Watch interview with relative to Bernard, Mathare 4A – C area, August 23, 2017; interview with relative to Victor, Mathare 4A, August 23, 2017.

and tried to “shoot their way out” of a crowd.³⁸ However, both Odoyo and Obondo were shot in the back and died instantly, while trying to flee from security officers, suggesting that force was at least by that point unnecessary.³⁹

Paul Mungai, a charcoal seller, was shot by police as he was shuttering his shop in the face of violence between police and protesters, according to witnesses.⁴⁰ The bullet pierced the tin wall of his shop and hit him in the abdomen, exiting at the other side of his back. Friends rushed him to a local clinic which was initially reluctant to treat shooting victims for fear of police reprisals, family members said.⁴¹ He was eventually transferred to Kenyatta Hospital where he died from internal bleeding two days later.⁴²

Around 9 p.m. on the evening of August 11 in Babadogo area, moments before Kenyatta was declared winner, police shot dead one boy and two men: **Raphael Ayieko**, 17, his close friend and neighbor, **Privel Ochieng Ameso**, 18, and **Shady Omondi Juma**, 18, according to witnesses. Witnesses claimed the three were watching other youth looting.⁴³

Raphael, a student at Usenge Boys High School in Siaya county who was visiting his parents in Nairobi for holidays, went to carry some groceries to Privel's house.⁴⁴ Privel's mother said the two boys then went out to observe youth looting nearby kiosks when they were shot by police. An eyewitness described what happened:

We were together. We saw looting and saw men come in military uniforms, jungle green. I heard one officer shout ‘kill those criminals’ and they shot live bullets. I saw an officer push Raphael, on a wall and then shoot him. Shady was shot in the chest. Privel tried to run away but was shot in the back.⁴⁵

³⁸ Amnesty International interview, Mathare, August 31, 2017.

³⁹ Human Rights Watch interview with relative to Bernard, Mathare 4A – C area, August 23, 2017; interview with human rights activist, Bondeni area, August 23, 2017.

⁴⁰ Amnesty International interview with relatives and neighbours, Kwangware, September 2, 2017

⁴¹ Amnesty International interview, Kawangware, September 2, 2017

⁴² Post-mortem and police report, seen by Amnesty International, September 2, 2017

⁴³ Human Rights Watch interview with family member to Raphael, Babadogo, August 23, 2017; interview with relative to Privel, Babadogo, August 23, 2017.

⁴⁴ Human Rights Watch interview with family member to Raphael, Babadogo, August 23, 2017.

⁴⁵ Ibid.

A relative of Privel confirmed that he was shot in the hip and at the back of his neck and died later; Raphael was shot in the back and died instantly.⁴⁶

Juma's father, a matatu driver, described to researchers how he learned of his son's death: "I was at work with Shady the whole day and dropped him back to the estate in Kasabuni area at around 9.30 p.m....Later at 11 p.m. a fellow matatu driver called to say my son had been shot by police as he knelt in surrender."⁴⁷ The next day he saw his son's body in the City Mortuary with five bullet holes in it: "one on the chest, then lower abdomen, left arm, ribs on the right and another on the right knee, breaking it."⁴⁸

Henry Matete died as a result of beating in Kibera on August 11. Matete, who had an unrelated wound that needed daily dressing, was intercepted by GSU police when returning from a clinic in Bombolulu area in the afternoon when they saw him limping, the officers ordered him to kneel. Witnesses said he raised his hands but the GSU police beat him anyway, on his back, legs and body. The police left him on the road and bystanders carried him home. The next day he died at Muthaiga hospital. The family could not afford a post-mortem and buried him in their ancestral area in Western Kenya on August 26.⁴⁹

Five witnesses told researchers how they saw GSU police shoot four protesters during violent clashes following the announcement of Kenyatta's victory on the night of August 11 whose bodies were taken away by police. Protestors set fire to tires and taunted police who were surrounded at the Olympic area. Witnesses described police repelling protestors with tear gas and firing in the air and into crowds then the protestors regrouping and advancing again. One witness explained:

After a while, when it seemed calm again, we came back and saw a body bleeding on the road. As we came out to look the police were arriving from the other side, they fired tear gas to make us disperse and some police

⁴⁶ Human Rights Watch interview with a relative, Babadogo, August 23, 2017.

⁴⁷ Human Rights Watch phone interview with Shaddy's father, Babadogo, August 23, 2017.

⁴⁸ Human Rights Watch interview with relative of Juma, Babadogo, August 24, 2017.

⁴⁹ Human Rights Watch interview, Kibera, August 29, 2017.

advanced to chase people into alleyways while the ones behind collected the body. They put him in a body bag and threw him into a lorry⁵⁰

In total, four bodies were left on the road after several such exchanges, witnesses said, which police officers zipped into bags and loaded onto lorries⁵¹. "You could tell they were dead, the way they threw them, it was not gentle!" said one woman, watching from an alley.⁵²

Witnesses named one of those killed and his body taken as Michael Owino, 28 years old. His body and that of three others are still missing, according to a representative from the chief's office at Sarang'ombe.⁵³ The chief and community leaders have appealed for relatives to come forward but at the time of writing the identities of the others killed and whose bodies were taken, are unknown.⁵⁴

Excessive force

Researchers documented several cases of police shooting at unarmed people from a distance who posed no apparent threat.

In one case, a construction worker returning to Kibera on a motorbike after work on August 12, described:

when we were one hundred meters away, just as we caught sight of the police as we came up the road towards Kiandaa/Bombolulu the police started shooting. We approached them from behind, when they heard the bike they just turned and opened fire with live rounds. There were four police firing. More than 20 shots were fired.

⁵⁰ Amnesty International interview, Kibera, September 3, 2017.

⁵¹ Amnesty International interviews, Kibera, September 3, 2017.

⁵² Amnesty International, interview, Kibera, September 3, 2017.

⁵³ Amnesty International interview, Kibera, September 3, 2017.

⁵⁴ Amnesty International interviews, Kibera, September 3, 2017.

Eyewitnesses confirmed his account of police shooting unprovoked.⁵⁵ The victim was hit in the thigh and hid in the slums before admitting himself to hospital.

The excessive force seemed to follow a pattern of police reprisals for violence by protestors. In Mathare, police went door to door looking for all males. Shouting “wanaume!” (men! In Swahili).⁵⁶ A 32-year-old carpenter in Mathare 4A said police beat and broke both his legs at around 9 a.m. on August 12. “I had closed my door because I heard police chasing youth who were throwing stones. Four police officers kicked my door in. It came off on its hinges and they started beating me. They broke my legs. They beat me for around an hour.”⁵⁷ One of the police officers said, “kill him,” according to the victim, whose wife was also present and took the victim to hospital.

In several alleys of the Ngomongo area of Korogocho on August 13 following the burning of the chief’s office at Waraka, GSU police went house to house looking for men again, shouting “Wanaume!”. They banged on doors one after the other, systematically, and pulled male residents out of their homes, breaking doors and smashing property. In one case, seven GSU officers in helmets pulled all the men in one street, one victim recalled: “outside, they told us to get on our stomachs, saying, ‘ukiinua kichwa ni risasi’ [if you raise your head, you get a bullet].” Then they beat the men, leaving this victim unable to walk or work. Along a neighboring street, GSU also banged on all the doors shouting “tokeni nje” [come out!] and beat a husband and wife who were at home with their small children, injuring the husband so badly. He was still bedridden two weeks later.⁵⁸

Police beat another man, Gordon Onyango, an opposition youth leader, on August 12 in Kiandaa on the rail tracks near Kibera Town Centre. Onyango was leading a small protest, holding aloft a stool: “I was in the front line of the demonstration. I went up to the police to talk to them but they just grabbed me and threw me on the ground and they beat me with batons. I was being beaten for about 10 minutes on the ground. As they were doing it one of them said to me: ‘If we had the time, we’d kill you. You are really disturbing people’”⁵⁹

⁵⁵ Amnesty International interviews, Kibera August 25 and September 3, 2017.

⁵⁶ Amnesty International interviews, Mathare, August 25, 2017.

⁵⁷ Human Rights Watch interview with victim of police beating, Mathare 4A – C area, August 23, 2017.

⁵⁸ Amnesty International interview, August 30, 2017.

⁵⁹ Amnesty International interview, Kibera, August 28, 2017.

When Onyango tried to use his mobile phone to film what was happening to him, a police officer smashed it. A foreign photographer, Neil Shea, documented Gordon's beating and a police officer snatched Shea's camera, removed the memory card and smashed the camera too.⁶⁰ His followers threw stones at the police which gave him the opportunity to run away. Onyango sustained broken ribs and head injuries which have affected his vision.

The Geography of Violence

The violations described above took place in areas where the police response was excessive and violence and injury correspondingly higher. In areas such as Kawangware, Mathare and Dandora, where large numbers of paramilitary police – GSU and AP – were deployed, there was a higher level of what appeared to be unlawful police conduct than in some other areas. For example, in Korogocho and Kariobangi, local police chiefs engaged with community and youth leaders personally and either prevented or tried to prevent deploying the GSU reinforcements. In those areas, levels of violence were much lower and there were no deaths.

The following breakdown describes the main patterns of rights violations in each location and details other deaths, beatings and excessive force that merit further investigation.

Dandora

On the night of August 11, police had already deployed in significant numbers around Dandora's "phase 4," and "phase 3," areas populated predominantly by opposition supporters. According to residents, police stationed seven large trucks at key intersections.⁶¹

As the result was announced, protesters in phase 4 set fire to businesses and began looting. They continued throughout the following day.⁶² Police tried to disperse them with tear gas and firing into the air but quickly moved on to firing live ammunition directly at protesters and bystanders, killing at least three in what would appear to be cases of unlawful killing and intentional use of force where it was not necessary.

⁶⁰ Amnesty International interview, Kibera, August 28 and Facebook post of Neil Shea, August 29, 2017.

⁶¹ Amnesty International interviews, Dandora phase 4, August 31, 2017.

⁶² Human Rights Watch interview, Dandora, August 25, 2017.

An eyewitness described how a group of 15-20 police pursued demonstrators, and one of them shot dead Vincent Omondi Okebe, a 27-year-old man at the main junction in phase 4: "I tried talking to the police, then one of them knelt and aimed..." The demonstrators ran away from police, but, "one of the young men fell down."⁶³

Youths in Dandora interviewed by researchers described the scene as "a game of cat-and-mouse," with police firing tear gas and demonstrators throwing stones, running away and coming back again.⁶⁴ Police pursued protesters into the alleys, shooting at body height and aiming at fleeing youths.⁶⁵

"It was as if they knew the damage they wanted to cause, they were deliberately punishing the community. They thought it was a war. They were shooting wildly in Dandora," recalled one health worker.⁶⁶

As the game with police and protestors continued, police shot dead Thomas Odhiambo Okul, age 26, in the back, right outside the gate to his house in an alleyway. A relative told researchers how Thomas had stepped out of his home to see what was happening. A short while later, he came running home again and was shot and killed.⁶⁷

Police also shot Kevin Otieno, age 23, in the stomach, in same neighborhood, about one hundred meters away. Residents said he was trying to get home and avoid the shooting. A witness said that police were walking, aiming and shooting at people on sight.⁶⁸ Kevin's neighbors said they tried to drag his body away but police aimed at them too and they ran away.

Residents said the unit responsible for the fatal shootings of Thomas and Kevin, was a group of 15 or so police dressed in jungle green led by a female officer wearing safari boots.⁶⁹

⁶³ Human Rights Watch interview, Dandora, August 26, 2017.

⁶⁴ Amnesty International interview, August 31, 2017.

⁶⁵ Amnesty International interviews, Dandora, August 31, 2017.

⁶⁶ Amnesty International interview, Dandora, August 31, 2017.

⁶⁷ Human Rights Watch interview, Dandora, August 26, 2017.

⁶⁸ Human Rights Watch interview, Dandora, August 26, 2017.

⁶⁹ Amnesty International interview, Dandora, August 31, 2017.

Vitalis Otieno, a 35-year-old man suffering from tuberculosis, died of shock, according to a relative. A relative told researchers that on August 11, neighborhood youth had come banging on doors calling men to come to defend the neighborhood against “Mungiki” – a banned criminal gang associated with the Kikuyu ethnic group and linked to extortion and political violence. Vitalis looked out of the gate and saw police shooting his friend Thomas in the back. He did not leave the house, but spent the rest of the day and night panicking, struggling to breathe, believing he would be trapped and unable to flee if the Mungiki or the police came house to house. He passed away around 4am on Saturday morning.⁷⁰

Kawangware

In this settlement, witnesses said the police were extremely violent, using abusive force in beating protesters, and firing tear gas canisters and live bullets indiscriminately. The police may be responsible for at least nine unlawful killings here. A full investigation is needed to establish whether in any of these cases there was an imminent risk to the lives or of serious injury of the police or others that would have justified the use of lethal force. The nature of many injuries – from tear gas canisters fired at people, at close range, gunshot wounds of protestors shot in the back – strongly indicates that in many cases the use of force was excessive.

In at least two cases people in their homes were killed by stray bullets from police weapons, which suggests that the police were not complying with international law and standards on the use of firearms. In the cases of two people trampled to death by fleeing protesters the police may not be criminally responsible but their failure to de-escalate the violence and to act in a proportionate manner may have contributed to the chaos which resulted in these deaths.

Protests began in Kawangware earlier than in many other locations. The day after polling, on August 9, youths clashed with police and continued to engage in running battles with them for several days.⁷¹ Residents said that youths taunted police and threw rocks at them while police retaliated with water cannon, tear gas, truncheons and live

⁷⁰ Amnesty International interview, Dandora, August 31, 2017.

⁷¹ Amnesty International interviews, Kawangware, September 2, 2017 and Human Rights Watch interview, Kawangware, September 11, 2017.

ammunition.⁷² Even if protestors are throwing stones at the police, if the police are equipped with protective gear and appropriate non-lethal weapons enabling them to make a proportionate response, as required under international law, it should rarely be necessary for them to use firearms in self-defense.

In the “stage two” area, GSU police clashed with protestors and fired teargas, which contributed to several deaths. A witness said that a 45-year-old businessman, Sammy Amira Loka, who sold tea, was hit by a tear gas canister in the chest as he tried to escape the fighting. Bystanders said he was not beaten but he began coughing blood and vomiting and was taken to Kenyatta Hospital where relatives said he died on August 16.⁷³ Later that evening, at the “56 stage⁷⁴” area, police fired teargas cannisters into crowds as they advanced towards demonstrators. Lilian Khavere, a 40-year-old house-keeper who was eight months pregnant, fainted and was trampled to death by crowds fleeing the teargas as she was coming home from work in Parklands, according to a witness.⁷⁵

Festo Kivogo, a 33-year-old father of three, was shot dead while in the vicinity of violent protestors throwing rocks at police at around 7p.m. that evening when a bullet hit him behind the left ear and exited through his eye, according to one of the men who tried to help take him to hospital. Witnesses were not sure if police fired the bullet; some said a Kikuyu businessman shot a handgun from an adjoining alley.⁷⁶ Throwing rocks at police is not, in itself, grounds for the use of lethal force, unless such action presents an imminent threat of death or serious injury, and no less extreme means are sufficient to stop that threat. An effective investigation is required to examine whether his killing was lawful. This should include consideration of the post-mortem report. However, police and the government pathologist have so far refused to release the post-mortem report to Kivogo’s family despite repeated requests, including from IPOA.⁷⁷

⁷² Amnesty International interviews, Kawangware, September 2, 2017.

⁷³ Human Rights Watch interviews, Kawangware, September 8, 2017.

⁷⁴ “56 stage” is a terminus for public service vehicles plying Kawangware – Nairobi Central Business District route. The area around there is generally known as “56 stage”.

⁷⁵ Human Rights Watch interview, Kawangware, September 11, 2017.

⁷⁶ Amnesty International interviews, Kawangware, September 2, 2017.

⁷⁷ Human Rights Watch interview, Kawangware, September 8, 2017.

Relatives of **Melvin Mboka Mwangitsi**, a 19-year-old woman, also believe police killed her that night. They found her swollen body at Kenyatta Hospital mortuary three days after she failed to return home. Her phone and money were still in her clothes. She had been shot through the torso from the right side.⁷⁸

On August 10, residents said police clashed with protesters who were throwing rocks at them nearly the whole day.

At around 1p.m., **Zebedeo Mukhala**, a 42-year-old construction worker, was shot in the leg by police according to a witness, then trampled to death by crowds after he fell on the ground.⁷⁹

Eric Kwama, a 30-year-old casual laborer, was killed when police fired a teargas canister at his head at close range, according to a relative. A friend of his said they were trying to run away from the police.⁸⁰ **Violet Khagai**, a 43-year-old woman, first fainted after being inhaling tear gas, and died after being hit on the head by a rock.⁸¹

On August 11, hours before the declaration of Uhuru Kenyatta as winner, **Nelvin Amakove**, a 30-year-old woman, was shot dead upon returning from shopping for food during a lull in the protests, a relative said. A relative found her body, along that of another woman. “[I]t had a small bullet hole at the back – right side,” and a huge exit wound at the front, he recalled.⁸²

In the Kinyanjui area, **Suleiman Khatibu**, a 25-year-old Tanzanian national working at a hotel in Nairobi, died after being hit by a tear gas canister in the chest, according to a relative and a family friend who were with him. A relative said he bled from the nose and struggled to breathe. He died one week later in hospital.⁸³

⁷⁸ Human Rights Watch interview, Kawangware, September 11, 2017.

⁷⁹ Human Rights Watch interview, Kawangware, September 11, 2017.

⁸⁰ Human Rights Watch interviews, Kawangware, September 8, 2017.

⁸¹ Human Rights Watch interview, Kawangware, September 11, 2017.

⁸² Human Rights Watch interview, Kawangware, September 8, 2017.

⁸³ Human Rights Watch interview with relative, Kawangware, September 11, 2017; interview with family friend, Kawangware, September 11, 2017.

At “56 stage” area, Jeremiah Maranga, a 50-year-old watchman, was beaten to death by police. According to witnesses, police caught and beat him so badly that his body was soaked in blood.⁸⁴ He died before he was seen by doctors, who told relatives he had suffered significant internal bleeding and organ damage.⁸⁵

Witnesses also described police grabbing youths and dunking them in the open sewer that runs alongside the main road through Kawangware slum and is full of sticky black, toxic, effluent.⁸⁶

Researchers received 10 other reports of police killings in Kawangware which at the time of writing are still unconfirmed because families are either still upcountry for burials or are too afraid to speak about the killings.

Kibera

In Kibera, police clashed with violent protestors on August 10 and 11 and with a smaller group of protestors on August 12. At least two people were killed in circumstances that appear to be unlawful killings, and dozens were shot and injured. Police used force and firearms that appeared to be excessive, in violation of international law and standards. Residents attributed beatings and shootings, and the removal of bodies of people shot by security forces, to GSU reinforcements from outside the locality.

As in other areas, unrest in Kibera began around Kamkunji and Gatwikera areas as soon as the opposition announced that the IEBC server had been hacked. Protesters at Olympic and Soweto areas in Kiandaa, Kibera, started throwing stones and barricaded the road. Many witnesses described a large, volatile, angry crowd flooding the road from Bombalulu junction in the west to Olympic stage in the east. Police, parked at Olympic and along the southern bypass, deployed to Olympic and Bombalulu in large numbers and began a “cat and mouse game” with the crowds. Police fired tear gas and shots into the air to repulse the crowd that then advanced again.⁸⁷ Some officers also fired into the

⁸⁴ Human Rights Watch interview, Kawangware, September 8, 2017.

⁸⁵ Human Rights Watch interview, Kawangware, September 8, 2017.

⁸⁶ Amnesty International interviews, Kawangware, September 2, 2017.

⁸⁷ Amnesty International interview, Kibera, August 29, 2017.

crowds, killing at least four. As mentioned above, witnesses described GSU officers loading the bodies of four people shot onto trucks.⁸⁸

During these clashes, which continued up to 1 a.m., police beat several people – a local businessman described being beaten and verbally abused by police, losing many teeth in the process.⁸⁹ Researchers spoke to several men who were watching an English Premier League soccer game on Kibera Drive when police made them lie down on the ground and beat them severely.⁹⁰

The following day protests continued, with beatings and shootings of protestors. A university student, was shot in the leg near Olympic primary school as he crept to check if the coast was clear, he said.⁹¹ Another, a carpenter, described police aiming at him from a distance as they battled protestors in his neighborhood. He was shot in the ribs. At the time of interview, the bullet was still lodged in his body.⁹²

Relatives said that during protests on August 10, **Geoffrey Onacha**, a 34-year-old resident in Kibera, was shot dead. We could not establish who fired the gun. His family went to view the body the next day in City Mortuary. His daughter, **Sharon Imenza**, age 10, was so traumatized from seeing the body in the hospital that she collapsed immediately and died, according to a relative. Relatives buried both soon after in western Kenya without reporting to police or IPOA.

In total, during the period, Ushirika hospital at Olympic recorded 31 victims of beatings and gunshot wounds and Kibera South health center recorded 12.

The allegations that security forces in Kibera took away bodies which have not been accounted for are deeply worrying and these incidents need to be speedily and thoroughly investigated by IPOA and other relevant authorities. The authorities have an obligation to ensure that all deaths as a result of police action are fully investigated, and not to cover up such deaths by disposing of bodies without recording the deaths with the

⁸⁸ Amnesty International interviews, Kibera, September 3, 2017.

⁸⁹ Amnesty International interview, Kibera, August 29, 2017.

⁹⁰ Human Rights Watch interviews, Kibera, August 29, 2017.

⁹¹ Amnesty International interview, Kibera, August 29, 2017.

⁹² Human Rights Watch interview, Kibera, August 29, 2017.

proper authorities or revealing the whereabouts of the bodies to the relatives or others with a legitimate interest.

Mathare

Mathare was also a scene of very violent police behavior and nine apparent killings by police. Multiple police units deployed in opposition strongholds of Mathare several days before the voting on August 8. Following the violence in the slum after the poll, they used teargas and water cannons, batons and firearms for several days, leaving at least nine dead between August 9 and 12, with seven of them shot dead and two beaten to death.⁹³ Dozens of people were treated in local clinics and hospitals for gunshot wounds and other injuries sustained as police battled violent protestors and conducted house-to-house raids pursuing protestors in their homes. Violations by police were concentrated in opposition areas, while ruling party areas such as Kiamaiko and Mlango Kubwa remained calm.⁹⁴

Williams Waka 42, was shot dead on August 11, according to what witnesses told his relatives.⁹⁵ The relatives saw his body the following day with a small entry wound on one side of the ribs and a large exit wound, at City Mortuary. The family members told researchers they could not afford a post-mortem and they buried him on August 17 without reporting to police or IPOA.

Two other men were shot dead in Bondeni area at around 1a.m. on August 12, according to their relatives. Bonface Ochieng Owino, 31, a plumber, and his close friend and relative, a restaurant owner, David Owino, 28, left their respective houses in Bondeni area of Mathare and went to join demonstrators on Juja road soon after Kenyatta was declared winner at 10 p.m. on August 11.⁹⁶ The next morning, relatives said they received news they had been shot dead. The families later found their bodies at the City Mortuary.

On the morning of August 12, police swept through neighborhoods in Mathare 4A, areas C and T pursuing protestors. They kicked doors open, pulled men out of their houses, and

⁹³ Human Rights Watch interview with community mobiliser, Mathare, August 24, 2017; interview with school teacher and victim of police beatings, Mathare 4A, August 23, 2017; interview with youth leader who assisted several victims, Mathare 4A, August 23, 2017.

⁹⁴ Human Rights Watch interview with human rights activist, Mathare, August 23, 2017.

⁹⁵ Human Rights Watch interview with relative, Kawangware, August 8, 2017.

⁹⁶ Human Rights Watch joint interview with relatives to Bonface and David, Mathare – Bondeni area, August 24, 2017.

beat them with batons and gun butts.⁹⁷ Victims said police shot at residents even where there was no evidence that their lives could have been in danger.⁹⁸

In another case, a human rights activist said police beat to death **Bernard Ochieng Omondi**, 31, a community mobiliser for a community-based organization in Mathare.⁹⁹ Researchers were however unable to establish further details and the circumstances surrounding his beating and eventual death.

According to mortuary records, police took the body of a middle-aged man, **Fahuel Muruka Amule**, to Nairobi's city mortuary from Mathare on August 12 with bullet wounds in the chest. Researchers were however unable to establish the circumstances of his killing.¹⁰⁰

On August 13, a witness said, police shot dead 32-year-old construction worker, **Christopher Samwell Mutua**, after he stepped out of his house in Mathare North at around 8pm.¹⁰¹ A witness and neighbor who was with him told researchers that directly after the shooting, a group of 10 officers in full anti-riot gear and armed with guns and batons emerged from the darkness. "There were no demonstrations in this area or where he was shot," added the neighbor.¹⁰²

Seven other men were shot dead during the post-election period in Mathare. Further investigation is needed to determine this in each case and what were the circumstances of each killing; if they were shot by security forces the investigation needs to examine in particular whether any of those shot posed an imminent threat to life or of serious injury at the time they were killed, or if the security forces acted unlawfully.

Many beatings were extremely severe. A 20-year-old man, who didn't want to give his name for fear of reprisals, was beaten by police and left for dead. Nearly three weeks later

⁹⁷ Human Rights Watch interview with multiple victims, Mathare 4A – C area, August 23, 2017; interview with multiple victims and community leaders, Mathare 4A – T area, August 24, 2017.

⁹⁸ Human Rights Watch interview with relative of victim, Mathare 4A, August 23, 2017; interview with spouse of victim, Mathare North, August 24, 2017.

⁹⁹ Human Rights Watch interview with a human rights activist, Mathare 4A – C area, August 23, 2017.

¹⁰⁰ Records at Nairobi City Mortuary, on file.

¹⁰¹ Human Rights Watch interview with family member, Mathare North, August 24, 2017.

¹⁰² Ibid.

when a researcher interviewed him, he still could not remember what had happened due to beatings on his head.¹⁰³ Another man said he had broken ribs while at least three others said they could no longer work or fend for their families due to beatings.¹⁰⁴

Men believed by witnesses to be plain clothed officers fired at bystanders, including children. At around 9 a.m. on August 12, three men in plain clothes and who residents said they believed to be officers from the Directorate of Criminal Investigations, wounded a 12-year-old primary school boy in Mathare 4A who was out playing with classmates.¹⁰⁵ The boy was later admitted at Kenyatta National Hospital with gunshot injuries in the left leg. "They were shooting at anyone, in most cases those in groups of more than three. The man who shot at the boy had an AK47 and he is a CID officer well known in this area," said a 22 – year old man and resident of Mathare 4A.¹⁰⁶

Babadogo

In addition to killing three boys in Babadogo described above, the police beat at least two people badly and several other people sustained gunshot wounds after police had deployed to the area and begun shooting.¹⁰⁷

Residents described turning out to defend the community against "Mungiki" but then being shot by people apparently wearing police uniforms. A 40-year-old construction worker from western Kenya said he was among the residents who went out in a large group to defend their neighborhood against Mungiki, and was shot in the back.¹⁰⁸ A second man, a 35-year-old carpenter, was shot in the lower back area that same night. "We thought they were Mungiki because they acted sneaky in the dark. Police in this area are well known and they told us they did not know the people who attacked us that night," said the victim from Kasabuni side of Babadogo.¹⁰⁹

¹⁰³ Human Rights Watch interview with victim of police beating, name withheld Mathare 4A – C area, August 23, 2017.

¹⁰⁴ Human Rights watch interview with multiple victims of police beatings, Mathare 4A – C area and Mathare 4A – T area, August 24, 2017.

¹⁰⁵ Human Rights watch interview with relative of victim, Mathare 4A – C area, August 23, 2017.

¹⁰⁶ Ibid.

¹⁰⁷ Human Rights Watch interview with human rights activist, Babadogo, August 23, 2017; interview with two witnesses to the killings, Babadogo, August 23, 2017.

¹⁰⁸ Ibid.

¹⁰⁹ Human Rights Watch interview with victim of shooting, Babadogo – Kasabuni area, August 23, 2017.

Korogocho and Kariobangi

There were house to house operations by GSU police in Korogocho and the officers beat residents arbitrarily and with excessive force. However, the local police chief said he did not request the GSU to come into his area, they came in pursuit of boys who had surrounded the police post at Waraka and burned the chief's office there.¹¹⁰

In Korogocho and Kariobangi, protests erupted following the announcement of the presidential election results but the police reacted in very different fashion to their colleagues in Kawangware, Mathare and elsewhere. In both locations, residents did not report to researchers any deaths at the hands of police

In Korogocho, the OCS of the local police post, a trainer in community policing methods at the police academy, explained that he urged police restraint: "We were provoked a lot but we tried to avoid escalating the situation. We were attacked with stones, but it was just stones."¹¹¹ He stationed GSU reinforcements out of sight and urged them not to deploy, to give him and his local officers a chance to talk to protestors first.¹¹²

In Kariobangi there were clashes along ethnic-political lines between local youths on the night of August 11 after the announcement of results. NASA supporters gathered on the street and told elders and women to go inside, witnesses recalled, and some lit fires as they prepared to clash with "Mungiki" gangs known as "the Hilton group" and the "Kanyama group."¹¹³

But police dispersed the gangs and prevented them from clashing, and intervened in at least one street fight likely saving a young man's life.¹¹⁴

While youth in the Gitathuru area of Kariobangi set shops on fire and destroyed the wall of a school believed belonged to a Kikuyu businessman, there was no loss of life, no reports of gunshot wounds and the disturbance was more short-lived than in other areas. On

¹¹⁰ Amnesty International interview with Chief Inspector, Korogocho Police Post, August 30, 2017.

¹¹¹ Amnesty International interview with Chief Inspector, Korogocho Police Post, August 30, 2017.

¹¹² Ibid.

¹¹³ Amnesty International interview, Kariobangi, August 31, 2017.

¹¹⁴ Ibid.

August 12, police went down into the center of the slum and talked to residents, even handing out water and biscuits.¹¹⁵

Community activists attribute the general avoidance of force by the police in this area to the peace meetings between all candidates, a peace walk prior to the election and a constructive relationship between community leaders and the police command.¹¹⁶

Amnesty International and Human Rights Watch heard similar stories in other areas, of good relationships with local police where community policing approaches, rather than the deployment of paramilitary reinforcements, characterized the state's response to the disturbances following the election.

GSU reinforcements were on standby in Korogocho and in Kariobangi, but in both places, local police chiefs kept them out of sight. The Officer Commanding Station (OCS) in Kariobangi explained: "Because the members of the public, if they see a large number of police, they will want to retaliate."¹¹⁷ Such restraint went a long way to reducing violence, and is a key lesson for the police from the events of August 2017.

Community activists who made lists of victims of police violence at the hands of GSU praised the OCS in Korogocho for his role in averting major violence. The experience of these two areas provides a stark alternative example to police responses elsewhere and shows that police can abide by international standards. It also demonstrates the benefits of the work invested in community relationships by the Kenya police and the support that donors have provided for this work. It is unfortunate that commanders in other areas apparently did not show similar leadership.

¹¹⁵ Amnesty International interviews, Kariobangi, August 31, 2017.

¹¹⁶ Ibid.

¹¹⁷ Amnesty International interview, Kariobangi, August 31, 2017.

IV. Suppression of Freedom of Expression

Police sought to cover up the crackdown by smashing phones and cameras used to document the police response to the protests.

The Committee to Protect Journalists (CPJ) has documented the cases of at least 10 journalists countrywide who reported being harassed by security services and prevented from doing their job during the election period.¹¹⁸ The threats of arrest after the elections from the Nairobi police chief also played a part in intimidating journalists and disrupting their work.

Police smashed the camera of well-known international photographer, Neil Shea, in Kibera when he tried to photograph a youth leader being beaten.¹¹⁹ In Mathare, an activist who tried to capture police on film had his camera snatched and smashed by police. They then beat him for the attempt, saying, he said: "if you film us, it can be used as evidence, we can lose our jobs."¹²⁰ Such experiences were common during the protests.¹²¹

Police obstructed and ejected from the area journalists who were covering protests in Kibera. Kenya Television Network journalist Duncan Khaemba and cameraman David Okech were arrested for not possessing a permit for their protective clothing, whilst Wall Street Journal correspondent, Matina Stevis was hit with a stick and told to leave the area along with others.

Police also threatened human rights defenders. In Mathare, researchers spoke to four human rights defenders who fled their homes after threats from police who told them to

¹¹⁸ CPJ statement, see https://www.the-star.co.ke/news/2017/08/18/probe-harassment-of-journalists-after-poll-remove-safety-hoops-cpj_c1618950 (accessed October 1, 2017).

¹¹⁹ Amnesty International interview, Kibera, August 28, 2017.

¹²⁰ Amnesty International interview, Mathare, August 27, 2017.

¹²¹ See Human Rights Watch "Not Worth the Risk: Threats to Free Expression Ahead of Kenya's 2017 Elections" May 30, 2017; <https://www.hrw.org/report/2017/05/30/not-worth-risk/threats-free-expression-ahead-kenyas-2017-elections> (accessed October 1, 2017).

“stop telling lies”.¹²² In the end, seven human rights defenders from Nairobi who reported threats from police were relocated by human rights groups for their safety.¹²³

Linked to the post-election violence and attempts to suppress reporting about it was the government’s attack on human rights organizations, Kenya Human Rights Commission (KHRC) and the Africa Centre for Open Governance (AfriCOG). In mid-August both groups were ordered to close and had their bank accounts frozen by the NGO Coordination Board.¹²⁴ KHRC was part of a coalition of organizations monitoring police behavior, and AfriCOG is one of the foremost funders, supporters and trainers of the many community-based paralegal organizations that offer legal advice and human rights monitoring in the slums.

Some commentaries have focused on the possible role of these organizations in supporting a petition challenging the election result, and an attempt by the government to impede that process, as a possible motivation for the closure. But the impact on their work at the grassroots level was far more significant, and disrupted efforts to document rights violations in informal settlements and Kibera.¹²⁵ The order also diverted other human rights organizations from the central work of documenting the post-election violence.

¹²² Human Rights Watch interviews, Mathare, August 14, 2017.

¹²³ Amnesty International interview with a human rights defender network, Nairobi, August 28, 2017.

¹²⁴ ‘UN, Amnesty condemn NGO board over AfriCOG, KHRC attacks’ *The Nation*, August 15, 2017
<http://www.nation.co.ke/news/UN-Amnesty-condemn-NGO-board-AfriCOG-KHRC/1056-4058566-8ryftpz/index.html>
 (accessed October 1, 2017).

¹²⁵ ‘Exposed: Why ‘Statehouse’ ordered closure of KHRC, AfriCOG, arrest of activists,’ *Kenya Today*, August 16, 2017
<https://www.kenya-today.com/politics/exposed-statehouse-ordered-closure-khrc-africog-arrest-civil-society-activists>
 (accessed October 1, 2017).

V. Response of Government Agencies

Under Kenyan law, police may use lethal force only when necessary for self-defence or to save a life. Section 4 of the Sixth Schedule of the National Police Service Act of 2011 requires police officers who use lethal force to report to their immediate superior explaining the circumstances that necessitated the use of force. Section 5 of the same act requires officials to report any use of force that leads to death or serious injury to IPOA for investigation. At time of writing, the police have not complied with this requirement to date.¹²⁶

The government's response has largely been to deny the scale of the violence. Even as the clashes were ongoing, the acting Cabinet Secretary for the interior, Fred Matiang'i, claimed on August 12 that police had not used firearms, nor killed anyone. He claimed all demonstrators were looters and thus implied they were legitimate targets for shooting.¹²⁷ The cabinet secretary suggested that the few people who might have been killed were criminals who were looting shops and that police had only acted to thwart such criminal attempts. Matiang'i said:

Peaceful demonstrations and picketing are protected by the Constitution and our police always act according to the law. Individuals or gangs that are looting shops; that want to endanger lives, breaking into people's businesses; those are not demonstrators, they're criminals.¹²⁸

According to victims at time of writing, IPOA has taken statements from families and witnesses in at least six cases of police shooting so far. IPOA refused to share with researchers information that it said related to ongoing investigations. However, IPOA had a standing arrangement with the NGO Independent Medical Legal Unit (IMLU) during the

¹²⁶ Human Rights Watch, correspondence with IPOA, September 13, 2017.

¹²⁷ 'Matiang'i denies use of live bullets, deaths, in post-election protests,' *The Star*, August 12, 2017, https://www.the-star.co.ke/news/2017/08/12/matiangi-denies-use-of-live-bullets-deaths-in-post-election-protests_c1615392 (accessed October 1, 2017).

¹²⁸ Jeremiah Wakaya, "Matiang'i denies protesters killed by police, warns protesters will be crushed," Capital FM Online, August 12, 2017; <http://www.capitalfm.co.ke/news/2017/08/matiangi-denies-protesters-killed-by-police-warns-violence-will-be-crushed/>.

crisis, which provided IPOA with some insights into the cases of dead and injured referred by monitors. One shooting victim told researchers that IPOA had visited him in hospital.

However, IPOA has to date not proven effective at investigating police, concluding at least seven cases since its inception in 2012.¹²⁹ During those years, rogue police activity, especially by the Anti-Terror Police Unit (ATPU) has gone unchecked.¹³⁰ Donor support for the ATPU, and a wilful blindness to its violations, means that even as donors support and fund community engagement initiatives, they are not speaking with one voice on accountability for police. Police reform in Kenya still has a long way to go.¹³¹

Unsurprisingly, sources within IPOA told Reuters journalists that the police were not cooperating with them in their investigations into police actions in the post-election period.¹³² And the experience of the family of Festo Kivogo, (see above), for whom even the intervention of IPOA could not secure the release of the post-mortem into his death, suggests that IPOA faces an uphill struggle to establish facts and prosecute cases.

Many relatives told researchers that they could not afford a post-mortem, nor did they see the point of reporting the death saying "the police cannot investigate themselves."¹³³ Ordinarily under Kenyan law, a family needs to register a complaint or express doubt about the cause of death for the state to order a post-mortem.¹³⁴ In practice though, most families are asked to pay.

¹²⁹ Human Rights Watch interview with IPOA, Nairobi, 2016; Under the law, both IPOA and Kenya National Commission on Human Rights, a constitutional commission, have power to investigate police misconduct. IPOA refers cases it has investigated to the office of the Director of Public Prosecutions for prosecution; KNCHR can either refer to the DPP or prosecute by itself. The DPP can order investigations into police misconduct. National Police Service Commission generally does not investigate such abuses, but where information is made available to it, the commission can institute disciplinary proceedings against officers implicated in use of excessive force or unlawful killings.

¹³⁰ See Human Rights Watch, 'Kenya: Killings, Disappearances by Anti-Terror Police,' August 18, 2014, <https://www.hrw.org/news/2014/08/18/kenya-killings-disappearances-anti-terror-police>; and Kenya National Commission on Human Rights, 'The Error of Fighting Terror with Terror', (2015) <http://www.knchr.org/Portals/0/CivilAndPoliticalReports/Final%20Disappearances%20report%20pdf.pdf>.

¹³¹ Amnesty International, 'A Drop in the Ocean: Police Reform in Kenya,' 2013, <https://www.amnesty.org/en/documents/afr32/001/2013/en/2013>.

¹³² 'Kenya Police not cooperating with watchdog over election deaths: sources.' Reuters, September, 6, 2017 <http://af.reuters.com/article/africaTech/IdAFKCN1BH25Q-OZATP>.

¹³³ Human Rights Watch interview, Kawangware, September 8, 2017.

¹³⁴ The relevant law is the Criminal Procedure Code, 1931.

Neither police nor IPOA have come to visit the families of many victims, especially relatives of those killed in Kawangware.¹³⁵ The potential extent of police killings in the 2017 post-election period, at least 50 nationwide, requires a broader investigation which should include penetrating questions over the planning, deployments, command and orders given. IPOA does not in practice have the requisite independence, nor does it have sufficient powers or resources, for the scope of investigations required, especially given the power of some of the people who must be subject to scrutiny. Hence the need for a judicial inquiry.

As shown in this report, there were far more abuses by police in opposition-populated areas where GSU/paramilitary police deployed. Some residents and rights activists have claimed that the police action was indeed not a preventive response to spontaneous demonstrations and violence, but pre-meditated, selective and punitive. Some weight is added to this claim by a comment made by one police officer interviewed for this report who said that an officer's decision not to deploy GSU in his area – although it may have been sensible and life-saving – might not have been what his superiors wanted.¹³⁶ That such a thought is even possible is cause for grave concern.

¹³⁵ Amnesty International and Human Rights Watch interviews, Kawangware September, 2017.

¹³⁶ Amnesty International interview, Nairobi, date withheld.

Appendix 1: Table of Confirmed Deaths and Alleged Perpetrators During Post-Election Violence in Nairobi, 2017

No.	Name	Location	Date	Description of Violation	Status
1	Francis Njuguna, 31 years old	Kariobangi, Nairobi	August 11, 2017	Shot dead	Body found at City Mortuary
2	Vincent Omondi Okebe, 27 years old	Dandora, Nairobi	August 11, 2017	Shot by police	Died at Kenyatta National Hospital
3	Thomas Odhiambo Okul, 26 years old	Dandora, Nairobi	August 11, 2017	Shot inside his gate by police	Died instantly
4	Kevin Otieno, 23 years old	Dandora, Nairobi	August 12, 2017	Shot outside his gate by police	Died on way to hospital
5	Vitalis Otieno, 24 years old	Dandora, Nairobi	August 12, 2017	Died of shock	Died in his house
6	Sammy Amira Loka, 45 years old	Kawangware Stage Two, Nairobi	August 9, 2017	Hit by a teargas canister – inhaled teargas	Died at KNH on August 10, 2017
7	Lilian Khavere, 40 years old, 8 months pregnant	Kawangware No.56, Nairobi	August 9, 2017	Teargassed, fell and trampled by crowd	Died at KNH
8	Festo Kevogo, 33 years old	Kawangware No. 56, Nairobi	August 12, 2017	Shot through the head by police	Died on way to hospital
9	Melvin Mboka Mwangitsi, 19 years old	Satellite/Kawangware, Nairobi	August 9, 2017	Shot dead by police	Body traced at KNH mortuary
10	Paul Mungai, 33 years old	Kawangware No 56, Nairobi	August 12, 2017	Shot in the abdomen by	Died from internal bleeding at KNH

				police in his house	
11	Zebedeo Mukhala, 42 years old	Kawangware No. 56, Nairobi	August 12, 2017	Shot in the leg, fell and trampled by crowd	Died at Mbagathi Hospital on August 14, 2017
12	Violet Khagai, 43 years old	Kawangware Stage Two, Nairobi	August 12, 2017	Hit by teargas and inhaled pepper spray	Died on way to hospital
13	Eric Kwama, 30 years old	Kawangware Stage Two, Nairobi	August 10, 2017	Hit by teargas fired at close range, inhaled pepper spray	Died at Kenyatta National Hospital (KNH)
14	Nelvin Amakove, 30 years old	Kawangware No. 56, Nairobi	August 11, 2017	Caught up in riots, shot in the back while running away from police	Died instantly; body traced to KNH
15	Suleiman Khatibu, 25-year-old Tanzanian national, employee of San Valencia restaurant in Karen	Kinyanjui area, Wanye, near Kawangware, Nairobi	August 11, 2017	Hit in chest by teargas fired at close range, bled through nose and mouth	Died at KNH on August 18, 2017
16	Jeremiah Maranga, 50 years old, G4S employee	Kawangware No.56, Nairobi	August 11, 2017	Beaten by police and left for dead, body soaked in blood	Died of internal bleeding and severe organ damage while waiting for treatment at KNH
17	Benson Wandera, 47 years old	Kinyanjui area, near Kawangware, Nairobi	August 11, 2017	Shot dead by police.	Buried in western Kenya, Busia county
18	Silas Owiti Lebo, 18 years	Mathare 4A - C area, Nairobi	August 12, 2017	Beaten by police	Died on admission in hospital

19	Bernard Okoth Odoyo, 25 years old	Mathare 4A, Nairobi	August 9, 2017	Shot in the back	Died instantly at No.10
20	Victor Okoth Obondo, 24 years old	Mathare 4A, Nairobi	August 9, 2017	Shot in the back	Died instantly at No.10
21	Williams Waka, 42 years old	Mathare North, Nairobi	August 9, 2017	Shot in the chest	Body traced to City Mortuary
22	Boniface Ochieng Owino, 31 years old	Mathare, Bondeni area, Nairobi	August 12, 2017	Shot in the chest	Died instantly along Juja road
23	David Owino, 28 years old	Mathare, Bondeni area, Nairobi	August 12, 2017	Shot in the chest	Died instantly along Juja road
24	Stephanie Moraa Nyarangi, 9 years old	Mathare North, Nairobi	August 12, 2017	Shot in the chest	Died instantly on balcony
25	Christopher Samwell Mutua, 32 years old	Mathare North, Nairobi	August 13, 2017	Shot in the chest at close range	Died instantly near his house
26	Fanuel Muruka Amule, 30 years old	Mathare North, Nairobi	August 12, 2017	Shot in the chest	Body traced to City Mortuary
27	Raphael Ayieko, 17 years old	Babadogo, Kasabuni area, Nairobi	August 12, 2017	Shot in the back	Died instantly
28	Privel Ochieng Ameso, 18 years	Babadogo, Kasabuni area, Nairobi	August 12, 2017	Shot at back of neck and in the hip while on his knees	Died instantly
29	Shaddy Omondi Juma, 17 years old	Babadogo, Kasabuni area, Nairobi	August 12, 2017	Shot dead while on his knees	Body traced to City Mortuary with five bullet wounds
30	Geoffrey Onacha, 34 years old	Kibera, Nairobi	August 10, 2017	Shot dead	Body traced at City Mortuary
31	Sharon Imenza, 10-year-old daughter of	Kibera, Nairobi	August 11, 2017	Collapsed and died upon	Collapsed

	Geoffrey Onacha above			seeing father's body	
32	Henry Onyango Matete	Kibera, Olympic area, Nairobi	August 12, 2017	Beaten by police	Died a day later at Muthaiga Hospital
33.	Michael Owino, 28 years old	Kibera Olympic area, Nairobi	August 12, 2017	Shot dead and body taken away in body bag	Boy yet to be found
34.	Between 17 to 27 unconfirmed cases from various parts of Nairobi	Kawangware, Kibera, Mathare, Dandora	August 9 to 13	Allegedly shot by police	Did not document for various reasons – families and witnesses not willing to speak

“Kill Those Criminals”

Security Forces Violations in Kenya’s August 2017 Elections

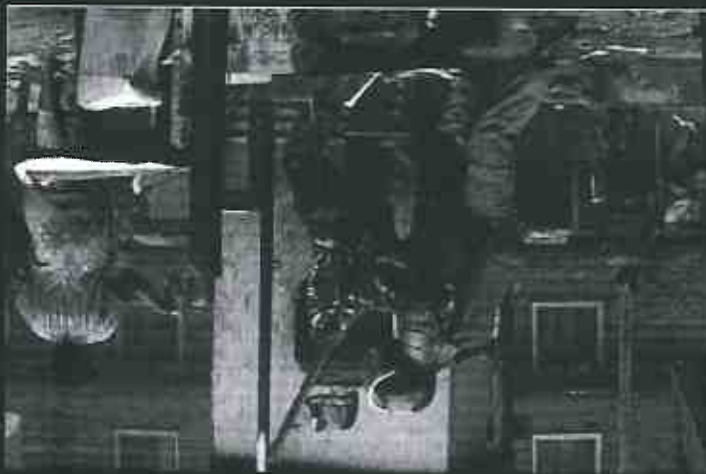
On August 11, 2017, the Independent Electoral and Boundaries Commission declared incumbent President Uhuru Kenyatta winner of the presidential elections amid claims of fraud. Opposition supporters in Nairobi, the coast and western Kenya protested the results, burning tyres and lighting bonfires, blocking roads and stoning police officers.

Based on one month of research in Nairobi’s informal settlements, this report documents how police used excessive force against protesters, firing teargas in residential areas or inside houses, shooting in the air but also directly into the crowd and carrying out violent and abusive house to house operations, beating and shooting residents.

In Nairobi alone, at least 33 people were killed. There were unconfirmed reports of another 17 dead in Nairobi. Added to 12 killings documented earlier by Human Rights Watch in western Kenya, and 5 new cases reported by KNCHR on October 9 the national death toll could be as high as 67.

The report also describes how police harassed and intimidated journalists and human rights defenders.

Amnesty International and Human Rights Watch call on the Kenyan government to acknowledge, condemn and investigate the killings and excessive use of force by police and other security agencies and to urgently take measures to prevent a repeat in the upcoming fresh election.

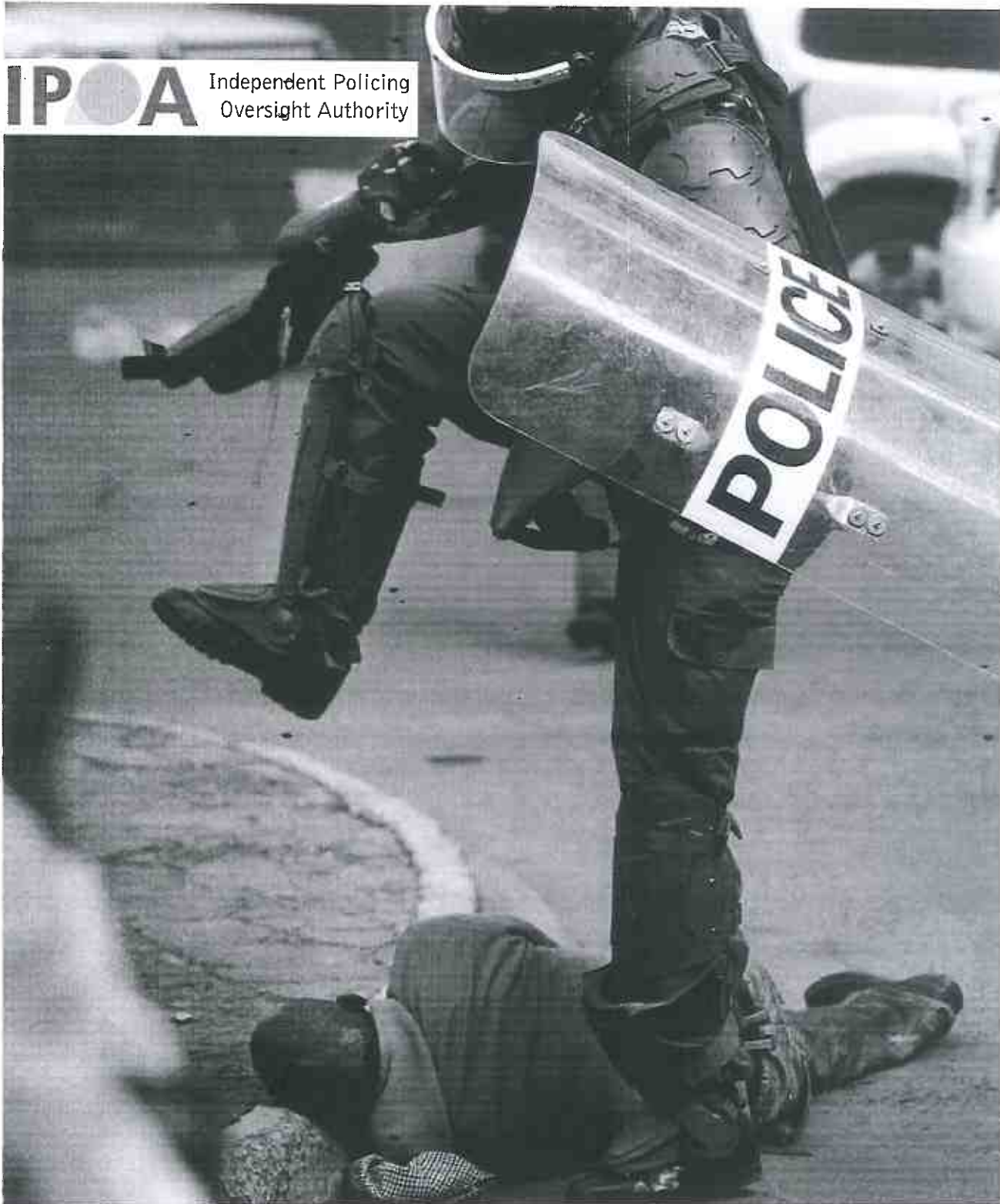


Residents flee as anti-riot policemen pursue opposition protesters in Mathare, Nairobi, on August 12.

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Monitoring Report on Police Conduct during Public Protests and Gatherings

A Focus on the Anti-IEBC Demonstrations (April – June 2016)

This is the exhibit marked... *KK 5*
Annexed to in the Affidavit/Declaration
Of... *Shebet Bhalifa*
Sworn / Declared Before me this...
Day of... *September 23*... At... *Nairobi*
in the Republic of Kenya
[Signature]
Commissioner for Oath

Monitoring Report on Police Conduct during Public Protests and Gatherings

A Focus on the Anti-IEBC Demonstrations (April – June 2016)


February 2017

MONITORING REPORT ON POLICE CONDUCT DURING PUBLIC PROTESTS AND GATHERINGS


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December 2016

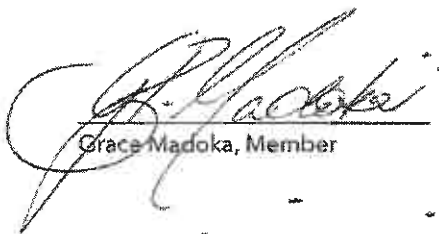
BOARD SIGNATURES



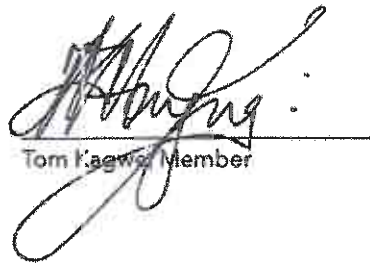
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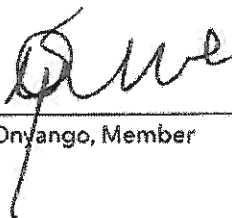
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LIST OF ACRONYMS AND ABBREVIATIONS

APS	Administration Police Service
CORD	Coalition for Reforms and Democracy
GSU	General Service Unit
IEBC	Independent Electoral and Boundaries Commission
IPOA	Independent Policing Oversight Authority
KAPU	Kenya Airport Police Unit
KPS	Kenya Police Service
MCA	Member of County Assembly
NPS	National Police Service
NPSC	National Police Service Commission
RBPU	Rural Border Patrol Unit
RDU	Rapid Deployment Unit
SGB	Security of Government Building

FOREWORD

The Independent Policing Oversight Authority (IPOA) is established to provide oversight, on behalf of the public, in the work of the National Police Service (NPS) and to ensure accountability, impartiality and respect for human rights in policing. Section 6 (c) of the Independent Policing Oversight Authority Act No. 35 of 2011, mandates the Authority to monitor and investigate policing operations affecting members of the public. In case of this Report, the policing operations pertain to public order management prior, during and after public assemblies, demonstrations, picketing and presentation of petitions.



Between April and June 2016, IPOA monitored the police operations relating to the public protests and gatherings; also known as 'anti-IEBC (Independent Electoral and Boundaries' Commission) demonstrations'. Since they began, five (5) demonstrations were held in the entire country; mostly on Monday's and later Monday's and Thursday's.

The Authority has in the past highlighted areas of concern in the way policing is conducted and especially during public order management. It is the Authority's position that public order management should be done in a professional manner, as enshrined in Constitution under Article 37, thus every person has the right, peaceably and unarmed, to assemble, to demonstrate, to picket, and to present petitions to public authorities. This is a right that determines the quality of policing and police professionalism; now and in the future.

Article 38 of the Constitution allows pursuit of legitimate political interests and therefore, the National Police Service cannot interfere with such interests. This however is subject to the parties concerned doing so within the confines of the law; by only notification and not whether any police officer can decline or accept such notification. Indeed, action or inaction by the Service, when such notification is issued, in itself would amount to dereliction of duty.

In policing public protests and gatherings, IPOA expects the Inspector General to ensure discipline amongst the officers that he commands if we are to have a professional National Police Service. Equally, action should be taken against offending members of the Service if they break the law.

It is IPOA's expectation that the National Police Service will act strictly in compliance with the Constitution, other written laws or regulations particularly the National Police Service Act and their Service Standing Orders, and that the use of lethal force should be avoided and if required, be exercised only to the extent that is necessary, ensuring that its minimum, reasonable and proportional to the resistance being faced.

In conclusion, this Report provides candid and frank observations and recommendations, which depicts that the police, in general and in specific circumstances, violated the laws they swore to protect. The recommendations provided should be implemented to ensure realisation of Article 244 of the Constitution.

Macharia Njeru

Chairperson

Independent Policing Oversight Authority

EXECUTIVE SUMMARY

This report is based on the anti-IEBC demonstrations that were organised by the Coalition for Reforms and Democracy (CORD), between April and June 2016, to have the former IEBC disbanded. Since the beginning of the demonstrations in April 25th to 6th June, five demonstrations on every Monday across the county were held. IPOA monitored the police conduct during these five demonstrations.

The main objective of the monitoring was to "monitor and investigate policing operations affecting members of the public" in accordance with Section 6(c) of the IPOA Act. The monitoring was done to ensure compliance with national, regional and international policing norms.

The Authority applied various methodologies while doing the monitoring. These included doing interviews with various general members of the public who suffered under the hands of the police, members of the NPS who were caught between their superiors' orders and the lawbreakers, and also, IPOA interviewed the public whose property was destroyed. The Authority also partnered with various State and non-State actors in various counties during the monitoring of police conduct or misconduct, to corroborate the information that was gathered. Further, the Authority was able to document through video, photography and hand-written reports, with use of media-reports being highly considered.

The key findings were that high levels of police brutality, notoriety, harassment and use of excessive force particularly in Nairobi, Migori, Kisumu, Siaya and Homa Bay Counties was observed. 88 people sustained various forms of injuries raising from minor injuries to serious injuries and arrested persons were detained more than 24 hours and their right to a fair trial was not respected.

Of great concern to the Authority was the use of excessive force on innocent children, women, the disabled and other special interest groups who became victims of police injuries and brutality.

According to Kenya Private Sector Alliance (KEPSA) report¹, each business within the Nairobi Central Business District (CBD) lost at least Kshs. 48,304 per day every time there was a public protest.

Based on these findings, the Authority in line with Article 244 of the Constitution, makes the following recommendations;

1. The National Police Service should urgently establish a comprehensive training on public order management with reference to other international standards as comparatively expressed in Part 7 of this report. This training could seek for external assistance from USA, Sweden and UK, countries that are already involved in the Police Reform Program under the Ministry of Interior and Coordination of National Government. A compulsory section aimed at preparing officers for the psychological challenges and demands required in policing public protests should be introduced beyond the generalized police training.
2. Under the changed policing context, Public Order Management should be made mandatory to all police officers. The abrupt pulling of officers from different units such as General Service Unit (GSU), Security of Government Building (SGB), Kenya Airport Police Unit (KAPU), Rural Border Patrol Unit (RBPU), Rapid Deployment Unit (RDU) among others

¹ http://www.the-star.co.ke/news/2016/08/02/sh48000-revenue-lost-per-business-daily-during-anti-iebc-demos-kepsa_c1396804 accessed on 25th August 2016

without proper briefing and training waters down effective and efficient command, control, communication and coordination. Further, contemporary public order management is a skill and all officers involved in it should have common understanding, with commonality of purpose.

3. The National Police Service should proactively be engaging with the conveners / organizers of public protests and gatherings, and come up with written agreements to reduce tensions while ensuring public order policing. These proactive engagements should among others agree on the timings and the routes to take. Further joint conferences with the organizers to assure the public of their security and safety, and enhance community policing in the country.
4. The National Police Service should enhance intelligence gathering around public order management to map out the criminal elements who might infringe on freedom of assembly, demonstrations and picketing. This should be done with the conveners / organizers of the public protests having their field marshals as well, to promote and protect security of all actors.
5. 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. This would be in conformity with Rule No. 10 of Part A of the Sixth Schedule to the NPS Act, 2011 and would ensure accountability of individual officers.
6. Use of force in the service should be graduated as envisaged under the Sixth Schedule to the NPS Act. First, there should be proclamation with audible loud speakers, which should be graduated to use of physical force; then mechanical force with police being literally a few meters in front of the crowd. Use of coercive and deadly force during public order management should be avoided at all costs, and when used, it should be only to immobilize the victim but not to kill. No loss of life should be encouraged under public order management environment.
7. The National Police Service should abide by Article 239 of the Constitution while performing their functions and exercising their powers. The Service should not act in a partisan manner, further any interest of a political party or cause, or prejudice a political interest of political cause that is legitimate under the Constitution. The Service should remain impartial at all times while carrying out its functions.
8. Use of modern policing skills such as information technology and videography should be encouraged, with tracking of the errant members of the public for later arrests.
9. The police should also ensure availability of medical aid at stand by, with all necessary equipment, to give first aid to those injured during public order management.
10. The communication by policy makers and the ministry of interior prior, during and after public protests and gatherings should be to enhance the rights of Kenyans as enshrined in the constitution and not to curtail them. Public awareness should be enhanced by the Ministry for change of culture, behavior and attitudes of both the police and members of the public.
11. A policy on public order management, with clear guidelines and procedures for policing of public protests and gatherings must be developed, understood and implemented by all officers. The guidelines and procedures should allow local commanders to take creative initiative when new situation arises, while in adherence to the lines of command and control.

1.0 BACKGROUND: RATIONALE AND OBJECTIVES OF THE MONITORING EXERCISE

1.1 IPOA's Mandate

The Independent Policing Oversight Authority Act, No. 35 of 2011, (the IPOA Constitutive Act) requires the Authority to hold the police accountable to the public in the discharge and performance of their functions. This law requires the Authority to give effect to the provisions of Article 244 of the Constitution, which obligates the National Police Service to:

- a). Strive for the highest standards of professionalism and discipline among its members;
- b). Prevent corruption, promote and practice transparency and accountability;
- c). Comply with constitutional standards of human rights and fundamental freedoms;
- d). Train staff to the highest possible standards of competence and integrity and to respect human rights and fundamental freedoms and dignity; and,
- e). Foster and promote relationships with the broader society.

1.2 Objectives and Rationale of Monitoring

The monitoring was aimed at observing and documenting how the police carry out public order management with a focus on public protests and gatherings. Using both national, regional and international norms on how police should conduct themselves during public protests and gatherings, IPOA isolated the Main Objective of the monitoring as: "to monitor and investigate policing operations affecting members of the public" in accordance with the constitutive IPOA Act.

Thereafter, the Specific Objectives were: to ensure that police adhere to the rule of law, professionalism and discipline as per their constitutive Act; to closely monitor the availability and utility of tools and equipment's on public protests; to identify possible misconduct of police officers when managing public order; to investigate where cases of police misconduct were cited; and finally, to recommend to the NPS, or any other State organ on how to manage public order, using national, regional and international norms, of which Kenya's democratic State and its police in general, should adhere to.

From the foregoing, the Authority's monitoring team sought to objectively monitor, document and give recommendations based on the observations of the monitoring in order to realize IPOA's motto: *guarding public interest in policing*.

2.0 METHODOLOGY OF THE MONITORING EXERCISE

Monitoring, as a mandate area of the Authority, is described as: the close observation of a situation so as to determine what further action needs to be taken. In policing context, it is the close observation of systemic policing issues. In this report, the ongoing theme among the police as a whole is the management of public order, or policing of assemblies, protests and gatherings, which has been an ongoing theme in Kenya for a period of time. The main intention is to point out misconduct, open investigations and also hold individual police officers to account for criminal or disciplinary misconduct, and thereof make relevant recommendations to the Service and various State organs.

This Report documents the monitoring exercise carried out by the Authority in the eight weeks of the public protests and gatherings famously referred to as "anti-IEBC demonstrations," which took place in various Counties in the Republic of Kenya. The demonstrations begun on 25th April and ended on 6th June, 2016.

Over this period, the IPOA monitored, with use of a developed tool, the police conduct by physically observing and documenting police conduct or misconduct, particularly how they managed the protests or gatherings in compliance with both national, regional and international norms.

The Authority was able to interview various general members of the public who suffered under the hands of the police; members of the NPS who were caught between their superiors' orders and the hooliganism witnessed, and also, IPOA interviewed the public whose property was destroyed. The Authority also partnered with various State and non-State actors in various counties during the monitoring of police conduct or misconduct.

During the monitoring, the Authority was able to document (through video, photography, and hand-written reports or interviews) high levels of police brutality, notoriety, harassment and excessive use of force particularly in Nairobi, Migori, Kisumu, Siaya and Homabay Counties. Several cases of arbitrary arrests and rounding-up of youth in Mombasa, Nairobi and Kisumu Counties also took place.

The information gathered was analyzed to inform the findings and due to limited reach across the country, the Authority made use of the media (print and audio) to enrich the content of the report, by analyzing the flow of the information as was reported from various parts of the country.

3.0 THE PROTESTS

From 25th April 2016 to 6th June 2016, the Coalition for Reform and Democracy (CORD), leaders and their supporters called for a series of demonstrations against the Independent Electoral and Boundaries Commission (IEBC) across the country. CORD and its supporters sought to have the IEBC disbanded, through public protests, on grounds that it had failed in its mandate of overseeing free, fair, credible and transparent elections. The Commission, it was said, "cannot manage a transparent election"² and "had no trust residue, and the national consensus was that it can't be trusted to oversee credible elections"³. While CORD took this position, those opposed to its disbandment stated that "the Constitution ought to be followed in the disbandment of the Commission"⁴.

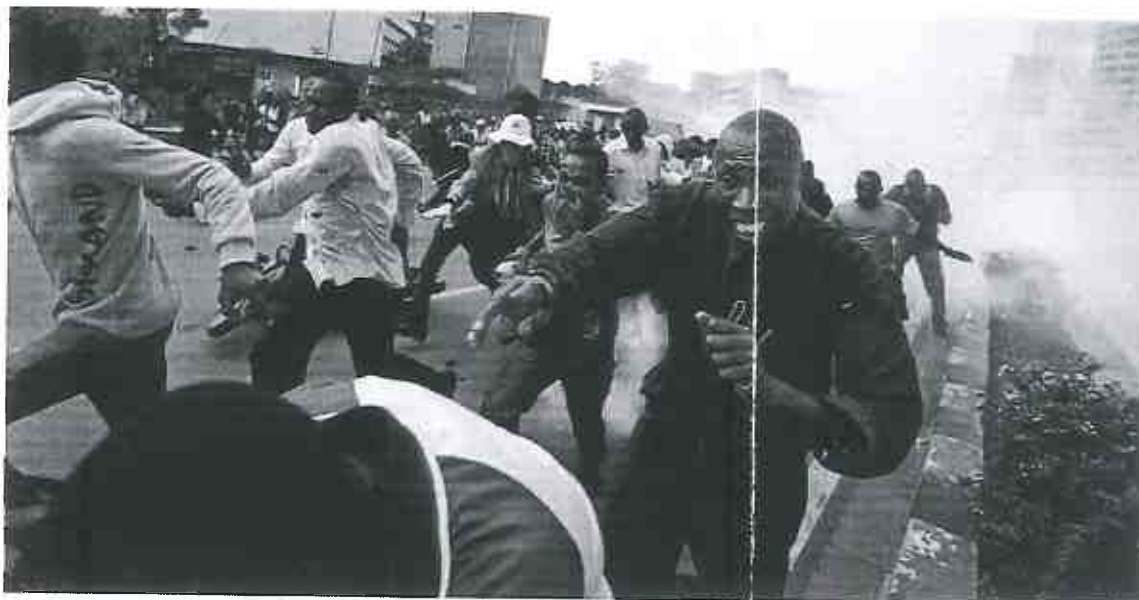
In this period, April to June 2016, a series of five demonstrations were held on April 25th, May 9th, 16th, 23rd and June 6th 2016 across the county, and one Cord rally on 1st June in Nairobi. On these occasions, supporters led by their leaders' and also CORD party officials took to the streets bearing twigs and chanting anti-IEBC slogans as they marched in the streets, to have IEBC disbanded.

In these demonstrations, police officers were deployed to disperse the crowds resulting in confrontations between the police and the demonstrators. This resulted in excessive use of force on demonstrators, serious injuries and deaths under the hands of the NPS officers and occasionally, prison warders.

² <http://www.nation.co.ke/news/Cord-declares-no-election-without-reformed-IEBC/1056-3132518-df30cb/index.html> accessed on 5th September 2016

³ <http://www.standardmedia.co.ke/article/2000199792/four-presidential-candidates-say-iebc-has-lost-credibility-should-be-disbanded> accessed on 5th September 2016

⁴ <http://www.the-star.co.ke/news/2016/05/19/follow-the-law-in-disbanding-iebc-protests-will-not-help-uhuru-tells...c1354402> accessed on 5th September 2016



People caught up in the demonstrations (Courtesy www.dailymail.co.uk)

Conversely, police officers were also injured by demonstrators who wielded crude weapons and stones, to repulse members of the NPS. These demonstrators also affected the maintenance of law and order, particularly by some elements being involved in hooliganism, outright theft and all manner of ills against other persons, who were not involved in the public protests or gatherings.

4.0 POLICING NORMS AND STANDARDS

Before embarking on the major findings of this Report, there is need from the onset to highlight some of the policing norms used all over the world, meaning there are international standards some of which are part of the domestic laws. Notably, the right to assemble peacefully applies to all individuals and groups, unregistered associations, legal entities and corporate bodies without any form of discrimination. The right to freedom of peaceful assembly is included in all the major international human rights instruments including Article 20 of the Universal Declaration of Human Rights (1948); Article 21 of the International Covenant on Civil and Political Rights (1966); Article 15 of the UN Convention on the Rights of the Child (1989). This means that states have an obligation not to interfere or restrict people's rights, but to take the necessary actions to respect, protect and facilitate people's rights.

The African Continent is at the stage of developing Principles and Operational Standards for Policing Assemblies by Law Enforcement Officials, but even without the ratification of these standards, there still exist African Regional Standards contained in, and also derived from the African Charter on Human and Peoples' Rights (ACHPR).

The regulations derived from the ACHPR include Resolutions such as: Resolution 281 on the Right to Peaceful Demonstrations, adopted at 55th Session of the African Commission on Human and Peoples' Rights (ACmHPR) of 2014; Resolution 306 on Police and Human Rights in Africa of 2015; and finally, an early Resolution 69 on Police Reform, Accountability and Civilian Police Oversight in Africa of 2004. These and many other Resolutions bind Kenya.

At the national, or domestic level, Kenya is committed to the above standards through Article 2(6) of the Constitution where any ratification of the above instruments means they are part

and parcel of Kenyan laws under the Constitution. Further, there are the National Police Service, the National Police Service Commission Act (with amendments) and the Independent Policing Oversight Authority Act that enrich policing norms in Kenya.

The above laws and their annexed schedules, the attendant regulations, subsidiary legislation and also the yet-to-be completed Service Standing Orders among others provide how the National Police Service should operate, including during public order management. The subsections below briefly capture the letter and spirit of these policing norms.

4.1 International Standards

At the global level, there are guidelines that govern how law enforcement officials (read, police) should act, behave or respond when it comes to public order management, especially during policing assemblies. First is the United Nations Code of Conduct for Law Enforcement Officials, which is an important set of principles for accountable policing.

Besides setting out general standards of behaviour for police officials, it specifies in Article 8 that any violation of the Code shall be reported to the superior authorities and, if necessary, to other "[...] appropriate authorities or organs vested with reviewing or remedial power⁵." In the Kenyan context, such other appropriate authorities include the IPOA as an external oversight by civilians, and the Internal Affairs Unit, as an internal oversight by police themselves.

Second, the United Nations Basic Principles for Law Enforcement Officials calls for the government and of course the police officers, even in Kenya, to exercise a lot of restraint when using force and firearms when undertaking their mandate. Indeed, in Principle 4, it is outright clear that police, "in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result."

That is, use of excessive force, pain-starkly as it is defined, refers to: "the use of force greater than that which a reasonable and prudent law enforcement officer would use under the circumstances⁶." Whether force is reasonable or necessary or excessive is measured by what a reasonable and prudent law enforcement officer would use under the circumstances. Further, there is a reiteration of the need for caution when it comes to use of force and firearms. The UN Principles read:

"...whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall: a) exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved; b) minimize damage and injury, and respect and preserve human life; c) ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment; d) ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment."⁷

Throughout this guideline, caution is urged when use of force has to be employed. Thus, in any case an injury or a death is caused by the use of force and firearms by law enforcement officials, the police shall report the incident promptly to their superiors, in accordance with Principle 22. Within our domestic laws, as seen below, this Principle 22, is contained in the

⁵ Amnesty International, Dutch Section, *POLICE OVERSIGHT, Police and Human Rights Programme, Short Paper Series No. 2, January 2015*

⁶ <http://definitions.uslegal.com/e/excessive-force/> accessed June 20, 2016

⁷ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/UseOfForceAndFirearms.aspx>, in Principle 5, accessed June 29, 2016

Sixth Schedule of the National Police Service Act, and further also provided that the superiors (Officers' Commanding Stations - OCSs) shall promptly report the matter to IPOA⁸.

Specifically, when it comes to policing assemblies, the subject matter of this Report, whether lawful or unlawful (and indeed the Principles address unlawful assemblies), the government of Kenya and its police service are urged, in very strong terms, to adhere to international standards, most of which are also regional and national standards or norms.

These include: a) the assertion of the right of every person to participate in assemblies as guaranteed in the various international covenants and declarations, which Kenya is signatory to; b) in dispersing assemblies, especially where they are unlawful, but non-violent, police should avoid the use of force, and where used, to the minimum extent necessary; and finally, c) where public assemblies turn violent, police shall avoid use of force unless to the extent minimum and necessary, but cautioned is urged that firearms (which are a form of lethal force), shall not be used. Firearms are only permissible only when:

...in self-defense or defense of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives."⁹

To summarize the need for observing this right to assemble, the UN Special Procedures mechanism on this right, identified in 2015, that: "...[the right to] assembly plays a facilitating role in respect of other rights. In many instances, public protest has been the vehicle through which a wide range of human rights have gained entry into the global human rights project. Protest is a tool primarily used by opposition and minority groups."¹⁰ In so doing, they are able to express their point in the platform that can be accessed and therefore the caution given is that it should not be regulated in favour of those in political power at any given point in time.

In conclusion, international standards are summarized by the Peelian Principles which prohibit police use of force. They provide that policing can never be done without consent of the public; that they (police) too are part of the public; that they cannot act as the judge, jury and the executioner; and also, that police are rated by how they are involved in crime detection and prevention not how they deal with suspected criminals, among other principles. In a nutshell, these international principles have become part and parcel of Kenyan laws, through Article 2 (5 and 6) of the Constitution of Kenya.

4.2 Regional Standards

The African Continent has plenty of democratic principles, which many States signed and have continued to ratify after the post-colonial period. They are not spectacularly different from the international norms, but only to the extent of application within the African States, which seem democratic on paper as the practice leaves a lot to be desired.

As alluded to above, the ACHPR (the Charter) has recognized the right to assemble among

⁸ Pursuant to Section 5 Part B of the Sixth Schedule as read with Section 1 Part C of the Sixth Schedule of the NPS Act, 2011

⁹ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/UseOfForceAndFirearms.aspx>, in Principle 9, accessed June 29, 2016

¹⁰ Christof Heyns, 2011, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, <http://www.icnl.org/research/resources/assembly/Report>, accessed July 07, 2016. Paragraph 31, P 7

many other democratic freedoms and universal human rights, which entered into force 30 years ago after ratification by the requisite State Parties. Specifically, the Charter provides that: "...every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedom of others."¹¹

There is need to understand or acknowledge that rights cannot be limited by police action or inaction. Rights can only be limited by law, whereby in Kenya, national security definition includes protection of human rights and fundamental freedoms. For any limitation on rights such as freedom to assemble, there must be a law or judicial review, which should determine how police or government could purport to "stop demonstrations in Kenya", as was seen recently in June 2016, clawing back the constitutional gains. It is crystal clear that a right "shall not be limited except by law, and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom."¹²

On policing assemblies, the ACmHPR (the Commission) is currently working on the Principles and Operational Standards for Policing Assemblies by Law Enforcement Officials in Africa, which shall enhance the realization of this important right in the context of African policing.¹³ There are a number of Resolutions passed within the mandate of the Commission, and of particular emphasis, is Resolution on the Right to Peaceful Demonstrations, No. 281 of May 2014.

The Commission, having considered the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, exercised their mandate and adopted Resolution 281 of the Commission, which among others, provides for protection of peaceful protesters regardless of their political affiliation or any other; refrain from disproportionate use of force and/or firearms against the demonstrators; and also, refrain from conducting arbitrary arrests and detention of demonstrators.¹⁴ Noteworthy of mention is that this Report, in documenting Kenyan police operations of May 2016, (two years after adoption of the Resolution), police were in total violation of the same with impunity.

To demonstrate using a case study of the Republic of South Africa during the former apartheid system of governance and policing, particularly their role in public order management during freedom protests, it is documented by their former Commission on Truth and Reconciliation, that:

"...the creation of a specialized riot control function within South Africa's policing agencies was essentially a reaction to the disorder and political unrest associated with resistance to apartheid... Since the nature of their task was inherently public, the police units tasked with riot control played a prominent role as front line 'enforcers' of apartheid policies, and were viewed with a mixture of fear and loathing by the communities in which they served. The units were para-military in nature (by way of training, operational understanding and culture), and brutal in the enforcement of bans on political protest. They operated within a policy paradigm that accepted and supported the lethal use of force. This, combined with

¹¹ [http://www.achpr.org/instruments/achpr/Article 11](http://www.achpr.org/instruments/achpr/Article%2011), accessed July 07, 2016

¹² Constitution of Kenya, Article 24(1), on limitation of rights and fundamental freedoms, <http://kenyalaw.org/kl/index.php?id=398>, accessed July 10, 2016.

¹³ African Commission on Human and Peoples' Rights, *Policing Assemblies in Africa: Principles and Operational Standards for the Policing of Assemblies by Law Enforcement Officials in Africa*, ZERO DRAFT, 28 June 2016. These Principles, done by APCOF, are for discussion and possible adoption in an Ordinary Session slated for October 2016.

¹⁴ <http://www.achpr.org/sessions/55th/resolutions/281/>, accessed July 10, 2016.

the authorities' complete intolerance of protest action, meant that they frequently used maximum force."¹⁵

The above paragraph seems to define what is the National Police Service, and in particular, the General Service Unit (GSU) and some members of the Administrative Police Service (APS), who through their nature of training and their approach to public order management, has predisposed negative culture and attitude towards the public, as seen below in this Report. This would require urgent redress.

From the foregoing, it is imperative to briefly outline the national standards, most of which are borrowed from the Constitution of Kenya and the international and regional standards on policing, of which the State is party to.

4.3 National Standards

It is evident that whatever international or regional standards that exist, Kenyan police are obligated to underscore and respect, but are in utter disregard. Kenya is failing in meeting the regional and international obligations.

Therefore, despite domesticating these norms into Kenya's Constitution, subsequent legislation and attendant schedules, and subsidiary legislation or regulations among others, both the Kenya Police Service (KPS) and Administration Police Service (APS) are wanting in terms of how they respect and protect freedom of assembly, which our national standard points out that: "... every person has the right, peaceably and unarmed, to assemble, to demonstrate, to picket, and to present petitions to public authorities."¹⁶ Thereafter, the Constitution provides under Article 24 for limitation of those rights based on what was alluded to above, but also factors that include:

"a) the nature of the right or fundamental freedom; b) the importance of the purpose of the limitation; c) the nature and extent of the limitation; d) the need to ensure that the enjoyment of rights and fundamental freedoms by any individual does not prejudice the rights and fundamental freedoms of others; and e), the relation between the limitation and its purpose and whether there are less restrictive means to achieve the purpose."¹⁷

It is against this legal principles of non-limitation of fundamental freedoms and human rights that the not-so-new set of laws were enacted to bring for a fresh and independent police service, where the constitutional Articles 244, 245, and 246 were to be made operational through the work of the IPOA, the independence of the National Police Service, and especially the office of the Inspector General, and the NPSC respectively.

The laws that created this three new entities provide a legal framework that if followed in letter and spirit, then the police transformation process should have begun in 2012. That transformation, according to IPOA never started, and if it did at all, it was nipped in the bud in the year 2014, through many attempts or successful amendments of the same laws (save for the IPOA Act), no to mention the introduction of draconian laws such as the Security Laws (Amendment) Act of December 2014. Beyond the 'hardware' issues of law and lack of modern equipment and tools, not to mention police welfare, the 'software' issues of attitudes, behaviour, culture and

¹⁵ Janine Rauch and David Storey, *The Policing of Public Gatherings and Demonstrations in South Africa 1960-1994*, Paper commissioned by The Commission on Truth and Reconciliation (TRC) Research Department, May 1998.

¹⁶ Constitution of Kenya, Article 37, on assembly, demonstration, picketing and petition

¹⁷ Ibid, Article 24, on limitation of rights and fundamental freedoms

response of police to public order policing, and their knee-jerk reactions when accountability is demanded, are urgently needed.

Nonetheless, even with the amendments, some solid rules and principles were left intact, since the Constitution has never been amended. Further, amendments to some of the very principles in the subsequent legislation have been declared unconstitutional, particularly the Security Laws (Amendment) Act¹⁸.

This being a Monitoring Report, police were held to account on the basis of the Constitution (especially the Bill of Rights from Article 19 to 59) and subsequent legislation where necessary. Some of these Constitutional principles that still apply and have been used to hold police accountable, from a national (read Constitutional) standards, include:

- (1) Article 26: A person shall not be deprived of life intentionally, except to the extent authorized by this Constitution or other written law.
- (2) Article 28: Every person has inherent dignity and the right to have that dignity respected and protected.
- (3) Article 29: Every person has the right to freedom and security of the person, which includes the right not to be: subjected to any form of violence from either public or private sources; subjected to torture in any manner, whether physical or psychological; and treated or punished in a cruel, inhuman or degrading manner.
- (4) Article 36: Every person has the right to freedom of association, which includes the right to form, join or participate in the activities of an association of any kind.
- (5) Article 37: Every person has the right, peaceably and unarmed, to assemble, to demonstrate, to picket and to present petitions to public authorities.
- (6) Article 38: Every citizen is free to make political choices which includes the right to campaign for a political party or cause.
- (7) Article 49: Every arrested person has the right to be informed of the reason for that arrest, to communicate with an advocate or family of that arrest, not to be compelled to make a confession, or admission that could be used as evidence against them, and also to be brought before a court within 24 hours of that arrest.
- (8) Article 239: In performing their functions and exercising their powers, the national security organs [including the police] and every member of the national security shall not a) act in a partisan manner, b) further any interest of a political party or cause, or c) prejudice a political interest of political cause that is legitimate under the Constitution.
- (9) Article 244: police should strive for the highest standards of professionalism and discipline among its members; prevent corruption, promote and practice transparency and accountability; comply with constitutional standards of human rights and fundamental freedoms; train staff to the highest possible standards of competence and integrity and to respect human rights and fundamental freedoms and dignity; and, foster and promote relationships with the broader society.
- (10) Article 245: No person may give a direction to the Inspector-General with respect to: the investigation of any particular offence or offences or the enforcement of the law against any particular person(s).

Generally, with regard to the National Police Service Act, this law prohibits most of what police engaged in, during the public protests and gatherings documented in this Report, by violating provisions of their constitutive Act, including Schedules on Use of Force, Use of Firearms, offenses against discipline among other acts of commission or omission. Therefore, using these

¹⁸ <http://www.nation.co.ke/news/politics/Security-laws-illegal-declares-High-Court/1064-2633342-jw2qp1/index.html> accessed 5th September 2016

national standards, and also the regional and international norms above, the police in Kenya failed woefully as depicted hereunder.

5.0 MAJOR FINDINGS

5.1 Deaths and Serious Injuries

Deaths and serious injuries are violations to the right to life and also right to integrity and security of the person, not to mention right to inherent dignity and protection of the same. Beginning with deaths, four (4) persons lost their life during the anti-IEBC demonstrations as was recorded by the Authority. On 23rd May, Japheth Owiti and Fredrick Ojwang' died as a result of police shooting during the demonstrations in Kisumu County. Similarly, on 23rd May, two (2) young people were fatally shot in Siaya County during the demonstrations, and they included Austin Omuombo and Churchill Odhiambo Ododa. Other organisations¹⁹ recorded at least 5 people who died and 60 wounded by gunfire as police tried to obstruct protests.

Consequently, IPOA went ahead and instituted investigations into the deaths with a view of establishing culpability (or lack thereof) of the police officers responsible for these fatal shootings. Insofar as the international, regional and national standards, police committed killings, which were still suspect, and hence the investigations.

To the Authority, these remain alleged executions since the police cannot, without independent investigations, confirm whether they were saving their own lives or lives of others. Further to be investigated is indeed whether the police made any verbal warnings (audible proclamations) before they were about to use firearms or even whether there were grounds for not giving those warnings in the first place. Part A of the Sixth Schedule to the NPS Act, 2011 requires that

"a police officer shall always attempt to use non-violent means first and force may only be employed when non-violent means are ineffective or without any promise of achieving the intended result".²⁰

Other standards, such as using non-lethal means, which could have been deployed by the officers, have not yet been confirmed. The investigations were still ongoing as this Report was being developed in September 2016, to ascertain whether Part B of the Sixth Schedule to the NPS Act, 2011 was complied with.

On the second, but related aspect of bodily injuries, many as a result of gunshot wounds, the numbers were dumbfounding. Given that police went ahead to use firearms, other than other non-lethal weapons, the number of young people who sustained serious injuries were in their scores. In Homabay County, four (4) women sustained gunshot wounds during the 23rd May demonstrations while in Kisumu's for example Japheth Owiti and David Onyango sustained gunshot wounds²¹. In Nairobi, Shaban Abdulahi sustained gunshot wounds. On 6th June, in Kisumu County alone, 24 people sustained gunshot injuries!

19 <https://www.hrw.org/news/2016/06/20/kenya-police-killings-during-protests> accessed on 5th September 2016

20 Part A of the Sixth Schedule to the NPS Act, 2011 on Conditions as to the Use of Force.

21 See more details from other human rights organisation <https://www.hrw.org/news/2016/06/20/kenya-police-killings-during-protests> accessed on 5th September 2016



AP officer captured severely beating and kicking a helpless demonstrator (Courtesy www.dailymail.co.uk)

Conversely, during the demonstrations particularly in Kisumu and Siaya Counties, several police officers were injured during the demonstrations. Protesters threw stones and other crude weapons at the officers. It was observed that protesters would demonstrate while armed with crude weapons including stone-throwing slings, stones, Molotov cocktails and clubs among others. On 23rd May demonstrations, it is alleged that 28 police officers in Siaya and Kisumu were said to have been injured when they confronted the demonstrators. On 6th June demonstrations, two (2) officers were injured in Kisumu.

In general, regarding bodily injuries, which also have impact of psychological set up of those affected, IPOA initiated investigations into these cases, and with priority being given to those cases whose evidence was easier to collect, with a view of holding police to account. Second, bodily injuries also have possibility of making victims succumb to those injuries. IPOA was, and still is, in liaison with hospitals and other medical facilities where victims were taken with a view to ensure that, where the victims succumb or succumbed to those injuries, accountability is ensured. In case of the victims succumbing to injuries, the nature of the investigations would change from bodily injuries to investigating death. These investigations were ongoing as this report was being developed in September 2016.

5.2 Abuse of firearms

The Sixth Schedule to the NPS Act clearly stipulate conditions under which force may be applied by police officer. Non-violent means shall first be employed and when this fails, a police officer can use force but only in proportion to the objective to be achieved, the seriousness of the offence, and the resistance of the person against whom it is used, and only to the extent

necessary while adhering to the provisions of the law and the Service Standing Orders. These demonstrations saw police use excessive force, abuse of firearms and aimless shootings by police officers.

The case of Jeremy Otieno Adongo, aged 6, who was shot in the back while at their house in Kasule, Manyatta estate, was the most disturbing²². Jeremy was hit by "stray bullet"²³ during anti-IEBC demos on Monday, June 6, 2016. Further six protesters were shot by police during demonstrations in Kisumu Town and underwent surgery to remove bullets²⁴.

The Sixth Schedule to the NPS Act states "Firearms may only be used when less extreme means are inadequate and for saving or protecting the life of the officer or other person; and in self-defense or in defense of other person against imminent threat of life or serious injury". The direction-less shootings by police officers, even to children such as Jeremy, are pointers that training on use of firearms in the training colleges are unsatisfactory and officers need continuous refresher courses, especially those being deployed on public order management issues, not the paramilitary tactics that have been historically witnessed.

5.3 Intelligence gathering and analysis

During the monitoring of the police conduct during anti-IEBC protests and gathering, it was observed that police officers had already developed a negative attitude against the demonstrators. This minimized interactions with the organizers of the anti-IEBC demonstrations. Information gathering and analyzing is a skill which police officers should have to enhance proper public order management.

With already formed opinion influenced by negative attitude, police officers ended up disrespecting Articles 36 and 37 of the Constitution on freedom of association and of assembly, demonstrations and picketing. Due to minimal levels of information gathering and analysis around the anti-IEBC demonstrations to inform the police actions, mapping out the criminal elements within the demonstrators was not possible. Police have a duty to take reasonable steps to protect those who want to exercise their rights peacefully. This applies where there is a threat of disruption or disorder from others.

Further, it was quite evident that anyone who was seen around the Anti-IEBC demonstrations was mistaken to be a protester and could not be allowed to freely assemble. This is despite the constitutional provision that every person has the right to freedom of association, which includes the right to form, join or participate in the activities of an association of any kind and that a person shall not be compelled to join an association of any kind.

These rights were violated even to those who were running businesses around the IEBC offices but due to the partisan nature on policing in the country, informed by poor intelligence gathering, it was only the opposition that was largely seen as violators of the rights of others. This partisan approach negates the whole essence of freedom of association and assembly as postulated by the constitution.

²² http://www.the-star.co.ke/news/2016/06/06/six-year-old-boy-shot-by-police-in-kisumu-protests_c1364168 accessed on 5th September 2016

²³ A stray bullet is a bullet that, after being fired from a gun, hits an unintended target. Such a shooting accident may occur during crossfire or celebratory gunfire https://en.wikipedia.org/wiki/Stray_bullet. The case here is whether there was crossfire between the child and the officers or it was a case of celebration by the officers.

²⁴ <http://www.nation.co.ke/news/Doctors-rembye-bullets-from-six-hurt-in-anti-IEBC-protest/1056-3237120-sjuvctz/index.html> accessed 5th September 2016

For informed public order management, police officers should change their perceptions, behaviours and attitude towards those planning for protests and gatherings. Police officers should be free to engage and interact with the planners and the organizers of public protests, even with the organisers having their field marshals as well, to ensure adequate security arrangements. This would guarantee security of all actors, with adequate information and its analysis to inform actions to be undertaken in case of any eventuality.

5.4 Identification of police officers

During the monitoring, it was observed that police officers involved were not identifiable. Undoubtedly, the anti-IEBC demonstrations had been marred with tension between the National Police Service and the protesters. In the first four demonstrations in the months of April and May, the NPS insisted that the anti-IEBC protests were illegal and hence endeavored to disperse the crowd and prevent the demonstrators enjoying their constitutional rights. The continuous demonstrations saw the police increase their presence and spread in Nairobi in order to prevent the demonstrations from happening.

Many of the officers who were deployed to manage the protests and gatherings could not be identified. They did not have prominently displayed means of identification including visible name tags, officer's service number, even on their helmets. This was against Rule No. 10 of Part A of the Sixth Schedule to the NPS Act, 2011 which requires that "A Police officer in uniform shall at all times affix a name tag or identifiable Service number in a clearly visible part of the uniform". This is meant to enhance accountability of individual officers and reduce police misconduct during public order management. More so, being readily and prominently identifiable is a serious show of professionalism which the Service should embrace to endear to the public.

In modern policing that enhances discipline and professionalism, police officers should set the policing style and tone at the start of an operation with clarity of their identity as police officers while being aware of the potential positive impact this could have on public perceptions. This professional approach can only be possible if police remain impartial, fair, approachable, accessible and legally compliant.

5.5 Communication, coordination, control and command

As public officers, police are bound by Article 232 of the Constitution thus they should exercise high standards of professional ethics; be efficient, effective and ensure economic use of resources; be responsive, prompt, effective, impartial and ensure equitable provision of services; involve the people in the process of policing and policy matters and also be accountable and transparent in provision of public services.

During the monitoring of the anti-IEBC demonstrations, the police acted unprofessionally largely due to poor communication and coordination. Cases of police brutality that were witnessed in several demonstrations including on 16th & 23rd May 2016 and 6th of June 2016 in Nairobi, Kisumu, Migori and Homa-Bay could attest to this. Officers were seen brutally beating up demonstrators as was captured in a clip during the May 23rd demonstrations where an AP officer was captured severely beating and kicking a demonstrator who was helpless on the ground²⁵.

The quick pulling and deployment of officers from different units such as General Service Unit(GSU), Security of Government Building (SGB), Kenya Airport Police Unit (KAPU), Rural

²⁵ <https://www.youtube.com/watch?v=43iBrvzyW-Y> accessed on 5th September 2016

Border Patrol Unit (RBPU), Rapid Deployment Unit (RDU) among others without proper briefing and training, waters down the effective and efficient command, control, communication and coordination. It should be noted that proper public order management is a communication, coordination and command skill which involves use of public engagement and dialogue skills, with establishment and maintenance of links with communities, groups and partners to build trust and confidence. Any messaging around public order management should therefore be well planned, unambiguous, clear and coordinated.

Poor communication and coordination, combined with politically inclined utterances from key policy makers, inhibits the professionalization of the police service. These makes the police to be seen as unprofessional, inefficient, ineffective, unresponsive, partial and with excessive display of quantity mightiness rather than quality prowess. Through its policing operations, the Service should be proactive in establishing a sense of trust in others, developing a sense of new identity in society, and helping the next generation prepare for the future.

For professionalization of the service to happen, the police service units to be involved in public order management should have commonality of purpose through proper communication and coordination, with training, use of drills and debriefing of the officers involved. This should be taken seriously in the service, with enhanced training sessions on public order management. Public order commanders must be trained, accredited and operationally competent. The Service should consider use of specialist advice on this area, and the command structure should be appropriate and resilient to meet the requirements of public order operations. Throughout its policing operations, the Service should be proactive in establishing a sense of trust in the public, developing a sense of new identity in society, and helping the next generation prepare for the future.

5.6 Rights of Arrested Persons

During the monitoring, several arrests were made. On 16th May 2016 during the protests, 16 people were arrested and moved to Central Police Station, Nairobi during the demonstrations. They were later charged in a Court OB 105/16/5/2016. On 23rd May 2016, 9 protesters were arrested and charged in Milimani Law Courts for taking part in an unlawful assembly, they were released on bond of Kshs. 10,000 each.

On 23rd May 2016, 3 protesters arrested were arrested in Kakamega and later released on Kshs. 100,000 fine. Also in Mombasa, 12 protesters were arrested while in Nakuru County, 12 protesters were arrested on 6th June 2016, 11 took plea and 1 never took plea.

The Authority was not able to reach all those who were arrested on these various dates but those who were reached and interviewed stated that they were not informed promptly of the reason for their arrest, which was contrary to Article 49 of the Constitution.

5.7 Partisanship and Directives to Police by Ministry

Over the years, police have been accused of being biased, which eventually led to the loss of trust and confidence by the public, on their role and independence, while maintaining law and order. As was evident during the demonstrations, between April and June 2016, the police had not changed.



The police allowed some political parties to demonstrate and embargoed others. (Courtesy www.the-star.co.ke)

When for example, some political parties and their allies notify police and the latter decline receipt of that notification, or when the police out-rightly ban political demonstrations, under the guise that the national security would be threatened, while also accepting other notifications, it is a clear and evident disservice under the Constitution, and a total violation of the same. It shows a partisan approach to policing.

Article 239 (3) of the Constitution of Kenya provides that in performing their functions and exercising their powers, the national security organs and every member of the national security organs "...shall not act in a partisan manner; further any interest of a political party or cause; or prejudice a political interest or political cause that is legitimate under this Constitution". Article 239 (1) defines clearly the national security organs which include the Kenya Defence Forces; the National Intelligence Service; and the National Police Service.

Further, it is important to note that police officers work under immense pressure with undue influence even from policy makers who are supposed to ensure that the law is followed and adhered to. During the anti-IEBC demonstrations, various official government statements were issued²⁶. The Cabinet Secretary for Interior Hon. Joseph Nkaissery was quoted saying "the protesters did not comply with the law and had caused loss of lives and destruction of properties",²⁷ that the Ministry had enough teargas at his disposal and that the police had just acquired new equipment to deal with protesters²⁸.

While making some of these statements, the Cabinet Secretary was for instance flanked by the Inspector General of Police, the Attorney General, and other officials²⁹. These are some of the remarks which suggest that public demonstrations are illegal yet they are guaranteed under Article 37 of the Constitution. The remarks are also an indication of subjectivity, and interfere with police work.

²⁶ <https://www.youtube.com/watch?v=EcQ13D2YQig> and <https://www.youtube.com/watch?v=ecaC5XUbCIA> accessed on 5th September 2016

²⁷ <http://www.standardmedia.co.ke/article/2000204389/stalemate-persists-as-state-bans-anti-iebc-protests> accessed on 5th September 2016

²⁸ <http://www.standardmedia.co.ke/article/2000202179/cs-john-nkaissery-directive-comes-to-pass> accessed on 7th September 2016

²⁹ <https://www.youtube.com/watch?v=EcQ13D2YQig> and <https://www.youtube.com/watch?v=ecaC5XUbCIA> accessed on 5th September 2016

Indeed, it worth noting that during the anti-IEBC demonstrations, statements were made that police officers would not stop using force to keep protesters away from Independent Electoral and Boundaries Commission (IEBC) offices. The Nairobi County Commander, Mr. Japheth Koome said "stern action would be taken against those who plan to take part in Monday's demonstrations, adding that officers engaged to suppress riot or protect persons or property during the protest are justified in using any degree of force, depending on the circumstances"³⁰. With these kind of comments from policy makers and police leadership, police officers get psyched to use any means to ensure loyalty to the policy makers rather than delivering quality services to Kenyans as disciplined and professional officers.

Thus, such comments go against the independence of the police as envisaged under Article 239(3) and 244 of the Constitution, and they influence some of the brutal actions taken by police officers. To ensure accountability, professionalism and discipline amongst the police officers, policy makers and NPS leadership should let the service work under their established channels of communication, coordination, control and command.

5.8 Medical Aid and Police Operations

During the demonstrations especially in most parts of Nairobi County, the Authority did not see any police medical aid van(s). It is essential that the health, safety and welfare of police officers and well as that of the members of the public should be taken with the seriousness deserved. Public order management operations call for on-site strategic, tactical and operational guidance and advice, including provision of medical aid to assist both the police officers and well as members of the public.

The operations saw police officers stopping Public Service Vehicles (PSVs) along major routes to the City, for their usual stop and search, with even use of police aerial surveillance and mobile patrols. However key areas related to medical aid, including first aid kits would be critical for offering first aid in case of any fatality, either to the officers or any member of the public.

This is critical because during the protests, several police officers were said to have been injured, especially in Nyanza, during the demonstrations by protesters. Protesters were observed coming to the demonstrations while armed with crude weapons including slings, stones, petrol, and clubs among others. It was reported that on the 23rd May demonstrations, 28 police officers were said to have been injured while controlling the demonstrators in Siaya and Kisumu³¹ (see appendix 2). 11 of these officers injured in Kisumu, Migori, Kisii, Homabay and Siaya, were airlifted to Nairobi for treatment and the police spokesman said "...the service offered no apologies for how police responded to the rioters, instead, they warned, any attempts to attack a police officer, would be met with the necessary force". This is despite the fact that the police had to deal with the perception that this could be a public relations exercise³².

It is the Authority's considered opinion that if medical aid was availed in all public order management areas, quick response to the injured would see enhanced quality policing in the county. Article 26(1) of the Constitution, on right to life, should have that deeper meaning, to all officers and also members of the public. It is time life was highly valued and to the Authority, no life should be lost around policing issues.

³⁰ <http://nairobinews.nation.co.ke/news/police-use-lethal-force-anti-iebc-protesters/> accessed 5th September 2016

³¹ <https://www.youtube.com/watch?v=A1kwiVbSNnM> accessed on 6th September 2016

³² *ibid*

6.0 OTHER RELEVANT OBSERVATIONS TO STRENGTHEN POLICING

The sections below show other relevant observations by the IPOA on police preparedness and deployment, tooling and equipping and other police concerns that would enhance public order management in accordance with frameworks of the law and modern policing.

6.1 Police Preparedness and Deployment

As was noted in Section 5.5 above, on 25th April 2016, 250 police officers were deployed from the National Police Service (Kenya Police Service and Administration Police Service), drawn from various divisions within in County. The operations were poorly coordinated and supervised by Senior Superintendent of Police (SSP) Wanjama as the Operations Commander/ OCPD Central. However, the physical operational order was not availed to inform the noted gaps due non-cooperation from County Commander, Mr. Japheth Koome. Information obtained through interview with the officers in Nairobi County showed that there was no prior briefing or training.

The operations for 16th May 2016 in Nairobi had 300 police officers from the National Police Service (Kenya Police Service and Administration Police Service) from various divisions in Nairobi County. The operation was poorly coordinated and supervised by the Central OCPD with officers being deployed to all entries to Anniversary Towers and the surrounding streets within the Central Business District. The physical documentation of the operations orders were also not availed due non-cooperation from County Commander, with interviews also being done with the officers deployed. Operations in Migori, Siaya, Kisumu and Homa Bay were not monitored although information was availed to the Authority³³.



Deployed APS officers. (Courtesy www.kenya-today.com)

From interactions with the police officers it was evident that prior briefing was lacking in all the protests monitored. Further, the paramilitary nature of training for the APS, who were largely deployed to manage the protests, was a large constraint to professional approach to public

³³ For details see Appendix 3



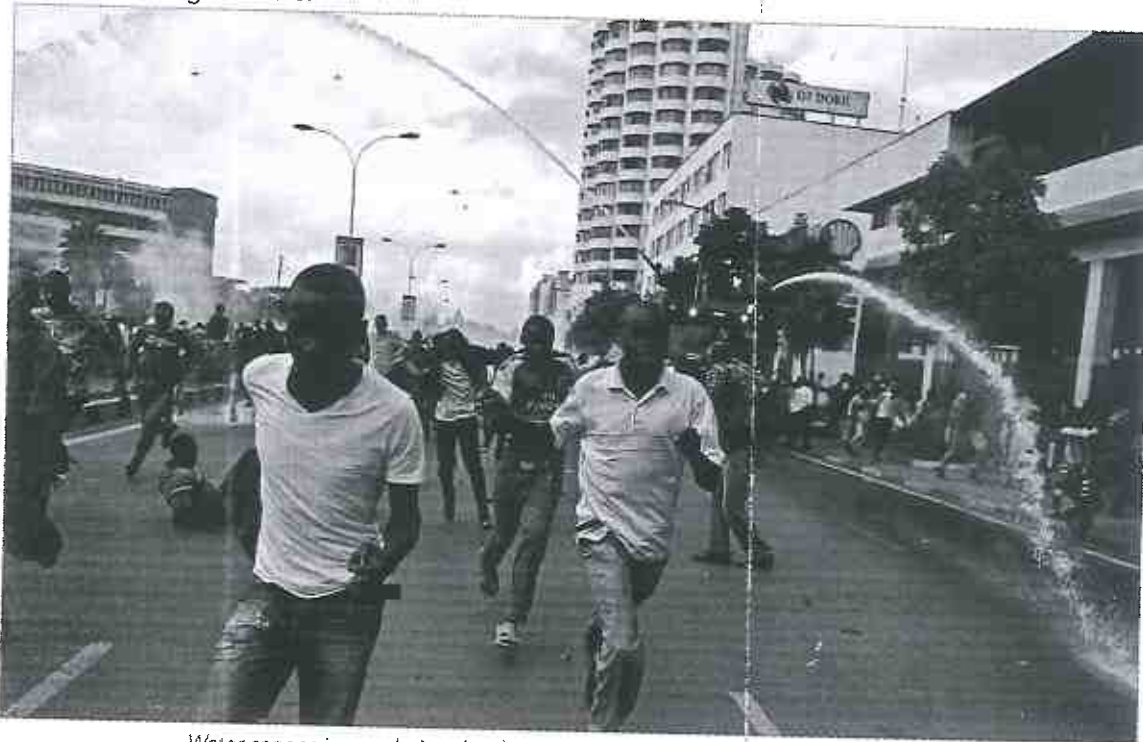
order management. The lack of cooperation from the County Commander meant that many issues could not be confirmed or corroborated, for enhancement of modern policing including deployment concerns, orders and plans; training and facilitation of the officers.

While this is the case, the police should also anticipate spontaneous public protests. These kind of protests do not provide the luxury of planning and sometimes call for immediate reaction. Such situations call for sound judgement and correct assessment of the situation. The Service should facilitate the development of contingency plans up to police station level, providing minimum guidance to respond should such public protests manifest. The standards around deployment of police officers should therefore be informed by intelligence gathered and analyzed for proper public order management. This should also inform the kind of training required.

6.2 Police Tooling and Equipment

It was observed that heavy police equipment including water cannons were deployed for purposes of crowd control. However, upon interviews with the police officers, it clearly emerged that the officers were not well equipped for the demonstrations that were happening. On anti-riot equipment and gears, officers alleged that there had inadequate issue of crowd control equipment's including non-lethal weapons, tear gas, batons, rubber bullets and riot guns.

The Officer Commanding Police Division (OCPD) Central shared with the monitors that per each Division in Nairobi, they had an average of one or two riot guns. In his Division, he had only two riot guns. The officers lacked important protective gears including the back plate, the chest plate, thigh groin protector, leg guard, knee pad, arm guard, calf protector, and anti-riot helmets amongst others.



Water canons in use during the demonstrations (Courtesy www.dailymail.co.uk)

Indeed, this is the reason why most of the police officers would easily be injured during crowd control. Of particular interest, the KPS officers complained that they were not well-kitted

compared to their counterparts in APS. In addition the officers alleged that the material used to make the new issue of the shield and the riot helmet was fragile compared to the old model which was made of tougher material.

Further, the use of information technology such as videography to track any errant members of the public for later arrests has not been effectively utilized in Kenya. This is a law enforcement skill which is being tried globally with minimal use of force and the NPS should rise to this occasion as well.

The tooling and equipping of the service still remains a matter of concern. However, attention should be turned to quality of policing (with a focus on change of attitude and behaviour) rather than quantity of purchased of equipment. Given the approaches police used on the demonstrators, fostering and promoting good relationships with the broader society still remains a mirage largely due to negative policing culture and attitude.

6.3 Police Actions or Inactions: Destruction of Property

The demonstrations were somewhat characterized by criminal acts by some of the protesters. Roads were barricaded with stones, burnt tires, torched vehicles, destroyed properties, stole and assaulted persons. On June 6th demonstrations in Kisumu, the demos kicked off as early as 5 am and was characterized by barricading of roads with stones, burning tires and chanting of anti-IEBC slogans by the protesters while marching towards the IEBC Offices in Milimani, Kisumu.

The demonstrators were seen armed with crude weapons including stones and slings, petrol, clubs among others. Confrontation with the police ensued and as the crowd was being dispersed, the demonstrations suddenly turned violent, irate protesters turned to destroying property including Naivas Supermarket within Kisumu CBD, Tumaini Supermarket in Kondele village, Safaricom branded mobile shop, Dunga Auto and Spare parts shop, Jomo Kenyatta Highway Roundabout barriers, private motor cycles, police vehicles, Yattin Supermarket, Water pipes for Kisumu Water and Sewerage Company among others. In Nairobi, a matatu belonging to one Ms. Agnes Macharia and prime city transporters Sacco was burnt during the protests.

Under the circumstances, police did their best to protect what could have been massive destructions of property. However, because of their inactions in some areas and in the midst of the chaos, business owners in Kisumu used own initiatives to try and protect their properties from the irate crowds. Some, illegally and unfortunately, hired vigilante groups to protect their properties and this led to two people sustaining serious injuries from panga cuts that were being used by the vigilantes to protect the Tumaini Supermarket.

In a study that was done by Kenya Private Sector Alliance (KEPSA) in partnership with TIFA research, businesses in Nairobi experienced higher revenue losses.³⁴ The most affected were from banking and financial sectors that lost an average of Sh166,727 per day while each business within the Nairobi Central Business District (CBD) lost at least Kshs. 48, 304 every time there were anti-IEBC protests which took place in May and June.

³⁴ See <https://www.capitalfm.co.ke/business/2016/08/much-anti-iebc-demos-cost-nairobi-businesses/>



A supermarket destroyed by demonstrators in Kisumu (Courtesy www.nairobiwire.com)

While the National Police Service is legally mandated to protect property and life of all Kenyans, it is worth noting that for these destructions to have happened, it indicts the police in terms of their approaches to people-centred-policing, the quality of policing and how members of the public perceive policing work in view of their roles and responsibilities. This calls for attitude and behavioral change towards policing by both the police and members of the public.

6.4 Officers' long hours

During the demonstrations, officers were required to be at work very early in the morning (as early as 0400hrs) and the demonstrations at times extended till evening. Some of the officers claimed that they had worked at night duties and had again been deployed to contain the protests.

Section 46(2) of the NPS Act on rights of police officers states working hours of police officers shall be reasonable and where excessive overtime is required police officers shall be compensated with commensurate periods of rest, and they shall be allowed a minimum time of rest during and in between shifts. The allegations that were made by the officers should therefore be looked into to comply with this legal provision.

6.5 Policy on public order management

During the monitoring period, it was noted that there were those who were out to loot from businesses and therefore were not there to exercise their rights. This abuse of the constitutional rights led to violation of others' people's rights. With no proper policing policy around policing and public order management, where management of right to assembly, demonstration, picketing, or presentation petitions to public authorities' fall the demonstrations and those organizing them, together with the police, fall victims. The Service should take keen interest to ensure that a policy is developed to guide public order management with respect to the rights of everyone, including businesses. The policy should focus on preparedness, engagements and role of communities, planning, identifications, intelligence gathering, and training even with external assistance, deployment, response among other areas.

7.0 COMPARATIVE APPROACHES ON PUBLIC ORDER MANAGEMENT

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To enhance knowledge around public order management in Kenya, the NPS should benchmark and seek external assistance from other countries on policing around public order management. Some of the countries to benchmark with, and those which have had an advanced systems on public order management, could be USA, Sweden and United Kingdom, among others already involved in the Police Reform Program, under the Ministry of Interior and Coordination of National Government.

In the United Kingdom for instance, the Metropolitan Police Service has an extensive and deep public order training, which prepares the officers on any eventualities. Public Order is more defined and can range from a visible presence, to intervention, to resolve violent disorder at public order events, including sports³⁵. The officers are afforded a view that is invaluable at crowded venues, and can spot possible potentially violent confrontations or crush situations. They are trained to alleviate the problem with crowd management tactics³⁶. On what they call Mounted Officer(s), one officer can be as effective as a dozen officers on foot.

On the training around public order management, all officers on the ground (those not in a command role), undergo three levels of Public Order Training. Level 3 is given to all police officers, covering peaceful protest and cordon work. Level 2 includes facilitating peaceful protest, managing hostile crowds, dealing with violent people, shield tactics and other different scenarios and Level 1, the most specialist training, regularly offers officers with the most challenging front line work, with fitness test being mandatory³⁷.

Further, under the College of Policing, there is a whole team comprising of specialist personnel with professional knowledge and experience across public order and public safety policing. These specialists support those involved in public order and public safety policing through the development of public order professional practices. This could include the maintenance and development of public order learning that could inform the content on National Policing Training Curriculum. They also provide support services to public order policing including written guidance and advice; tactical and strategic advice; support through telephone guidance; organizational learning, debriefing services and sharing of good practice around policing. The National Police Service can borrow a leaf from the Metropolitan Police Service in the UK.

In South Africa, there is a policy and guidelines on policing of public protests, gatherings and major events³⁸. The objectives of this policy and guidelines are to promote ideal crowd control and management capacity within the police in order to secure public trust and maintenance of safety during public gatherings. It is also meant to provide a framework and facilitate the development of appropriate guidelines by the South African Police Service (SAPS) on the use of force in relation to crowd control and management that adheres to international accepted standards; to establish the principle of intervention in controlling public protest in order to proportionate the means of force that can be applied by the police; and to facilitate the introduction of appropriate training initiatives which must, amongst others, address the principle of "first responder" guide SAPS operational planning and response, resource

³⁵ <http://content.met.police.uk/Article/Demonstrations-and-Public-Order/1400007129835/1400007129835> accessed on 6th September 2016

³⁶ Ibid

³⁷ <http://content.met.police.uk/PublicOrderPolicingandTraining.pdf> accessed on 5th September 2016

³⁸ http://www.policesecretariat.gov.za/downloads/policies/policing_public_protests_2013.pdf accessed on 5th September 2016

deployment and physical execution. Such a broad policy and guidelines on policing of public protests, gatherings and major events should be emulated to inform policing public gatherings and protests in Kenya, while at the same time improving these through lessons learnt.

8.0 CONCLUSION

From the monitoring of public protests and gatherings, especially on the anti-IEBC protests, it was evident that Article 244 of the Constitution is far from being realized. The culture, attitude and behaviour of policing has not changed. These software issues of the police and policing demands concerted attention from within and without the Service.

During the monitoring, it was noted that policy makers, including comments by the NPS leadership, have a lot of influence on how police conduct themselves on the ground. A lot of refrain by the policy makers and NPS leaders would see the police exercising due diligence in their operations, ensuring communication, command and control is well understood within the ranks, with independence and accountability. This is the journey the service needs towards eventual professionalism and discipline in the service as expected by Kenyans.

There are so many lessons to learn from other countries and as IPOA, attention now focuses on how police will be prepared, trained, equipped and coordinated to deal with the magnitude policing issues around public gatherings and protests, and especially in the lead to the 2017 general elections and beyond. Proper communication and sensitization will be required to ensure police conduct themselves as required by the law, and IPOA will be doing this with all Kenyans who exercise their rights responsibly.

Based on rule of law as advanced in this report, the Authority will be monitoring the police conduct and misconduct to advance the calls for an independent, professional, accountable and disciplined police service at all levels. These would be guided and informed by the recommendations the Authority has made in this report, as well as earlier ones made to the Service.

9.0 RECOMMENDATIONS TO THE POLICE AND OTHER STATE ORGANS

- 9.1 The National Police Service should urgently establish a comprehensive training on public order management with reference to other international standards as comparatively expressed in Part 7 of this report. This training could seek for external assistance from USA, Sweden and UK, countries that are already involved in the Police Reform Program under the Ministry of Interior and Co-ordination of National Government. This training should be inculcated in the training curriculum using modern methods and best practices from other countries. The training on this area should take into consideration psychological, social and cognitive skills, where establishing a sense of trust in the public, developing a sense of identity in society, and helping the next generation prepare for the future, should be taken seriously in the service.
- 9.2 Under the changed policing context, Public Order Management should be made mandatory to all police officers. The abrupt pulling of officers from different units such as General Service Unit (GSU), Security of Government Building (SGB), Kenya Airport Police Unit (KAPU), Rural Border Patrol Unit (RBPU), Rapid Deployment Unit (RDU) among others, that has been witnessed, without proper briefing and training, waters down effective and efficient command, control, communication and coordination.

- Further, contemporary public order management is a skill and all officers involved in it should have common understanding, with commonality of purpose.
- 9.3 The National Police Service should proactively be engaging with the conveners / organizers of public protests and gatherings, and come up with written agreements to reduce tensions while ensuring public order policing. These proactive engagements should among others agree on the timings and the routes to take. Further joint conferences with the organizers to assure the public of their security and safety as they rightly assemble, demonstrate, picket, or even present petitions to public authorities, would go a long way towards promoting community policing in the country. The freedom of assembly, demonstrations, picketing, or even presentation of petitions to public authorities must be constitutionally guaranteed and not seen as a favour.
- 9.4 The National Police Service should ensure intelligence gathering leads their policing around public order management to map out the criminal elements who might infringe on freedom of assembly, demonstrations and picketing. This should be done with the conveners / organizers of the public protests having their field marshals as well, and with adequate security arrangements being put in place, to promote and protect security of all actors.
- 9.5 While a clear chain of command in the management of public gatherings and protests should be ensured for accountability purposes. Guidelines and procedures for the policing of public protests and gatherings must be clearly developed, understood and implemented by all officers involved. The guidelines and procedures should allow local commanders to take initiative when a new situation arises. However, taking of such initiative must be done by the commanders while in adherence to the lines of command and control.
- 9.6 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 tag or identifiable Service number in a clearly visible part of the uniform". This is meant to enhance accountability of individual officers while at the same time ensuring professionalism and discipline in line with Article 244 of the Constitution.
- 9.7 Use of force in the service should be graduated as envisaged under the Sixth Schedule to the NPS Act. First, there should be proclamation with audible loud speakers, which should be graduated to use of physical force being applied such as wrestling to the ground, using wrist locks or arm locks, striking with the hands or feet, or other similar methods of hand-to-hand confrontation, with use of latest best practices. This can then be graduated to mechanical force where use of some devices or substances, other than a firearm, to overcome a subject's resistance are tried. Some of these could be use of a baton or other object, canine physical contact with a subject, or chemical or natural agent spraying, where police should be literally a few meters in front of the crowd. Use of coercive and deadly force during public order management should be avoided at all costs, and when used, it should be only to immobilize the victim and not to kill. No loss of life should be encouraged under public order management environment.
- 9.8 The National Police Service should abide by Article 239 of the Constitution while performing their functions and exercising their powers. The Service should not act in a partisan manner, further any interest of a political party or cause, or prejudice a political interest of political cause that is legitimate under the Constitution. The Service should remain impartial in carrying out its functions.
- 9.9 Use of modern policing skills such as information technology and videography should

- be encouraged, with tracking of the errant members of the public for later arrests. This is a law enforcement skill with use of modern technology and the NPS should raise to the occasion as well.
- 9.10 The police should also ensure availability of medical aid at stand by, with all necessary equipment, to give first aid to those injured during public order management and in case of unlikely event. The minimum equipment for any public order management should include body armour and helmets; shields; batons; water cannons; communication and video equipment; mobile operational centers among other key ones.
- 9.11 The communication by policy makers and the ministry of interior prior, during and after public protests and gatherings should be to enhance the rights as enshrined in the constitution and not to curtail them. The Minister of Interior should not encourage rights violations but should come up with an initiative to educate the public on how to conduct themselves during protests and gatherings without abusing the police as well. Public awareness should be enhanced through such an initiative for change of culture, behavior and attitudes.
- 9.12 A policy on public order management, where management of right to assembly, demonstration, picketing, or presentation petitions to public authorities' falls, should be developed.

10.0 APPENDICES

APPENDIX 1: Summary of the Dead and Seriously Injured in the Entire Anti-IEBC Protests

DATE	COUNTY	DEATH	INJURY
25/4/2016	NAIROBI	0	1
16 th May 2016	NAIROBI	0	1
23 rd May 2016	NAIROBI	0	1
	SIAYA	2	28
	HOMABAY	Records not available	4
	KISUMU	1	2
	MIGORI		7
6 th June 2016	KISUMU	1	44

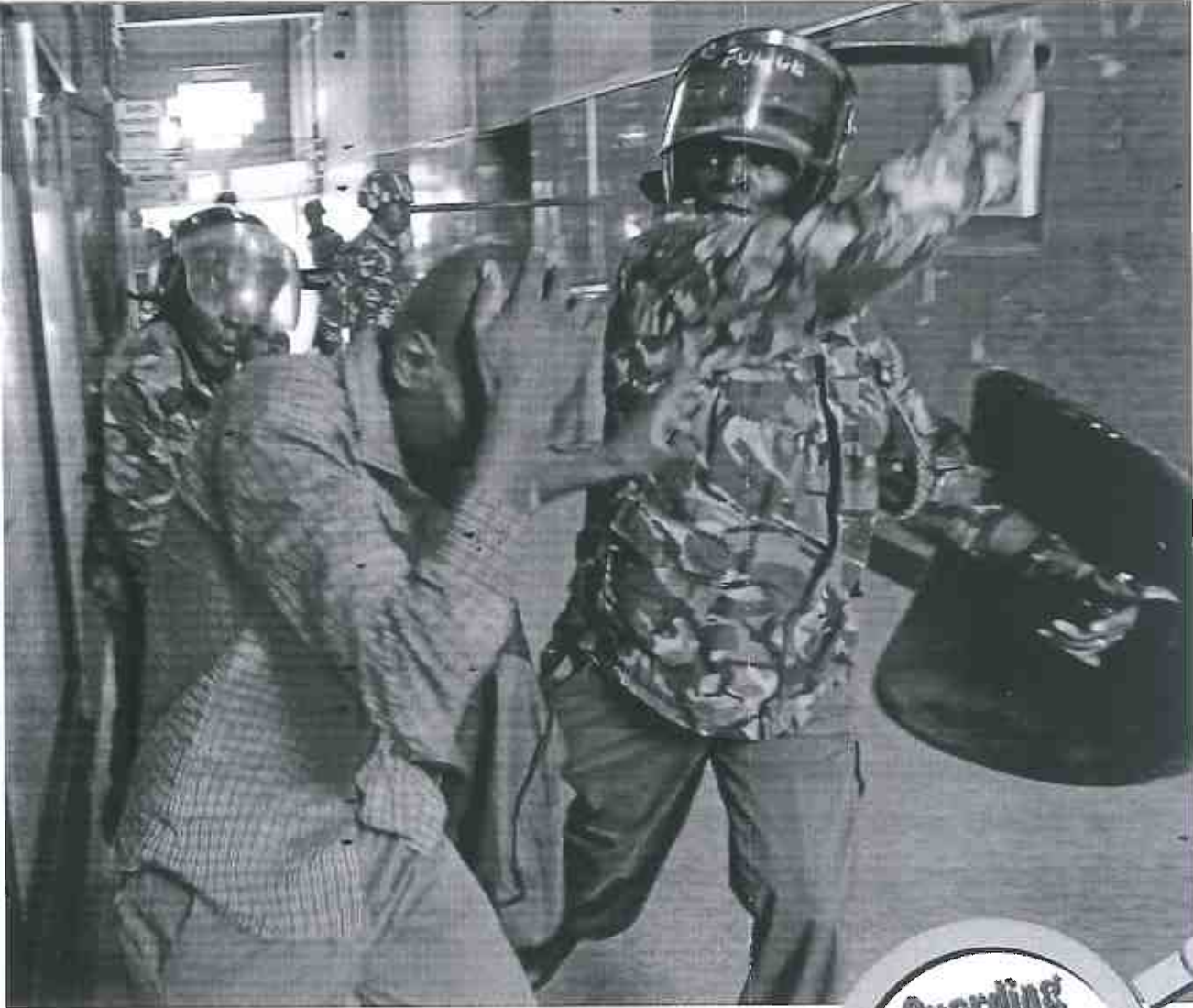
APPENDIX 2: Police Officers who were injured

Date	County	Officers injured	Remarks/ information source
25/4/2016	NAIROBI	1	Incident booked at Central Police Station OB. 67/25/4/2016. Officer was treated at KNH where he was treated and discharged. Officer was treated at Nairobi City Clinic, treated and discharged. Incident report CRI/4/3/18 to Ops Center Vigilance House
	MIGORI		Not monitored
	SIAYA		Not monitored
	KISUMU		Not monitored
	HOMABAY		Not monitored
16/5/2016	NAIROBI		No records available for injuries
	MIGORI		Not monitored
	SIAYA		Not monitored
	KISUMU		Not monitored
	HOMABAY		Not monitored
23/5/2016	NAIROBI		No injury records available
	MIGORI		Not monitored
	SIAYA	28	Incident booked at Siaya Police station vide OB 38/23/5/2016. In the Occurrence Book above, it is indicated the officers were initially attended by Red Cross paramedics in Siaya and discharged in good condition. The incident is also mentioned in a recorded statement by a Police Officer. According to the Statement, on the 24th of May 2016, 11 AP officers were brought to Nairobi and admitted in Nairobi West Hospital.
	KISUMU		Not monitored
	HOMABAY		Captured in the investigations report
6/6/2016	NAIROBI		
	MIGORI		Not monitored
	SIAYA		Not monitored
	KISUMU		Names received by monitoring officers after interviewing police officers in Kisumu.
	HOMABAY		Not monitored
	HOMABAY		Not monitored

Date	County	Availability of Operational Orders	Nature/summary details of the operations order:	Remarks
25/4/2016	NAIROBI	No	250 police officers were deployed from the National Police Service (Kenya Police Service and Administration Police Service), drawn from various divisions within in Nairobi. Operation was properly coordinated and supervised.	Physical documentation of the orders not availed due to non-cooperation from County Commander. Information obtained through interview with the Operation Commander
	MIGORI			Not monitored
	SIAYA			Not monitored
	KISUMU			Not monitored
	HOMABAY			Not monitored
	HOMABAY			Not monitored
16/5/2016	NAIROBI		300 police officers from the National Police Service (Kenya Police Service and Administration Police Service) various divisions in Nairobi. Operation was properly coordinated and supervised.	Physical documentation of the orders not availed due to non-cooperation from County Commander. Information obtained through interview with the Operation Commander.
	MIGORI			Not monitored
	SIAYA			Not monitored
	KISUMU			Not monitored
	HOMABAY			Not monitored
	HOMABAY			Not monitored
23/5/2016	NAIROBI			No information was vailed to the monitors by the Operation Commander.
	MIGORI			Not monitored
	SIAYA			Not monitored
	KISUMU			Not monitored
	HOMABAY			Not monitored
	HOMABAY			Not monitored

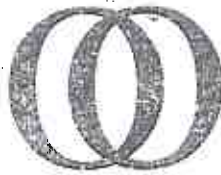
Date	County	Availability of Operational Orders	Nature/summary details of the operations order:	Remarks
6/6/2016	NAIROBI			No information was vailed to the monitors by the Operation Commander.
	MIGORI			Not monitored
	SIAYA			Not monitored
	KISUMU	Yes	Operation orders availed	Deployment was done in 7 sectors. No more details were given.
	HOMABAY			Not monitored
	HQMABAY			Not monitored

People caught up in the demonstrations (Courtesy www.businessinsider.com)



**Guarding
Public
Interest in
Policing**





OTIENO OGOLA
 & COMPANY ADVOCATES

This is the exhibit marked **KK6**
 Annexed to in the Affidavit/Declaration
 Of **Khelef Khalifa**
 Sworn / Declared Before me this **24th**
 Day of **September** 20**23** at **Nairobi**
 in the Republic of Kenya

111

[Signature]
 Commissioner for Oaths
 24th January 2023



The Secretary
 The Independent Policing Oversight Authority
 1st Ngong Avenue,
 ACK Garden Annex, 2nd floor
 P.O. Box 23035 – 00100
 NAIROBI.
 E-mail: info@ipoa.go.ke

The Chairperson
 The Independent Policing Oversight Authority
 1st Ngong Avenue,
 ACK Garden Annex, 2nd floor
 P.O. Box 23035 – 00100
 NAIROBI.
 E-mail: info@ipoa.go.ke

RE: REQUEST FOR INFORMATION UNDER ARTICLE 35 OF THE CONSTITUTION, ON THE INQUIRY ON THE MURDER OF PEACEFUL PROTESTERS IN KENYA AFTER THE 2017 PRESIDENTIAL ELECTIONS

The above matter kindly refers.

We have been instructed by our Client, Khelef Khalifa, the Chairman of Muslims for Human Rights (hereinafter MUHURI), a registered Non-Governmental Organization that works on promoting and protecting human rights amongst the most vulnerable in the Society.

We write regarding the police killings of innocent Kenyans who were killed by police officers in the aftermath of the 2017 presidential elections. We attach herewith this letter the names of the innocent Kenyans killed by police bullets and acts of brutality as some were exercising their rights to freedom to demonstrate and picket while others were killed by police officers in their homes and places of abode.

Our Client has noted with concern that despite the high profile and publicity of the killings including public reports, documenting the police killings, your agency has not taken any administrative or criminal justice measures to bring to book the police perpetrators and the commanders responsible for the units that committed the heinous acts against unarmed innocent civilians.

Office B11, 11th floor CMS Africa House
 Chania Avenue off Marcus Garvey Road, Kilimani, Nairobi
 P. O. Box 22671-00100 Nairobi, Kenya
 +254 (0)718 950 946, +254 (0)721 976 194, +254 (0)723 151 882
info@otienoogolaadvocates.co.ke

PARTNERS
 Willis Evans Otieno (Adv) LLB (Moi Uni) Dip. Law (KSL)
 Ogola Bonyo (Adv) LLB (Moi Uni) Dip. Law (KSL)
 PIN NO.: P051387070K

Justice delayed is justice denied, the families of the victims of police killings and the Kenyan people have waited for an inordinately long period of time for your office to take action against the perpetrators of these killings. It is over five years since the said heinous acts were committed and your office is yet to give a public report on the status of any investigations that may have been undertaken against the perpetrators of the crimes and those with command responsibility over the said officers.

Due to the foregoing, on behalf of the victims, their families and the people of Kenya, our Client, instructs us to write to you to request the following information that is in your custody relating to investigations of the killings:

- a) All the witness statements recorded by your officers in relation to the cases;
- b) All medical and post-mortem reports conducted on the deceased persons;
- c) Report of the investigations conducted by yourself in relation to the deaths.

The purpose of the information sought is to enable the families and the people of Kenya to seek justice for the unfortunate killings.

Please do note that we will be seeking legal recourse against your office if you do not heed to the request herein within fourteen (14) days of the date of this letter.

This matter has taken quite a while and a prompt response on the same will be highly appreciated.

We undertake to meet your reasonable administrative charges that may be necessary to process the information sought.

We have taken the liberty to copy this letter to the Commission of Administrative Justice for follow up with yourself as the agency tasked with the responsibility to ensure the right of access to justice.

Yours sincerely,
OTIENO OGOLA & CO. ADVOCATES


W.E.O. K'Ochieng

CC

1. Client
2. Commission of Administrative Justice
NAIROBI

Chairperson: Hon. Florence Kajuku, MBS
Vice-Chairperson: Mr. Washington Sati
Commissioner: Mrs. Lucy Ndung'u, EBS, HSC



THE
COMMISSION ON ADMINISTRATIVE JUSTICE
"Office of the Ombudsman"

113

Our Ref: CAJ/ATI/IPOA/131/4/23-SC

31st January, 2023

The Chief Executive Officer

The Independent Policing Oversight Authority
1st Ngong Avenue
ACK Garden Annex, 2nd Floor
P.O Box 23035-00100

NAIROBI.

This is the exhibit marked... *KK7*
Annexed to in the Affidavit/Declaration
Of... *Khelef Khaiifa*...
Sworn / Declared Before me this... *23rd*...
Day of... *September*... 20... *23*... at... *Nairobi*...
in the Republic of Kenya

Dear Sir,

[Signature]
Commissioner of Oath

**RE: REQUEST FOR INFORMATION ON THE INQUIRY ON THE MURDER OF PEACEFUL
PROTESTERS IN KENYA AFTER THE 2017 PRESIDENTIAL ELECTIONS**

The Commission is the Oversight and Enforcement Agency of the Access to Information Act, 2016 (ATI, Act 2016).

The Commission is in receipt of a letter dated 24th January, 2023 from Otieno Ogola & Company Advocates on behalf of Khelef Khaiifa, Chairman of Muslims for Muslims for Human Rights (MUHURI) (copy enclosed).

The request for information relates to the inquiry on the murder of peaceful protesters in Kenya after the 2017 presidential elections and particularly on;

- a) All the witness statements recorded by your officers in relation to the cases;
- b) All medical and post-mortem reports conducted on the deceased persons;
- c) Report of the investigations conducted by yourself in relation to the deaths.

This is therefore to request you to respond to the Applicant soonest in line with section 9(4) of ATI, Act 2016.

Your prompt response will be highly appreciated.

Billica, 1st Floor
(Opp. KNEC, Caledonia)
Denis Pritt Road
P. O. Box 44287 - 00100
Nairobi, Kenya

PIN: A003666435D



Tel: +254 (20) 218 11 3
+254 (20) 267 3256
Fax: +254 (20) 267 3256
+254 (20) 267 3256
+254 (20) 267 3256

Chief Office Nairobi
Website: www.soweto.co.ke

114

Our Ref: MHR/GE/1

Your Ref: TBA

Wednesday, 05 April 2023

Independent Policing Oversight Authority
ACK Garden Annex (2nd Fl)
1st Ngong Avenue
P. O. Box 23035 - 00100 Nairobi
Nairobi
Email: info@ipoa.go.ke

Attention: The Chairperson/Secretary

Dear Sirs,

**RE: REQUEST FOR INFORMATION UNDER ARTICLE 35 OF THE
CONSTITUTION ON THE MURDER OF PEACEFUL PROTESTORS IN KENYA
AFTER THE 2017 PRESIDENTIAL ELECTIONS**

We refer to the letter dated 24th January 2023, which is addressed to you by Otieno Ogola & Company Advocates on the above noted subject matter. A copy of the said letter is annexed hereto for your ease of reference. We have instructions to take over the conduct of the matter and to follow up on the same.

We note that it is now more than two (2) months since the request for information was made to you vide the aforesaid letter dated 24th January 2023. We have the following concerns, *inter alia*:

- 1) The non-responsiveness of the Authority to the request in contravention of among others Articles 10, 21(1), 35 and 47 of **The Constitution of Kenya**; and
- 2) The **Access to Information Act No 31 of 2016** stipulates that an application for access to information should at the maximum be processed within twenty-one (21) days. The Authority is therefore, further in breach of a statutory obligation.

This letter therefore serves as a reminder of the request made vide the letter dated 24th January 2023. Kindly let us have the information sought within fourteen days (14) of the date hereof.

PLEASE TAKE NOTICE that in addition to any other legal remedies and/or avenues available to our Clients for redress, we have instructions to pursue appropriate remedies and/or enforcement measures under section 28 of the **Access to**

Page | 1/2


NB: We have **MOVED**. Our new address is Nairobi Baptist Church Court, Unit 3. (Opp Nairobi Baptist Church), Green Lane (off) Ngong Road

This is the exhibit marked... **KK8**
Annexed to in the Affidavit/Declaration
Of... **Shelley Khairifa**...
Sworn / Declared Before me this... **12th**...
Day of **September 2023**... at **Nairobi**...
in the Republic of Kenya
Advance copy Commissioner for Oath

Information Act No 31 of 2016 against the responsible officers of the Authority.
Be advised accordingly.

By a copy of this letter, the Commission on Administrative Justice is hereby notified of the failure, neglect and/or refusal by the Authority to comply with the request made on 24th January 2023; and the follow up letter of the Commission thereto dated 31st January 2023.

Yours faithfully,
SOWETO & COMPANY ADVOCATES


Julie SOWETO AJELLO | Advocate
(Julie@sca.co.ke)

Cc: The Commission on Administrative Justice
West End Towers (2nd Fl)
Waiyaki Way, Westlands
P. O. Box 20414 - 00200
Nairobi

Cc: Client
Nairobi



This is the exhibit marked... *KK9*
 Annexed to in the Affidavit/Declaration
 Of... *Khelut Khalifa*...
 Sworn / Declared Before me this... *12th*...
 Day of... *April*... 20... *23*... at... *Nairobi*...
 In the Republic of Kenya

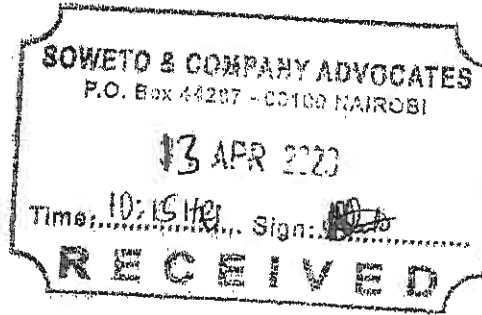


Commissioner for Ombudsman

IPOA/DI/HQ/1/1/077

12th April, 2023

Julie Soweto Aullo,
 Soweto & Company Advocates,
 Biblica House, 1st Floor,
 Dennis Pritt Road,
 P.O Box 44287 -00100,
Nairobi.



Dear Madam,

REF: REQUEST FOR INFORMATION UNDER ARTICLE 35 OF THE CONSTITUTION ON THE MURDER OF PEACEFUL PROTESTORS IN KENYA AFTER THE 2017 PRESIDENTIAL ELECTIONS

The Independent Policing Oversight Authority (IPOA) is a State Agency established under the Independent Policing Oversight Authority (IPOA) Act, No. 35 of 2011 (IPOA Act), with the object and purpose among other things, holding the police accountable to the public in the performance of their functions.

The Authority acknowledges receipt of your letter dated 5th April 2023 the contents whereof are duly noted. We also acknowledge receipt of letters from Otieno Ogolla & Company Advocates and from the Commission on Administrative Justice dated 24th and 31st January 2023 respectively on the same subject.

Upon review of the appendix attached to the letter from Ogolla and Company Advocates, the Authority notes that fifteen (15) cases out of the list of thirty-three (33) have been reported to the Authority and taken up for investigations (refer to the attached annexure).

In order to provide you with a comprehensive status update on the cases, the Authority requests that you avail duly executed consents by the complainants or where applicable families of the deceased persons, consenting to having the Authority divulge information to you regarding status of investigations into their complaints.

With regard to your request for witness statements, medical and post-mortem reports where available this will be provided to you with regard to concluded investigations once you avail requisite consents from the complainants or where applicable families of deceased persons.

However, please note that pursuant to section 24 (15) of the IPOA Act and section 6 of the Access to Information Act, these documents cannot be availed to you with regard to matters under active investigations or currently in court.

With regard to the other eighteen (18) cases referenced in the appendix the same were not reported to the Authority. The complainants or families of deceased persons may lodge complaints with the Authority.

For any clarification, please contact the Authority on Email: info@ipoa.go.ke or Tel: 254 20 490 6100.

Yours Faithfully,



ANNE MAKORI, (MRS), EBS
CHAIRPERSON

Copy to:

1. Otieno Ogolla & Company Advocates
We acknowledge receipt of your letter dated 24th January 2023 and have noted the contents thereof. The contents of this letter also apply to your request for information.
2. The Commission on Administrative Justice,
West End Towers, 2nd Floor,
Waiyaki Waki, Westlands,
Nairobi.
Attention: Lucy Ndung'u, EBS

ANNEXURE II : THE FOLLOWING DECEASED PERSONS ON THE LIST FROM OGOLLA WERE NOT REPORTED TO AUTHORITY

NAME OF DECEASED	DESCRIPTION AND LOCATION OF THE INCIDENT	DATE OF THE INCIDENT
1. Francis Njuguna 31, Years Old	Fatally shot at Kariobangi Nairobi county	11 th August 2017
2. Kevin Otiwn 23 Years Old	Shot by police and died while being taken to Hospital	11 th August 2017
3. Vitalis Otieno 24 Years Old	Died of Shock at Dandora in his house	12 th August 2017
4. Sammy Amira Loka 54 Years Old	Hit by teargas at Kawangware on 9 th August 2017 died at KNH on 10 th August 2017.	9 th August 2017 died at KNH on 10 th August 2017.
5. Lillian Khavere 40 Years Old, Expectant	Teargassed at Kawangware on 12 th August 2017 died at KNH	12 th August 2017 died at KNH
6. Melvin Mboka Mwangitsi 19 Years Old	Fatally shot at satellite on 9 th August 2017	9 th August 2017
7. Zebedeo Mukhala 42 Years Old	Shooting causing injuries on 12 th August 2017 died at Mbagathi on 14 th August 2017	12 th August 2017 died at Mbagathi on 14 th August 2017
8. Violet Khagai 43 Years Old	Hit by teargas at Kawangware on 12 th August 2017 died while being taken to hospital	12 th August 2017 died while being taken to hospital
9. Erick Kwama 30 Years Old	Hit by teargas at Kawangware on 12 th August 2017 Died at KNH on 10 th August 2017	Died at KNH on 10 th August 2017

10.	Nelvin Amakove 30 Years Old	Shot while in riots in Kawangware on 11 th August 2017	11 th August 2017
11.	Suleiman Khatibu 25 Years old Tanzanian	Hit by teargas at Kawangware on 11 th August 2017 Died at KNH on 18 th August 2017	11 th August 2017 Died at KNH on 18 th August 2017
12.	Jeremiah Maranga 50 Years Old	Assaulted by Police in Kawangware on 11 th August 2017	11 th August 2017 Died at KNH on 11 th August 2017
13.	Benson Wandera 47 Years Old	Fatally shot by police at Kawangware on 11 th August 2017	11 th August 2017
14.	William Waka 45 Years Old	Fatally shot by police at Mathare on 9 th August 2017	9 th August 2017
15.	Geoffrey Onacha 34 Years	Fatally shot by police in Kibera Nairobi County on 10 th August 2017	10 th August 2017
16.	Sharon Imenza 10 Years daughter of Geoffrey Onacha	Collapsed and died on 11 th August 2017, after seeing the body of his father Geoffrey Onacha	11 th August 2017,
17.	Henry Onyango Matete 28 Years	Assaulted by police on 12 th August 2017 at Kibera died at Muthaiga Hospital on 13 th August 2017	12 th August 2017 at Kibera died at Muthaiga Hospital on 13 th August 2017
18.	Michael Owino 28 Years Old	Fatally shot at Kibera on 12 th August 2017, body yet to be found	12 th August 2017

ANNEXURE I: 2017 POST ELECTION DEATHS RESULTING FROM POLICE ACTION IN NAIROBI

	Complaints Number	Region	Nature	Victim	Position in Otiemo Ogolla The List
1.	IPOA/INV/0906/2017	Nairobi	Fatal shooting	Stephanie Moraa Gisemba	24 in the list
2.	979-INV-NAIROBI-C-000710-2017	Nairobi	Assault causing death	Silas Lebo - Mathare	18 in the list.
3.	IPOA/CMU/971/2017	Nairobi	Fatal shooting	Christopher Mutua	25 in the list
4.	IPOA/CMU/0947/2017	Nairobi	Fatal shooting	Bernard Okoth Odoyo and Victor Okoth Obondo	19&20 in the List
5.	IPOA/CMU/981/2017	Nairobi	Fatal Shooting	Fanuel Muruka Amule	26 in the list
6.	IPOA/CMU/0982/2017	Nairobi	Fatal shooting	David Owino Otiemo	23 in the list
7.	IPOA/CMU/1015/2017	Nairobi	Fatal shooting	Vincent Omondi Okebe	2 in the list
8.	IPOA/CMU/00982/2017	Nairobi	Fatal shooting	Boniface Ochieng Owino	22 in the list
9.	688-INV-NAIROBI-001077-2017	Nairobi	Fatal shooting	Raphaël Ayieko	27 in the list
10.	IPOA/CMU/1077/2017	Nairobi	Fatal shooting	Sheddy Omondi & Privel Ochieng	28 & 29 in the list
11.	IPOA/CMU/981/2017	Nairobi	Fatal Shooting	Fanuel Muruka Amule	26 in the list
12.	IPOA/CMU/973/2017	Nairobi	Fatal Shooting	Thomas Odhiambo - Dandora	3 in the list
13.	IPOA/CMU/1976/2017	Nairobi	Shooting causing injuries	Paul Mungai	No 10 in the list

MBUGUA MUREITHI & CO.
ADVOCATES

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Commissioners for Oaths & Notaries Public

Mbugua Mureithi Woodlands Business Park Tel: 0722-527229
1st Floor mbugua.mureithi@yahoo.com
Victor Olewe Kiambere Road gikonyolw@hotmail.com
Upper Hill wanjikuvictoria@yahoo.com
P.O. Box 52969-00200 mbugua.mureithi99@gmail.com
Nairobi

Associates:
Desire Njamwea
Leah W. Gikonyo
Victoria W. Kariuki

This is the exhibit marked...
Annexed to in the Affidavit/Declaration
Of...
Sworn / Declared Before me this...
Day of... 20... 23... at...
in the Republic of Kenya

Our Ref: MM/KK/3/023 **Your Ref:** **Date:** 26th July 2023
Commissioner for Oaths

Japhet N. Koome, EBS, HSC 'ndc'(K)
The Inspector General of
The National Police Service
Police Headquarters
Nairobi.



RE: REQUEST FOR INFORMATION ON INVESTIGATIONS AND REMEDIAL ACTIONS TAKEN INTO THE KILLINGS OF PEACEFUL PROTESTERS IN NAIROBI OVER THE 2017 PRESIDENTIAL ELECTION RESULTS

The above matter refers.

We have been instructed by our client Mr. Khelef Khalifa, a senior citizen of Kenya and a director in the board of Muslims for Human Rights (MUHURI), a duly registered human rights non-governmental organization whose main object is the promotion, advancement and protection of human rights and fundamental freedoms of all vulnerable persons.

Our instructions is to request for information from your office regarding investigations into the killings of the eighteen (18) deceased persons appearing on the Annex enclosed herewith who were killed by police officers through unlawful use of force and firearms by shootings immediately before or soon after the announcement of results of the presidential election of August 2017, while exercising their constitutional right to peaceful demonstrations, pickets and protests over the said results of the presidential election, or pulled from their houses or places of work and executed in cold blood.

Our client is deeply concerned that more than five (5) years since the said killings, the apparent failure to investigate and punish those crimes has bred impunity that is now in

full display in the current shootings using live bullets in containing the ongoing *maandamano*. Consequently, our client urgently seeks the following information:- 122

- i. Status of investigations conducted by your office under paragraph 5 of Part A of the Sixth Schedule of the National Police Service Act (on Conditions as to the Use of Force) and paragraph 6 of Part B of the same Schedule (on Conditions as to the Use of Firearms) concerning the killings of the eighteen (18) deceased persons.
- ii. Particulars of any disciplinary cases taken against the officers who failed to report the killings of the said deceased persons herein as provided for under paragraph 8 of Part A of the Sixth Schedule (on Conditions as to the Use of Force).
- iii. Particulars of any disciplinary cases and/or criminal cases initiated by the National Police Service under paragraph 2(2) of Part C of the Sixth Schedule (on Specific Responsibilities of Superiors) against officers who gave orders that led to the unlawful use of force that led to the killing of the deceased persons herein.
- iv. Particulars of any criminal cases initiated by the National Police Service under paragraph 2(3)(d) of Part C of the Sixth Schedule (on Specific Responsibilities of Superiors) against station commanders and their direct superior officers who failed to investigate, secure evidence of the killings of the deceased persons herein and, also failed to furnish the Independent Policing Oversight Authority (IPOA) with reports of such investigations within the time and in the manner prescribed.
- v. Particulars of any murder or manslaughter cases recommended to the Director of Public Prosecutions for prosecution of police officers who unlawfully shot dead the deceased persons herein.
- vi. Particulars of any judicial inquest cases initiated by the National Police Service through your station commanders concerning the killings of the deceased persons herein as required by section 386(1)(b) and (c) and 387(1) of the Criminal Procedure Code (CPC).
- vii. Confirmation that the National Police Service neither investigated nor took any remedial action against its officers under the provisions of the said Sixth Schedule of the National Police Service Act, the Penal Code or the Criminal Procedure Code.

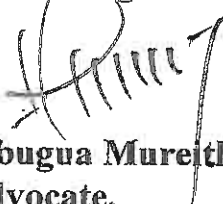
We are further instructed that our client seeks the above information to facilitate the families of the deceased and the people of Kenya generally to access justice and to seek effective remedies for the brutal and unlawful termination of the lives of the deceased.

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Take Notice that we are instructed to take out appropriate Court proceedings before the High Court against you if you do not furnish us with the said information within the next seven (7) days from the date hereof.

We have taken the liberty of copying this letter to the Commission on Administrative Justice which is the statutory body responsible for facilitation of the constitutional fundamental right of access to information.

Yours faithfully,
(For Mbugua Mureithi & Co.)


Mbugua Mureithi
Advocate.

Encl

Cc

1. Khelef Khalifa
C/o MUHURI
Mombasa.

2. The Chairperson
Commission on Administrative Justice
West End Towers, 2nd Floor
Waiyaki Way, Westlands
Nairobi.

**TABLE OF CONFIRMED DEATHS PERPETRATED BY POLICE OFFICERS
DURING POST-ELECTION VIOLENCE IN NAIROBI IN AUGUST 2017**

No.	Name	Location	Date	Description of violation	Status
1	Francis Njuguna, 31 Years Old	Kariobangi, Nairobi	August 11, 2017	Shot dead	Body found at City Mortuary
2	Kevin Otiwn, 23 Years Old	Dandora, Nairobi	August 11, 2017	Shot Outside his gate by police	Died on his way to the Hospital
3	Sammy Amira Loka, 54 Years Old	Kawangware stage Two, Nairobi	August 9, 2017	Hit by teargas canister-inhaled teargas	Died at KNH on August 10, 2017
4	Lilian Khavere, 40 Years, 8 months pregnant	Kawangware no. 56, Nairobi	August 12, 2017	Teargassed fell and trampled by crowd	Died at KNH on August 12, 2017
5	Melvin Mboka Mwangitsi, 19 Years Old	Satelite, Kawangware, Nairobi	August 9, 2017	Shot dead by police	Body traced at KNH mortuary
6	Vitalis Otieno, 24 Years Old	Dandora, Nairobi	August 12, 2017	Died of shock	Died in his House
7	Zebedeo Mukhala, 42 Years Old	Kawangware no. 56, Nairobi	August 12, 2017	Shot in the leg, fell and trampled by crowd	Died at Mbagathi hospital on August 14, 2017
8	Violet Khagar, 43 Years Old	Kawangware stage Two, Nairobi	August 12, 2017	Hit by Teargas and inhaled pepper spray	Died on way to hospital
9	Eric Kwama, 30 43 Years Old	Kawangware stage Two, Nairobi	August 10, 2017	Hit by Teargas fired at close range, inhaled pepper spray	Died at KNH
10	Nelvin Amakove 30, Years Old	Kawangware no. 56, Nairobi	August 11, 2017	Caught up in riots, shot in the back while running away	Died instantly body traced at KNH
11	Suleiman Khatibu, 25 Years Old	Kinyanjui area, Wanye, near Kawangware, Nairobi	August 11, 2017	Hit in the chest by Teargas fired in close range, bled through mouth and nose	Died at KNH on August 18, 2017
12	Jeremiah Maranga, 50 Years Old	Kawangware no. 56, Nairobi	August 11, 2017	Beaten by police and left for dead, body soaked in blood	Died of internal bleeding and severe organ damage while waiting for

					treatment at KNH 125
13	Benson Wandera, 47 Years Old	Kinyanjui area near Kawangware, Nairobi	August 11, 2017	Shot dead by police	Buried in western Kenya Busia County
14	William Waka, 45 Years Old	Mathare North, Nairobi	August 9, 2017	Shot in the Chest	Body traced at city mortuary
15	Geoffrey Onacha, 34 Years Old	Kibera, Nairobi	August 10, 2017	Shot Dead	Body traced at city mortuary
16	Sharon Imenza, 10 Years daughter of Geoffrey Onanacha	Kibera, Nairobi	August 11, 2017	Collapsed and died on seeing father's body	Collapsed
17	Henry Onyango Matete, 28 Years Old	Kibera Olympic area, Nairobi	August 12, 2017	Beaten by police	Died a day later at Muthaiga hospital
18	Michael Owino, 28 Years Old	Kibera Olympic area, Nairobi	August 12, 2017	Shot dead and body taken away in body bag	Body yet to be found

DATED AT NAIROBI THIS

26th DAY OF *July*

2023

[Signature]
MBUGUA MUREITHI & CO.
ADVOCATES

DRAWN BY:-

MBUGUA MUREITHI & CO. ADVOCATES

1ST FLOOR

WOODLANDS BUSINESS PARK

KIAMBERE ROAD

UPPER HILL

P.O. BOX 52969-00200

NAIROBI.

Chairperson: Hon. Florence Kajju, MBS
Vice-Chairperson: Mr. Washington Sati
Commissioner: Mrs. Lucy Ndung'u, EBS, HSC



THE
COMMISSION ON ADMINISTRATIVE JUSTICE **126**
"Office of the Ombudsman"

Our Ref: CAJ/ATI/NPS/015/34/23-MW

31st July 2023

Inspector General

National Police Service
Jogoo House 'A', 4th Flr
P.O. Box 44249-00100

NAIROBI

Dear Sir,

This is the exhibit marked **KK11**
Annexed to in the Affidavit/Declaration
Of **Khelef Khalifa**
Sworn / Declared Before me this **12th**
Day of **September 23** 20**23** at **Nairobi**
in the Republic of Kenya

Commissioner for Oath

RE: REQUEST FOR INFORMATION BY MBUGUA MUREITHI & CO. ADVOCATES ON BEHALF OF MR. KHELEF KHALIFA

The Commission is the Oversight and Enforcement Agency of the Access to Information Act, 2016 (ATI, Act 2016).

An initial request for information dated 26th July 2023 (copy enclosed) has been received by the Commission from Mbugua Mureithi & Co. Advocates on behalf of Mr. Khelef Khalifa addressed to your Office.

The request for information relates to the status of investigations and remedial actions taken into the killing of peaceful protesters in Nairobi over the 2017 Presidential election results.

This is therefore to request you to respond to the requester soonest in line with section 9(4) of ATI, Act 2016.

Your prompt response will be highly appreciated.

LUCY NDUNGU, EBS

ACCESS TO INFORMATION COMMISSIONER

CC:

Mbugua Mureithi & Co. Advocates

Woodlands Business Park
1st Flr Kiambere Rd, Upper Hill
P.O Box 52969-00200

NAIROBI



MBUGUA MUREITHI & CO.
ADVOCATES

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Commissioners for Oaths & Notaries Public

Mbugua Mureithi

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Associates:

Desire Njamwea

Leah W. Gikonyo

Victoria W. Kariuki

Nairobi

Our Ref: MM/KK/3/023

Your Ref:

Date: 15th August 2023

Japhet N. Koome, EBS, HSC 'ndc'(K)
The Inspector General of
The National Police Service
Police Headquarters
Nairobi.

This is the exhibit marked... **KK12**
Annexed to in the Affidavit/Declaration
Of... **Shelley Khalifa**...
Sworn / Declared Before me this... **15th**...
Day of **September 2023**... at... **Nairobi**
in the Republic of Kenya

.....
Commissioner for Oaths

**RE: REQUEST FOR INFORMATION ON INVESTIGATIONS AND REMEDIAL
ACTIONS TAKEN INTO THE KILLINGS OF PEACEFUL PROTESTERS
IN NAIROBI OVER THE 2017 PRESIDENTIAL ELECTION RESULTS**


We refer to the above matter and our letter of 26th July 2023 served on your office on 27th July 2023, and the letter of the Commission on Administrative Justice (CAJ) dated 31st July 2023 addressed to you and copied to us requesting you to comply with the applicable law regarding our client's request for the information sought in our said letter. Enclosed herewith is a copy of the said letter of the CAJ for your ease of reference.

We note with disappointment your lack of response to our said letter. We also have no information that you have responded to the said letter from the CAJ to date.

Please Take Notice that we are instructed to promptly proceed to Court if you do not furnish us with the said information within the next **seven (7) days** from the date hereof.

Yours faithfully,

(For Mbugua Mureithi & Co.)


Mbugua Mureithi
Advocate.

Encl

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Cc

Khelef Khalifa
C/o MUHURI
Mombasa.

This is the exhibit marked... *KK13*
Annexed to in the Affidavit/Declaration
Of... *Japhet Koome*...
Sworn / Declared Before me this... *13th*
Day of... *September*... 20... *23*... at... *Nairobi*
in the Republic of Kenya

Commissioner for Oaths



**OFFICE OF THE INSPECTOR GENERAL
NATIONAL POLICE SERVICE
NAIROBI - KENYA**

Telegraphic Address:
"IG, NPS"
Telephone: Nairobi

Jogoo House "A"
P O Box 44249-00100
NAIROBI

Ref. No. NPS/IG/ORG/6/10(51)

15th August, 2023

Mbugua Mureithi & Co. Advocates,
Woodlands Business Park,
1st Floor,
Kiambere Road,
Upper Hill,
P.O. Box 52969-00200
NAIROBI

Dear Sir,

**RE: REQUEST FOR INFORMATION ON INVESTIGATIONS AND REMEDIAL
ACTIONS TAKEN INTO THE KILLINGS OF PEACEFUL PROTESTERS IN
NAIROBI OVER THE 2017 PRESIDENTIAL ELECTIONS RESULTS.**

Please, further to your letter ref.MM/KK/3/023 dated 15th August, 2023 regarding the above stated matter, note that the law does not allow this Office to comment on matters under investigations by Independent Police Oversight Authority.

Consequently, kindly we have no further comments regarding the same.

Japhet Koome
JAPHET KOOME, EBS, HSC, ndc (K)
**INSPECTOR GENERAL
NATIONAL POLICE SERVICE**



PETITION

(Pursuant to Articles 19, 20(1),(2),(3),(4),21(1),22(1),(2),(3), 23(1),(3), 159(2)(a), 165(3)(a),(b),(d)(i),(ii) & 258(1),(2)(a),(b),(c) of the Constitution of Kenya and Rules 4(1),(2)(i),(ii),(iii), 10 and 11 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013)

TO:-

The Deputy Registrar
High Court, Constitutional & Human
Rights Division
Milimani Law Courts
Nairobi

The humble Petition of (1) KENYA HUMAN RIGHTS COMMISSION (KHRC), (2) MUSLIMS FOR HUMAN RIGHTS (MUHURI) and (3) KHELEF KHALIFA whose address of service for purposes of this Petition is care of MBUGUA MUREITHI & CO. ADVOCATES, 1ST FLOOR, WOODLANDS BUSINESS PARK, KIAMBERE ROAD, UPPER HILL, P.O. BOX 52969 – 00299 NAIROBI is as follows:-

A. DESCRIPTION OF THE PARTIES

1. The 1st Petitioner Kenya Human Rights Commission (hereafter “KHRC”) is a human rights non-governmental organization founded in 1992 with the objective of promotion, advancement and protection of fundamental rights and freedoms of the individual under the Constitution of Kenya and international law. The 1st petitioner is headquartered in Nairobi with networks and activities throughout Kenya.
2. The 2nd Petitioner Muslims for Human Rights (hereafter “MUHURI”) is a human rights non-governmental organization based in Mombasa and was founded in 1997 with the objective of promotion, protection, advancement and enjoyment of human rights and fundamental freedoms by all.
3. The 3rd Petitioner KHELEF KHALIFA is a senior citizen of Kenya (an elderly person in the meaning of the Constitution) a former Commissioner of the 2nd Interested Party the Kenya National Commission on Human Rights (KNCHR) and currently a Board member of the 2nd Petitioner MUHURI.
4. The 1st Respondent is the Inspector General of the National Police Service (IG-NPS) in charge of, *inter-alia*, the overall command of operations of the National Police Service under the Constitution and the National Police Service Act, 2011. Service of the petition on the 1st Respondent shall be effected through the Petitioners’ advocates’ office.

5. The 2nd Respondent is Mr. Japhet Koome the current holder of the office the 1st Respondent and who bears personal and command responsibility over all officers of the National Police Service and was the police commander of the City County of Nairobi at the time of the complained incidents herein. Service of the petition on the 2nd Respondent shall be effected through the Petitioners' advocates' office.
6. The 3rd Respondent is the National Policing Oversight Authority (IPOA), a statutory body established under the Independent Policing Oversight Authority Act, Act No. 35 of 2011 with the primary object and purpose of holding the police accountable to the public in the performance of their functions. Service of the petition on the 3rd Respondent shall be effected through the Petitioners' advocates' office.
7. The 4th Respondent is the Honourable Attorney of the Republic of Kenya, the constitutionally designated Principal Legal Advisor to the Government of Kenya and in that capacity vested with the legal authority to defend any civil suit against the National Government and its agencies. Service of the petition on the 4th respondent shall be effected through the Petitioners' advocates' office.
8. The named 1st Interested Party is the Director of Public Prosecutions (the DPP) created by the Constitution, mandated and bestowed with the power of public prosecution of all criminal offences and the power to direct the 1st Respondent to investigate criminal offences under the laws of Kenya. Service of the petition on the 1st Interested Party DPP shall be effected through the Petitioners' advocates' office.
9. The named 2nd Interested Party is the Kenya National Commission on Human Rights (hereafter "the KNCHR"), an independent constitutional commission established under article 59(4) of the Constitution and the Kenya National Commission on Human Rights Act (Act No. 14 of 2011). Service of the petition on the named 2nd Interested Party shall be effected through the Petitioners' advocates' office.
10. The named 3rd Interested Party is the Independent Medico-Legal Unit (hereafter "IMLU"), a human rights non-governmental organization founded in 1993 with the objective of promotion, advancement and protection of fundamental rights and freedoms of the individual under the Constitution of Kenya and international law particularly freedom from torture and other forms of ill-treatment. Service of the petition on the named 3rd Interested Party shall be effected through the Petitioners' advocates' office.

B. THE FACTS:-

11. The announcement of results of the presidential election on 11th August 2017 by the Chairman of the Independent Electoral and Boundaries Commission (IEBC) was

followed by public protests and demonstrations in several parts of the country particularly in the City County of Nairobi.

12. While purportedly responding to the said protests and demonstrations police officers under the overall command of the 1st Respondent and the 2nd Respondent personally as the head of the police in the City County of Nairobi used excessive and lethal force of firearms by shooting to death at least thirty three (33) people in various parts of Nairobi who were either demonstrating and protesting against the announced results or in their homes or while going about their daily businesses.
13. The 2nd Interested Party the KNCHR in exercise of its constitutional and statutory mandate of investigating and documenting incidents of human rights violations in the country, through its officers, visited the Nairobi City Mortuary and ascertained the presence of majority of the bodies of the thirty three (33) people killed as averred at paragraph 12 above.
14. At the material time, the 2nd Respondent Mr. Japhet Koome was the County Police Commander for the City County of Nairobi responsible for the overall command of all police officers in all the police stations and police posts in Nairobi.
15. The 2nd Respondent Mr. Japhet Koomē, as overall county police commander in Nairobi at the time, was responsible under Part C of the Sixth Schedule of the National Police Service Act and under Chapter 9 of the Police Service Standing Orders (on Chain of Command) to prevent the unlawful use of force or firearms by police officers in the City County of Nairobi and to investigate station commanders or other superior officers who failed to report to the 3rd respondent on the use of unlawful force and firearms leading to the deaths of the deceased persons herein.
16. Upon request by the 3rd Petitioner to the 3rd Respondent IPOA for information on the status of investigations into the said killings by police officers, the 3rd Respondent IPOA confirmed that it is seized of only of fifteen (15) the cases of the said killings in Nairobi but without any lawful justification refused to furnish the 3rd Petitioner with the status of investigations.
17. In refusing to furnish the 3rd Petitioner with information regarding the said fifteen (15) cases of killings by police officers that the 3rd Respondent IPOA is seized of the 3rd Respondent IPOA demanded unreasonable, unlawful prior conditions of confidentiality, privacy and consents from the victims being inapplicable conditions subservient to the public interest imperative for disclosure of such information involving commission of serious crimes including murder.
18. Upon request by the 3rd Petitioner to the 1st Respondent for information on the status of investigations into the killings by police officers of the eighteen (18) deceased

persons whose killings the 3rd Respondent IPOA is not seized of, the 2nd Respondent in his capacity as the 1st Respondent refused to furnish the 3rd Petitioner with the status of investigations of the killings of the eighteen (18) deceased persons and alleged that the same were under investigations by the 3rd Respondent IPOA.

19. Consequent to paragraph 17 above the 3rd Respondent IPOA did disclose nor furnish information to the 3rd Petitioner regarding the number of cases that it might have recommended to the 1st Interested Party DPP for prosecution out of the 15 cases of killings by police officers that the 3rd Respondent IPOA admitted being seized of.
20. Consequent to paragraphs 17 and 18 above it is apparent that the 1st and 2nd Respondents, in violation of the Constitution and the National Police Service Act, did not report and have not investigated nor reported the killing of the eighteen (18) deceased persons killed by police officers, as was required of the 2nd Respondent and the 1st Respondent by the applicable provisions and Regulations under the National Police Service Act and the Police Service Standing Orders.
21. The petitioners contend that the killing of the thirty (33) deceased persons herein by police officers amounts to mass killings and investigations thereof require to be proactively published and publicized to the general public as important information affecting the nation in terms of Article 35(3) of the Constitution even without requests for the information by the people of Kenya.
22. To date no lawful justification has been given by the 1st and 2nd Respondents for the killing or causing the deaths of the thirty three (33) deceased persons herein by police officers using excessive force of firearms and other weapons.
23. Despite the killing or causing the deaths of the thirty three (33) persons herein at paragraph 12 above by police officers under the personal command of the 2nd Respondent, the failure of the 2nd Respondent to report the killings to the 3rd Respondent IPOA and the failure of the 2nd Respondent to provide any lawful justification for the killings, the 2nd Respondent continues to occupy the office of the 1st Respondent unlawfully and in violation of constitutional standards governing the State office of the 1st Respondent.

C. COMPETENCE & JURISDICTION

24. The petitioners have taken out this petition in the public interest on behalf of the thirty three (33) deceased persons herein who were unlawfully killed by police officers in Nairobi City County in August 2017 while purportedly responding, controlling and containing public protests and demonstrations immediately prior and following the announcement of results of the 2017 presidential election.

25. The petitioners have brought this petition pursuant to articles 22(2)(a),(c) and 258(1),2(a),(c) of the Constitution and Rule 4(2)(i),(iii) of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 (*the Mutunga Rules*).
26. The petitioners have invoked the original and the enforcement of the Bill of Rights jurisdiction of the Court and the jurisdiction on interpretation of the Constitution under article 165(3)(a),(b), d(i),(ii) and (6) of the Constitution.

D. CONSTITUTIONAL FOUNDATION OF THE PETITION

27. By the Preamble the Constitution consecrates the aspirations of all Kenyans for a government based on the essential values of human rights, equality, freedom, democracy, social justice and the rule of law.
28. Article 1(1) of the Constitution provides that all sovereign power belongs to the people and shall be exercised only in accordance with the Constitution.
29. Article 2 of the Constitution decrees the supremacy of the Constitution and commands that the Constitution binds "all persons and all State organs at both levels of government," prohibits any person from claiming or exercising State authority except as authorized by the Constitution, invalidates any act or omission in contravention of the Constitution and domesticates general rules of international law and international treaties and conventions ratified by Kenya.
30. Article 3 of the Constitution obligates every person to respect, uphold and defend the Constitution.
31. Article 4(2) of the Constitution declares the Republic of Kenya as a competitive multiparty democratic State founded on the national values and principles of governance referred in Article 10.
32. Article 10 of the Constitution enacts the national values and principles of governance to include the rule of law, democracy, human dignity, equality, human rights, good governance, integrity, transparency and accountability.
33. Article 26 of the Constitution guarantees the right to life and prohibits intentional deprivation to life except as permitted by the law.
34. Article 27 of the Constitution guarantees to every person the right to equal protection and equal benefit of the law and declares equality to include full and equal enjoyment of all rights and fundamental freedoms.

35. Article 28 of the Constitution guarantees every person the right to inherent dignity and the right to have that dignity respected and protected.
36. Article 29 of the Constitution guarantees every person the right to freedom and security of the person including the freedom not to be subjected to any form of violence from either public or private sources.
37. Article 35 guarantees every citizen of Kenya the right of access to information held by the State and obligates the State and its agencies with the duty to proactively publish and publicize any important information affecting the nation.
38. Article 37 of the Constitution guarantees every person the right, peaceably and unarmed, to assemble, to demonstrate, to picket and to present petitions to public authorities.
39. Article 73 of the Constitution declares authority assigned to a State officer to be a public trust to be exercised in a manner that, inter alia, is consistent with the purposes and objects of the Constitution, demonstrates respect for the people, brings honor to the nation and dignity to the office and promotes public confidence in the integrity of the office. The article also declares that the authority assigned to a State officer vests in the State officer the responsibility to serve the people, rather than the power to rule them.
40. Article 157(11) of the Constitution enjoins the Director of Public Prosecutions, in exercise of his powers, to have the regard to the public interest and the interests of the administration of justice.
41. Article 238 of the Constitution promulgates that the promotion and guarantee of the national security of Kenya is subject to the Constitution and Parliament, that national security shall be pursued in compliance with law and with utmost respect for the rule law, democracy, human rights and fundamental freedoms.
42. Article 244 of the Constitution enjoins the National Police Service to, inter alia, strive for the highest standards of professionalism and discipline among its members, promote and practice transparency and accountability and comply with constitutional standards of human rights and fundamental freedoms.
43. Article 245 of the Constitution provides that the Inspector-General of Police may be removed from office by the President on the grounds, among others, of serious violations of the Constitution or any other law, including contravention of Chapter Six of the Constitution and gross misconduct whether in the performance of the officer holder's functions or otherwise.

E. CONTRAVENTION OF THE CONSTITUTION AND ITS VALUES

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44. The killing or causing the deaths of the thirty three (33) deceased persons herein by police officers by use of brutal and lethal force of firearms by shooting is/was in violation and contravention of articles 26(3) and 29(c) of the Constitution by the 1st and 2nd Respondents and the officers who caused the deaths or did actual shootings.
45. The killing or causing the deaths of the thirty three (33) deceased persons herein by police officers by use of brutal and lethal force of firearms by shooting whilst the deceased persons were exercising their fundamental right under article 37 of the Constitution, to protest, demonstrate and picket was in violation and contravention of the rights of the deceased persons to equal protection and equal benefit of the law under article 27(1),(2) of the Constitution by the 1st and 2nd Respondents and the officers who caused the deaths or did actual shootings.
46. The failure by the 1st to 3rd Respondents to investigate, take disciplinary action and/or recommend prosecution of the culpable police officers including the 2nd Respondent for the unlawful shooting or causing the deaths and killing of the thirty (33) deceased persons herein is a violation of the right to life and the right to inherent human dignity and freedom from violence, cruel, inhuman or degrading treatment (ill-treatment) under articles 26(3) and 28, 29(c) and (f) of the Constitution.
47. The failure by the 1st to 3rd Respondents to investigate, take disciplinary action and/or recommend prosecution of the officers responsible for the unlawful shootings and killings or causing the deaths of the 33 deceased persons herein is a violation of the right of access to justice under Article 48 of the Constitution and the right to an effective remedy of law which is a foundational value of Kenya's constitutional order and breeds the culture of impunity.
48. The failure by the 1st to 3rd Respondents to investigate, take disciplinary action and/or recommend prosecution of the officers responsible for the unlawful shootings and killings or causing the deaths of the 33 deceased persons herein is a violation of the foundational values of the Constitution of Kenya including the rule of law, transparency and accountability and breeds the culture of impunity.
49. The refusal and failure by the 3rd Respondent to furnish the 3rd Petitioner IPOA with information regarding investigations conducted by the 3rd Respondent into the killing or cause of deaths of the thirty three (33) deceased persons herein by police officers and the status of such investigations is a violation of the right of the 3rd Petitioner of access to information held by the State and a breach of the duty to proactively publish and publicize important information affecting the country under

article 35(1) and (3) of the Constitution and a violation of national values and principles of governance of transparency and accountability by State agencies.

50. The failure by the person of the 2nd Respondent as the then overall police commander in the City County of Nairōbi and since becoming the office holder of the 1st Respondent, to take any disciplinary action against the officers responsible for the killing or causing the deaths of the 33 deceased persons herein is a dereliction of his constitutional duty to instill the National Police Service with the principles and ethos of national security under Article 238 and the objects and standards of service under Article 244 of the Constitution particularly of upholding the Constitution, utmost respect for the rule of law, human rights and fundamental freedoms and upholding the highest standards of professionalism and discipline, transparency and accountability.
51. The person of the 2nd Respondent who now occupies office of the 1st Respondent is consequently in violation of the Constitution as enumerated at paragraphs 44 to 50 above and fallen foul of the integrity requirements of Chapter Six of the Constitution and it is no longer constitutionally tenable for the 2nd Respondent to continue occupying the office of the 1st Respondent and the President of the Republic of Kenya should forthwith remove the 2nd Respondent from the office of the 1st Respondent.
52. There are no mitigating factors that the 2nd Respondent can lawfully invoke to forestall his removal from the office of the 1st Respondent in accordance with the provisions of Article of 245(7) of the Constitution.

F. WHETHER THERE ARE PENDING CASES RELATED TO THE INSTANT PETITION

53. The Petitioners affirm that to the best of their knowledge there are no other pending cases before any other courts relating to the same matter and between the same parties as the parties herein.
54. The present matter therefore has not been heard and determined on merits or otherwise by a Court of competent jurisdiction and hence the same is properly before this Honourable Court.

G. PRAYERS:-

55. Your Petitioners therefore humbly pray for:-
 - i) A declaration do issue that the right of the thirty three (33) deceased persons herein to life under article 26(1) and (3) of the Constitution has been infringed

by officers of the 1st Respondent and by the 2nd Respondent through brutal and lethal use of violence/force of firearms in shooting the deceased to death or causing their deaths through such violence of firearms.

- ii) A declaration do issue that the right of the thirty three (33) deceased persons herein to inherent human dignity and to have that dignity protected and respected under article 28 of the Constitution has been infringed by officers of the 1st Respondent and by the 2nd Respondent through brutal and lethal use of violence/force of firearms in shooting or causing the deaths of the deceased.
- iii) A declaration do issue that the use of brutal and lethal violence/force of firearms by police officers in shooting to death or causing the deaths of the thirty three (33) deceased persons herein is a violation by the police officers of the security and bodily integrity of the deceased persons, freedom from violence, cruel, inhuman and degrading treatment (ill-treatment) guaranteed by article 29(c) and (f) of the Constitution.
- iv) A declaration do issue that the unleashing of brutal and lethal violence/force of firearms by police officers by shooting to death or causing the deaths of the thirty three (33) deceased persons herein while they were exercising their rights under article 37 of the Constitution to protest, picket, demonstrate and hold processions was a violation of the right of the deceased persons to the equal enjoyment of article 37 rights and to the equal protection and equal benefit of the law guaranteed by article 27(1) and (2) of the Constitution.
- v) A declaration do issue that the thirty three (33) deceased persons herein, their families and the public generally are entitled in the public interest, through the petitioners herein, to the right of access to justice and to an effective remedy under article 48 of the Constitution and under the applicable provisions of regional and international human rights conventions ratified by Kenya for the brutal killing by use of lethal violence/force of firearms by police officers.
- vi) A declaration do issue that the refusal by the 1st and 3rd Respondents to furnish the 3rd Petitioner with information on the status of investigations conducted by the 1st and 3rd Respondents on the cases involving the killings or causing the deaths of the thirty three (33) deceased persons herein through shootings using firearms by officers of the 1st Respondent in August 2017 in the cause of protests following the announcement of results of the 2017 presidential election, is a violation of the right of the 3rd Petitioner of access to information under article 35(1) and (3) of the Constitution.
- vii) A mandatory order do issue compelling the 3rd Respondent IPOA to furnish information to the 3rd Petitioner and to this Honourable Court of all cases involving killing of protesters through shootings using firearms by officers of

the 1st Respondent in August 2017 following the announcement of results of the presidential election, investigations conducted by the 3rd respondent on the police officers who shot and killed or caused the deaths of the thirty three (33) deceased persons herein, the current status of the investigations and the cases recommended to the 4th respondent for prosecution.

- viii) A mandatory order do issue directing the 1st Respondent to forthwith investigate the killings of the deceased persons herein that have not been reported to the 3rd Respondent out of the thirty three (33) deceased persons herein and to report such investigations to the 3rd Respondent and/or cause the prosecution of the police officers found to have committed criminal offences and/or cause judicial inquests to be conducted into the killings.
- ix) A declaration do issue that the 2nd Respondent Mr. Japhet Koome is personally liable for serious violations of the Constitution particularly the use of brutal and lethal violence/force of firearms leading to the unlawful killing or causing the deaths of the thirty three (33) deceased persons herein by police officers under his command in violation of articles 29(c) and 26(3) of the Constitution whilst the deceased were exercising their fundamental right to protest, demonstrate and picket guaranteed by article 37 of the Constitution.
- x) A declaration do issue that the violation of the Constitution particularly the Bill of Rights, Chapter six, the guiding principles of the National Police Service section 61 of the National Police Service Act and the Sixth Schedule thereof on the use of force and firearms by the 2nd Respondent Mr. Japhet Koome in the matters raised in this petition has attained the threshold for the President of the Republic of Kenya to cause the removal of the 2nd respondent from the State office of the 1st Respondent Inspector General of Police by dint of article 245(7) of the Constitution.
- xi) A mandatory order do issue directing the 3rd Respondent IPOA to investigate the role of the 2nd Respondent Mr. Japhet Koome and offences that he committed in the unleashing of unconstitutional, unlawful brutal and lethal violence of firearms in the shooting to death or causing the deaths of the thirty three (33) deceased persons herein by police officers under his command.
- xii) General damages as the Court shall assess consequent to the declarations of violations of fundamental rights and freedoms in prayers (i) to (vi) above.
- xiii) Exemplary, aggravated and/or punitive damages for oppressive, highhanded and unconstitutional conduct of the police.
- xiv) Costs of the Petition.

xv) Interests on prayers (ix) to (xi) above

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DATED AT NAIROBI THIS 12th DAY OF September 2023

MBUGUA MUREITHI & CO.
(ADVOCATES FOR THE PETITIONERS)

DRAWN & FILED BY:-

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3. INDEPENDENT POLICING
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REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI
MILIMANI LAW COURTS
CONSTITUTIONAL & HUMAN RIGHTS DIVISION
PETITION NO. _____ OF 2023

IN THE MATTER OF ARTICLE 10, 19, 20, 21(1), 22(1), 23(1) & (3),
73(1),(2)(b),(c),(d),(e)165(3)(a),(b),(d)(i), (ii), 232, 238(a),(b) & 244 OF THE
CONSTITUTION

=**AND**=

IN THE MATTER OF CONTRAVENTION OF FUNDAMENTAL RIGHTS
AND FREEDOMS UNDER ARTICLES 26(1),(3), 27(1),(2),(4), 28, 29(c),(d),(f),
31(c), 35(1)(a),(b),(3), & 37 OF THE CONSTITUTION

=**BETWEEN**=

1. KENYA HUMAN RIGHTS COMMISSION
2. MUSLIMS FOR HUMAN RIGHTS (MUHURI)
3. KHELEF KHALIFA:.....PETITIONERS

=**VERSUS**=

1. THE INSPECTOR GENERAL OF THE NATIONAL
POLICE SERVICE
2. INSPECTOR GENERAL JAPHET KOOME
3. THE INDEPENDENT POLICING
OVERSIGHT AUTHORITY (IPOA)
4. THE HON. ATTORNEY GENERAL RESPONDENTS

=**AND**=

1. THE DIRECTOR OF PUBLIC PROSECUTIONS
2. KENYA NATIONAL COMMISSION
ON HUMAN RIGHTS (KNCHR)
3. INDEPENDENT MEDICO-LEGAL
UNIT (IMLU).....INTERESTED PARTIES

AFFIDAVIT

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I, KHELEF KHALIFA, a resident of Mombasa whose address of service for purposes of this Petition is care of M/S MBUGUA MUREITHI & CO. ADVOCATES, P.O. BOX 52969 - 00200 NAIROBI do hereby make oath and State as follows:-

1. THAT I am the 3rd Petitioner herein, a male adult of sound mind aged 74 years old, a citizen of Kenya by birth and currently a member of the Board of Directors of the 2nd Petitioner herein Muslims for Human Rights (hereinafter "MUHURI") and I am hence competent to swear this affidavit on my own behalf and on behalf of the 2nd Petitioner MUHURI.
2. THAT the 1st Petitioner Kenya Human Rights Commission (hereinafter "the KHRC") is a human rights non-governmental organization with its head office in Nairobi and was founded in 1992 with the objective of promotion, protection, advancement and enjoyment of human rights and fundamental freedoms by individuals and communities in Kenya and I am duly authorized to swear this affidavit on behalf of the 1st Petitioner the KHRC. Annexed hereto marked "KK1A" is a true copy of the authority given to me by the 1st Petitioner the KHRC.
3. THAT the 2nd Petitioner MUHURI is also a human rights non-governmental organization based in Mombasa and was founded in 1997 with the objective of promotion, protection, advancement and enjoyment of human rights and fundamental freedoms by all.
4. THAT I am a former Commissioner of the 2nd Interested Party herein the Kenya National Commission on Human Rights (hereinafter "the KNCHR").
5. THAT I vividly recall that the announcement of results of the presidential election on 11th August 2017 by the Chairman of the IEBC was followed by public protests and demonstrations in several parts of the country and especially in Nairobi.
6. THAT on 12th August 2017 the 2nd Interested Party KNCHR released a press statement expressing concern at the incidents of violence surrounding the protests and especially the use of force and firearms by police officers purportedly in controlling the protests. Annexed hereto marked "KK2A" is a true copy of the press statement by the 2nd Interested Party the KNCHR dated 12th August 2017.
7. THAT I vividly recall that at the time of the protests there was widespread news reports from the media and also information and reports from human rights monitors of the 1st and 2nd Petitioners, human rights activists and defenders to the effect that in purporting to control the said protests and demonstrations police officers used

excessive, brutal and lethal force of firearms by shooting to death or causing the death of at least thirty three (33) people in Nairobi who were either demonstrating and protesting against the announced results, or who were simply in their homes or while going about their daily businesses. Annexed hereto marked "KK3A" is an annex table of the thirty three (33) deceased persons killed as aforesaid.

8. THAT as the protests were going on I was informed by one Kamanda Mucheke, a Deputy Director of the 2nd Interested Party and I verily believe to be true that he had in the exercise of the constitutional and statutory mandate of investigating and documenting incidents of human rights violations in the country, visited the City Mortuary and ascertained the presence of numerous bodies of people whom the mortuary attendants confirmed had been brought by police officers who indicated that they had been killed during the protests.
9. THAT postmortems conducted by the government pathologists on the bodies at paragraph 7 above confirmed that majority of the deceased persons had died from bullet wounds.
10. THAT the killings of the 33 deceased persons at paragraph 7 above generated a lot of local and international publicity and they were researched, investigated and documented by various local and international human rights non-governmental organizations including the 3rd Interested Party herein Independent Medico-Legal Unit (IMLU), and jointly by Amnesty International and Human Rights Watch.
11. THAT pursuant to paragraph 10 above the 3rd Interested Party IMLU provided independent pathologists who participated at the postmortems of the bodies of the said deceased persons and compiled postmortem reports while Amnesty International and Human Rights Watch documented the killings in a joint detailed report on violations committed by security agents during the 2017 elections entitled; "*Kill those Criminals.*" Annexed hereto marked "KK4A" is a true copy of the joint report of Amnesty International and Human Rights Watch.
12. THAT in February 2017 the 3rd Respondent IPOA published a monitoring report on the conduct of the police during public protests and gatherings against the Independent Electoral and Boundaries Commission (IEBC) from April to June 2016 (anti-IEBC protests) in which the 3rd Respondent found the police to have abused the use of force and firearms and unlawfully caused injurie and deaths in dealing with the protests. Annexed hereto marked "KK5A" is a true copy of the report.
13. THAT I verily believe that the unconstitutional and unlawful brutal force and lethal use of firearms by police officers against the public during the anti-IEBC protests as documented by the 3rd Respondent IPOA was the unheeded precursor of the unchecked brutal force and use of firearms that was unleashed on the public during

the August 2017 protests against the results of the 2017 presidential election leading to the death of the thirty three (33) deceased persons herein.

14. THAT I know for a fact that articles 20(1), 21(1), 29(c), 238(2)(a),(b) and 244(a) and (c) of the Constitution and section 62 of the National Police Service Act and the Sixth Schedule thereof, read together, outlaw the use of lethal, violent force by all including police officers.
15. THAT I also know for a fact that at the time of the said protests in August 2017, the 2nd Respondent Mr. Japhet Koome, now Inspector General of Police, was the County Police Commander for the City County of Nairobi, personally responsible for the overall command of all police officers in the whole of the City County of Nairobi.
16. THAT I verily believe that the 2nd Respondent Mr. Japhet Koome, as the overall county police commander in Nairobi at the material time, was responsible under Part C of the Sixth Schedule of the National Police Service Act to prevent the unconstitutional, illegal and unlawful use of force or firearms by police officers within the City County of Nairobi and to investigate police station commanders or other superior officers who failed to report to the 3rd respondent on the use of force and firearms that led to the deaths of the thirty three (33) deceased persons herein.
17. THAT despite the local and international publicity, public outrage and public interest generated by the wanton deaths of the thirty three (33) deceased persons herein by police officers, my co-petitioners and I are not aware of any investigations or any remedial actions whether disciplinary actions or criminal prosecutions that have been initiated/recommended by the 1st to 3rd Respondents herein or undertaken by the 1st Interested Party DPP under the Constitution and the applicable statute laws.
18. THAT my co-petitioners and I were and still are deeply concerned by the failure, refusal and neglect of the 1st to 3rd Respondents to take any remedial measures under the Constitution and the applicable laws to vindicate the numerous constitutional rights of the 33 deceased persons herein including their sacrosanct right to life and the sure potential of the inaction breeding and encouraging a culture of impunity.
19. THAT consequent to paragraph 18 above, acting on my instructions, on 24th January 2023 my then advocates M/s Otieno Ogola & Co. Advocates wrote a request to the 3rd Respondent IPOA for information on status of investigations into the said killings by police officers, and copied the request to the Commission on Administrative Justice (hereafter "the CAJ") responsible under the law for enforcing such requests. Annexed hereto marked "KK6A" and "KK7A" are true copies of the request for information and the follow-up letter of the CAJ to the 3rd Respondent, respectively.

20. THAT not having received a response from the 3rd Respondent IPOA, on 5th April 2023 my then advocates M/s Soweto & Co. Advocates wrote a reminder to the 3rd Respondent on the requested information, and copied the reminder to the CAJ. Annexed hereto marked "KK8A" is a true copy of the reminder.
21. THAT on 12th April 2023 the 3rd Respondent IPOA eventually wrote to my then advocates M/s Soweto & Co. Advocates in answer to the request for information and the 3rd Respondent confirmed that it is seized of only fifteen (15) of the said killings in Nairobi but refused to furnish me with the status of investigations based on prior conditions of confidentiality, privacy and consents from the victims. Annexed hereto marked "KK9A" is a true copy of the said response of the 3rd Respondent IPOA inclusive of the list of deceased persons.
22. THAT I verily believe that in placing prior conditions of confidentiality, privacy and consents from the victims, the 3rd Respondent IPOA acted unreasonably and set inapplicable conditions subservient to the public interest imperative for disclosure of such information involving gross violations of the Constitution and the Bill of Rights and commission of serious crimes including mass murders.
23. THAT subsequent to receipt of the said response from the 3rd Respondent IPOA, upon my instructions, on 26th July 2023, my advocates on record herein wrote a request to the 1st Respondent copied to the CAJ seeking for information on the status of investigations into the killings by police officers of the eighteen (18) deceased persons whose killings the 3rd Respondent had indicated it is not seized of. Annexed hereto marked "KK10A" and "KK11A" are true copies of the said request for information and the follow-up letter of the CAJ to the 1st Respondent, respectively
24. THAT there being no immediate response from the 1st Respondent to the request at paragraph 23 above, on 15th August 2023 my advocates on record wrote a reminder to the 1st Respondent on the requested information. Annexed hereto marked "KK12A" is a true copy of the reminder.
25. THAT on 15th August 2023 the 2nd Respondent in his capacity as the 1st Respondent responded to the requests at paragraphs 23 and 24 above and refused to furnish the me with any information on the status of investigations of the killings of the eighteen (18) deceased persons alleging that the cases of the eighteen (18) deceased persons were under investigations by the 3rd Respondent IPOA. Annexed hereto marked "KK13A" is a true copy of the response of the 1st Respondent.
26. THAT consequent to paragraph 21 above the 3rd Respondent refused to disclose information to me regarding the number of cases that it might have recommended to

the 1st Interested Party DPP for prosecution out of the 15 cases of killings by police officers that the 3rd respondent has admitted of being seized of.

- 27. THAT consequent to paragraphs 21 and 25 above the 1st and 2nd Respondents did not disclose any remedial action taken against the culpable police officers over the deaths of the eighteen (18) deceased persons at paragraph 23 above as was required of the 2nd Respondent then as the police commander of the City County of Nairobi.
- 28. THAT to date my co-Petitioners and I are not aware of any lawful justification given by the 1st to 3rd Respondents for the killing of the thirty three (33) deceased persons herein by police officers using lethal violent force of firearms and other weapons or causing their deaths as a consequence of use of such lethal force of firearms.
- 29. THAT my co-Petitioners and I verily believe that the deaths of the thirty three (33) deceased persons by police officers under the command of the 2nd Respondent Mr. Japhet Koome, the failure of the 2nd Respondent to report the killings to the 3rd Respondent IPOA and the failure of the 2nd Respondent to provide any lawful justification for the killings, are all gross violations of the Constitution and its guiding principles, the Bill of Rights and statute laws particularly the National Police Service Act by the 2nd Respondent who is the office holder of the 1st Respondent.
- 30. THAT my co-Petitioners and I verily believe that the gross violations of the Constitution and its guiding principles, the Bill of Rights and the National Police Service Act by the 2nd Respondent Mr. Japhet Koome make it untenable for the 2nd Respondent to hold or continue holding the office of the 1st Respondent.
- 31. THAT I swear this affidavit in support of the petition herein.
- 32. THAT save for the information given to me the sources whereof are fully disclosed hereinabove the facts deposed to herein are true and within my own knowledge and belief:

SWORN at NAIROBI by the said
KHELEF KHALIFA

this 12th day of September 2023

BEFORE ME: 
A COMMISSIONER FOR OATHS

Khelef Khalifa

DRAWN & FILED BY:-

MBUGUA MUREITHI & CO. ADVOCATES

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REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI
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CONSTITUTIONAL & HUMAN RIGHTS DIVISION
PETITION NO. OF 2023

IN THE MATTER OF ARTICLE 10, 19, 20, 21(1), 22(1), 23(1) & (3),
73(1),(2)(b),(c),(d),(e)165(3)(a),(b),(d)(i), (ii), 232, 238(a),(b) & 244 OF THE
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=**AND**=

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1. KENYA HUMAN RIGHTS COMMISSION
2. MUSLIMS FOR HUMAN RIGHTS (MUHURI)
3. KHELEF KHALIFA.....PETITIONERS

=**VERSUS**=

1. THE INSPECTOR GENERAL OF THE NATIONAL
POLICE SERVICE
2. INSPECTOR GENERAL JAPHET KOOME
3. THE INDEPENDENT POLICING
OVERSIGHT AUTHORITY (IPOA)
4. THE HON. ATTORNEY GENERALRESPONDENTS

This is the exhibit marked... **KKIA**
Annexed to in the Affidavit/Declaration
Of... **Khelef Khalifa**
Sworn / Declared Before me this... **12th**
Day of **September 23**... **2023** at **Nairobi**
in the Republic of Kenya
Commissioner for Oaths

=**AND**=

1. THE DIRECTOR OF PUBLIC PROSECUTIONS
2. KENYA NATIONAL COMMISSION
ON HUMAN RIGHTS (KNCHR)
3. INDEPENDENT MEDICO-LEGAL
UNIT (IMLU).....INTERESTED PARTIES

CONSENT AND AUTHORITY TO ACT

I, DAVIS MALOMBE of Post Office Box Number 41079-00100 NAIROBI, as the Executive Director of the 1st Petitioner herein KENYA HUMAN RIGHTS COMMISSION (KHRC), on behalf of the Board of Directors of the 1st Petitioner herein the KHRC, do hereby consent and authorize the 3rd Petitioner herein KHELEF KHALIFA to execute all affidavits and pleadings and to do anything that requires to be done in the Petition herein on behalf of the 1st Petitioner herein the KHRC.

I further confirm that this authority and consent has been freely and voluntarily given by me on behalf of the Board of Directors of the 1st Petitioner herein the KHRC without any misrepresentation or coercion and this authority and consent is intended to be fully binding unless revoked by the 1st Petitioner herein the KHRC.

DATED AT NAIROBI THIS 12th DAY OF September 2023

 DAVIS MALOMBE
(EXECUTIVE DIRECTOR – KENYA HUMAN RIGHTS COMMISSION)

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This is the exhibit marked KK2A
Annexed to in the Affidavit/Declaration
Of Shelef Khalifa
Sworn / Declared Before me this 12th
Day of September 23 at Nairobi
.....
Commissioner for Oaths

Press Statement
12th August 2017

Status Update on Developing Post Election Human Rights Violations

i. Introduction:

The Kenya National Commission on Human Rights (KNCHR) is deeply concerned by the turn of events immediately after the announcement of the presidential results yesterday by the Chairperson of the IEBC where violence erupted in some areas. We however, note that this was not widespread as many Kenyans continue to maintain peace and calm as they have since the electioneering process began.

We would like to appreciate the people of Kenya for the way they have exercised their patriotism through the vote, count and as they waited patiently for the final announcement. As we have noted before, the KNCHR has been and continues to monitor the 2017 elections including the post-election scenarios. The Kenyan citizens have continued to exhibit civility during the voting process and did indeed come out in large numbers and exercised their democratic right to political participation. It is also important to note that the IEBC worked tirelessly around the clock to ensure that this process was fast, seamless and accurate despite the growing pressure around them. One of the issues that has arisen during this process is in respect to the tallying and transmission of the results especially after the contestation of the presidential results outcome.

The People's Response:

The Kenya National Commission on Human Rights is however concerned that while a majority of the people have begun going back to their usual routines, a few pockets of unrest have emerged. KNCHR wants to remind Kenyans that while the right of citizens to express themselves through picketing and demonstrations under Articles 37 and 38 is Constitutional, the same must be done within the rule of law. That means as members of the public you MUST respect and uphold other people's dignity, life and property. Destruction or theft to property is illegal. We have learnt that this has taken place in parts of Gatwekera in Kibra and Kawangware 56. We should not allow any sort of hooliganism in the name of picketing.

The Security Response:

Equally, the security personnel are also mandated within the law under Article 244 to protect the right to life, property and human rights of all. They are allowed to contain any unruly protestors with dignity, within the rule of law and with reasonable force.

The KNCHR has noted that there are ongoing security operations since last night in various parts of the country. This has affected places like Nyalenda, Manyatta, Nyamasaria, Mambo Leo, Kondele in Kisumu, Migori, Bondo, Migosi and the Nairobi informal settlements which include Mathare (4A and No. 10), Dandora, Kibera, Lucky summer, Huruma.

We are however concerned by a number of human rights violations that have been brought to our attention through our various human rights monitors around the country. KNCHR has so far documented the following cases of gross human rights violations;

1. Right to Life

KNCHR has established that 24 people have lost their lives between 8th and today and this can be directly linked to the post-election environment. Specifically, these cases indicate that the casualties were felled by bullets and the same has been corroborated by family and community members who have indicated that they were killed during the protests which broke out in various parts of the country. KNCHR has established that loss of lives attributed to cases of police using live bullets in these places;

1. Nairobi City	17
2. Homabay	2
3. Kisumu	1
4. Migori	2
5. Siaya	2
Total	24

KNCHR appeals to the Inspector General and the Ag. Cabinet Secretary in charge of Internal Security to reign in the security personnel to forthwith and ask the officer in charge of operations to direct their officers stop the use of live ammunition against citizens. KNCHR also urges IPOA and the ODPP fully investigate the cases and ensure that officers involved are held to account.

2. Use of excessive force and misuse of firearms

KNCHR has confirmed that contrary to the sentiments made earlier today by the Ag. Cabinet Secretary in charge of Internal Security, the security personnel deployed to quell unrest in various parts of the country have been using excessive force, which is unlawful and unacceptable. While the Media has exercised self-censorship, it is worth noting that there are many cases of brutality being meted by the police on civilians and as a national agency charged with the mandate of protecting human rights, we want to condemn this.

Through our monitors' and reliable partners from different parts of the country, KNCHR can confirm that there has been use of excessive force and misuse of firearms by the police in dealing with the members of the public who are exercising their right to peaceful assembly as enshrined in Article 37 of the Constitution.

KNCHR has information about two people who have suffered gunshot wounds and have been treated at Russia hospital (Jaramogi Oginga Odinga Teaching and Referral Hospital) in Kisumu and five people are being treated for wounds inflicted by blunt objects at the same hospital. This has further spread to peoples' homes, including Nyamasaria, Nyalenda and Mowlem in Kisumu, where there are allegations of police forcefully entering into people's homes and beating them up as well as threatening them with rape and demanding money in exchange for their freedom. The forceful entry has further been reported in Nairobi regions of Kibera and Mathare where the GSU have been reported as the main culprits.

Police harassment has also been reported in other regions of Nyanza, including Migori where those that have been injured are currently being treated at Oruba Nursing Home Hospital and Tabaka Mission Hospital.

KNCHR also regrets and strongly condemns attacks on its monitors who have been engaged in monitoring the unfolding human rights situation.

3. Right to Property

KNCHR notes with concern the destruction of private property by both civilians and allegedly by security personnel in the course of their duty. These include an attack on Equity Bank at Kibera and looting of small scale businesses in the same region and in Dandora.

KNCHR notes that it is illegal to destroy property whether public or private. At the same time, KNCHR reminds the security personnel that they have a primary duty to protect property and any action contrary to this is unprofessional and illegal.

Conclusion

KNCHR appeals for calm and reminds Kenyans that the rule of law and human rights have not been suspended during this period. Specifically, vulnerable groups including the elderly, women, children and persons with disability must be protected. This is because the environment makes them more vulnerable to violence, including sexual and gender based violence.

As a Commission, during our preliminary report of the election observation process, we stated that the first part of the election process was generally well-managed by the IEBC. We held, and still continue to hold that in line with the election law, all Form 34As and Form 34Bs must be uploaded by the IEBC on their public portal. The availability of all these Forms will enable us to conclude our report as to the overall credibility of the just concluded presidential poll. Up to now, the IEBC has not uploaded any Form 34Bs and neither have they uploaded all the Form 34As on their public portal. We urge the IEBC to move with speed and upload these Forms in line with the relevant election laws.

KNCHR will continue to monitor the situation and asks members of the public to report any human rights violations through our toll-free number, 0800 720 627 or SMS 22359

.....
Ms Kagwiria Mbogori
Chairperson
Kenya National Commission on Human Rights

Appendix 1: Table of confirmed Deaths alleged perpetrators During Post - Election Violence in Nairobi , 2017

No.	Name	Location	Date	Description of violation	Status
1.	Francis Njuguna, 31 Years old	Kariobangi, Nairobi	August 11, 2017	Shot dead	Body found at City Mortuary
2.	Vincent Omondi Okebe, 27 Years old	Dandora, Nairobi	August 11, 2017	Shot by Police	Died at Kenyatta National Hospital
3.	Thomas odhiambo Okul, 26 Years old	Dandora, Nairobi	August 11, 2017	Shot Inside his gate By Police	Died Instantantly
4.	Kevin Otiwn, 23 Years old	Dandora Nairobi	August 12, 2017	Shot Outside his gate by Police	Died on his Way to the Hospital
5.	Vitalis otieno, 24 years Old	Dandora Nairobi	August 12, 2017	Died of shock	Died in his House
6.	Sammy Amira Loka, 45 Years old	Kawangware stage Two, Nairobi	August 9, 2017	Hit by a teargas canistar-inhaled teargas	Died at KNH on August 10, 2017
7.	Lilian Khavere, 40 Years old, 8 months Pregnant	Kawangware no. 56, Nairobi	August 9, 2017	Teargassed fell and trampled by crowd	Died at KNH
8.	Festo Kevogo, 33 Years old	Kawangware no. 56, Nairobi	August 12, 2017	Shot through the head by Police	Died on his way to the hospital
9.	Melvin Mboka Mwangitsi, 19 Years old	Satelite, Kawangware, Nairobi	August 9, 2017	Shot dead by Police	Body traced at KNH, mortuary
10.	Paul Mungai, 33 Years Old	Kawangware no. 56, Nairobi	August 12, 2017	Shot in the abdomen by Police in his house	Died from internal bleeding at KNH
11.	Zebedeo Mukhala, 42 Years old	Kawangware no. 56, Nairobi	August 12, 2017	Shot in the leg, fell and trampled by crowd	Died at Mbagathi hospital on August 14, 2017
12.	Violet Khagai, 43 Years old	Kawangware stage Two, Nairobi	August 12, 2017	Hit by teargas and inhaled pepper spray	Died on way to hospital
13.	Eric Kwama 30 years old.	Kawangware stage Two, Nairobi	August 10, 2017	Hit by teargas fired at close range, inhaled pepper spray	Died at KNH
14.	Nelvin Amakove 30 years old	Kawangware no. 56, Nairobi	August 11, 2017	Cought up in riots, shot in the back while running away	Died instantly body traced at KNH

This is the exhibit marked KK-3A
 Annexed to in the Affidavit/Declaration
 of Khalid Khalid
 Sworn / Declared Before me this 23
 Day of September 2023 at Nairobi
 in the Republic of Kenya

Commissioner of Police

Appendix 1: Table of confirmed Deaths alleged perpetrators During Post - Election Violence in Nairobi, 2017

15.	Suleiman Khatibu, 25 years old Tanzanian national, employee of San Valencia restaurant in Karen	Kinyanjui area, Wanye, near Kawangware, Nairobi	August 11, 2017	Hit in the chest by Teargas fired in close range, bled through mouth and nose	Died at KNH on August 18, 2017
16.	Jeremiah Maranga, 50 years old G4S employee	Kawangware no. 56, Nairobi	August 11, 2017	Beaten by Police and left for dead, body soaked in blood	Died of internal bleeding and severe organ damage while waiting for treatment at KNH
17.	Benson Wandera, 47 years old	Kinyanjui area near Kawangware, Nairobi	August 11, 2017	Shot daed by Police	Buried in western Kenya Busia county
18.	Silas Owiti Lebo, 18 years old	Mathare 4A – C area, Nairobi	August 12, 2017	Beaten by police	Died on admission to hospital
19.	Bernad Okoth Odoyo 25 years old	Mathare 4A, Nairobi	August 9, 2017	Shot in the back	Died instantly at no. 10.
20.	Victor Okoth Obondo 2 years old	Mathare 4A, Nairobi	August 9, 2017	Shot at the back	Died instantly at no. 10.
21.	Wiliam Waka 45 years old	Mathare North, Nairobi	August 9, 2017	Shot in the chest	Body taced at city mortuary
22.	Boniface Ochieng Owino, 31 years old	Mathare, Bondeni area., Nairobi	August 12, 2017	Shot in the chest	Died instantly along Juja road
23.	David Owino, 28 years old	Mathare, Bondeni area., Nairobi	August 12, 2017	Shot in the chest	Died instantly along Juja road
24.	Stephanie Moraa Nyarangi, 9 years old	Mathare North, Nairobi	August 12, 2017	Shot in the chest	Died instantly on Balcony
25.	Christopher Samwell Mutua, 32 years old	Mathare North, Nairobi	August 13, 2017	Shot in the chest at close range	Died instantly near his house
26.	Fanuel Muruka Amule, 30 years old	Mathare North, Nairobi	August 12, 2017	Shot in the chest	Body traced City Mortury
27.	Raphael Ayieko 17 years old	Babadogo, Kasabuni area, Nairobi	August 12, 2017	Shot in the back	Died instantly
28.	Privel Ochieng Ameso, 18 years	Babadogo, Kasabuni area, Nairobi	August 12, 2017	Shot at back of neck and in the hip while on his knees	Died Instantly

Appendix 1: Table of confirmed Deaths alleged perpetrators During Post - Election Violence in Nairobi , 2017

29.	Shaddy Omondi Juma, 17 Years old.	Babadogo, Kasabuni area, Nairobi	August 12,2017	Shot dead while on his knees	Body traced to city mortuary with five bullet wounds
30	Geoffrey Onacha, 34 years old	Kibera, Nairobi	August 10,2017	Shot Dead	Body traced at city mortuary
31.	Sharon Imenza, 10 year old daughter of Geoffrey Onacha above	Kibera, Nairobi	August 11,2017	Collapsed and died upon seeing father's body	Collapsed
32.	Henry Onyango Matete	Kibera Olympic area. Nairobi	August 12,2017	Beaten by police	Died a day later at Muthaiga hospital
33.	Michael Owino, 28 years old	Kibera Olympic area. Nairobi	August 12,2017	Shot dead and body taken away I body bag.	Boy yet to be found.
34.	Between 17 to 27 unconfirmed cases from various parts of Nairobi	Kawangware, Kibera, Mathare, Dandora	August 9 to 13	Allegedly shot by police	Did not document for various reasons - families and witnesses not willing to speak



“Kill Those Criminals”

Security Forces Violations in Kenya’s August 2017 Elections

AMNESTY
INTERNATIONAL



HUMAN
RIGHTS
WATCH



This is the exhibit marked KKHA
Annexed to in the Affidavit/Declaration
Of Charles Karanja
Sworn / Declared Before me this 12th
Day of September 2023 at Garissa
in the Republic of Kenya

.....
Commissioner for Oaths

“Kill Those Criminals”

Security Forces Violations in Kenya’s August 2017 Elections



“Kill Those Criminals”

Security Forces Violations in Kenya’s August 2017 Elections

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Map of Nairobi

Map of Nairobi: Informal Settlements where HRW and AI documented Police Killings



Acronyms and Abbreviations

AP:	Administration Police, one of two branches of National Police Service
AfriCOG:	Africa Centre for Open Governance
ATPU:	Anti-Terror Police Unit
CPJ:	Committee to Protect Journalists
GSU:	General Service Unit
ICCPR:	International Covenant on Civil and Political Rights
IEBC:	Independent Electoral and Boundaries Commission
IMLU:	Independent Medical Legal Unit
IPOA:	Independent Policing Oversight Authority
KHRC:	Kenya Human Rights Commission
KYSY:	Kura Yangu Sauti Yangu, a group of NGOs monitoring the 2017 general election)
NASA:	National Super Alliance coalition, a coalition of opposition parties
OCS:	Officer Commanding Station

Executive Summary

On August 8, 2017, Kenya held presidential elections in which the incumbent, Uhuru Kenyatta was re-elected amid allegations of electoral fraud. The vote, which has since been annulled by Kenya's supreme court following the opposition's legal challenge, was also marred by serious human rights violations, especially in opposition strongholds in Nairobi, western Kenya and Coast.

This report, based on research conducted by Amnesty International and Human Rights Watch between August 9 and September 12, 2017 focuses on events in Nairobi's informal settlements (Mathare, Kibera, Babadogo, Dandora, Korogocho, Kariobangi and Kawangware) in the aftermath of polling and the announcement of results on August 11. Demonstrations documented in this report were spontaneous and most of them were differing in degrees of violence. Responding to violence and looting is challenging, but the Kenya police have trained for this, and, as this report indicates, have shown, in some areas that they can do it lawfully, without loss of life. This report describes policing patterns in response to protests and violence in the informal settlements and documents a wide range of human rights violations including unlawful killings, excessive force and beatings.

At least 33 people were killed in Nairobi alone, most of them as a result of action by the police and therefore warranting investigation by either the Independent Policing Oversight Authority, a special commission or by parliament. Twenty-three, including children, appear to have been shot or beaten to death by police. Others were killed by tear gas and pepper spray fired at close range or trampled by fleeing crowds, and two died of trauma from shock. Two others were stoned by mobs. We received unconfirmed reports of another 17 dead in Nairobi. Added to the 12 killings at the hands of police documented by Human Rights Watch in western Kenya, and five additional killings confirmed by the Kenyan National Human Rights Commission, the national death toll could be as high as 67. Hundreds of residents have suffered severe injuries including gunshot wounds, debilitating injuries such as broken bones and extensive bruising as a result of the police violence.

In many opposition areas Kenyan authorities deployed large numbers of paramilitary units: General Service Unit (GSU) police, Administration Police (AP), and units from Prisons, Kenya Wildlife Service and National Youth Service ahead of the polling. In

anticipation of potential violence. These heavy deployments fueled political tensions ahead of the vote and exacerbated the unrest that followed the announcement of the results in which security forces sometimes used unlawful, excessive force to disperse protests, shooting and beating to death people on the street and in house-to-house searches. They used live ammunition, tear gas and pepper spray and beat residents with batons, often under cover of darkness.

The government's own National Contingency Plan for the August elections refers to "hotspots" that police publicly named, where they assessed that violence was most likely. The hotspots were all opposition strongholds in ethnic majority Luo and Luhya areas, creating the impression of an ethnic and political dimension to the excessive police action that followed the poll. Residents in these areas told Human Rights Watch and Amnesty International that they believed they were being punished for the way that they had voted. Indeed, police statements to witnesses suggested the same. In many areas, police attacked crowds rather than controlled them and conducted punitive raids into people's homes as they pursued youths who had thrown rocks at them.

However, in Kariobangi and Korogocho, researchers found that local police commanders chose not to deploy paramilitary reinforcements, opting instead for community policing methods and dialogue with protesters. Here, prior relationship building efforts between police chiefs and community leaders proved successful and, save for a few injuries, there were no deaths.

Police and paramilitary reinforcements also suppressed reporting on the violence and the gathering of evidence of human rights violations. Officers destroyed cameras and phones, beat photographers, arrested journalists and threatened human rights defenders, hampering the collection of evidence. Moreover, in many cases, victims and family members did not report violations and deaths because they feared retribution from police. The Kenya Police and the Cabinet Secretary for the Interior have denied reports of excessive force and unlawful killings by police and, at time of writing, were not cooperating with the Independent Policing Oversight Authority (IPOA), a civilian police accountability institution.

Kenya has a long history of political violence, impunity for high-level perpetrators, and mistrust of the police. The September 1 ruling of the Supreme Court annulling the flawed

election has not calmed political tensions. With the incumbent President Kenyatta publicly criticizing the judiciary for the ruling, and the opposition refusing to participate in the election unless certain conditions are met, the stakes are high for the revote. On October 10, leading opposition candidate, Raila Odinga, announced withdrawal from the October 26 elections, creating uncertainty over the repeat poll.

As the country prepares for a fresh election, whether it takes place on October 26, 2017 or at a later date, authorities should ensure the police refrain from the violations that undermined the aftermath of the August poll. They should condemn violations that occurred, establish an independent judicial inquiry to examine the role of the police in responding to the August election violence, support the Independent Policing Oversight Authority (IPOA) in investigating all cases of killing by the police and excessive use of force, publicly encourage all victims of police violence to come forward and submit complaints to IPOA, commit to prompt and effective investigation and prosecution of officers reasonably suspected of responsibility for criminal acts, and commit to ensuring reparations, including adequate compensation, for victims and their families.

Recommendations

To the National Police Service

- Urgently review all allegations of unlawful use of force resulting in killing and injury and refer all cases to the Independent Policing Oversight Authority (IPOA) for further investigations and prosecution.
- Fully co-operate with IPOA by sharing necessary files and responding to requests for interviews.
- Implement all recommendations made by IPOA in its investigations to date to ensure that officers and commanders implicated in unlawful use of force are held to account.
- Remove, discipline and prosecute all officers found to have violated human rights including provisions of the National Police Services Act.
- Review police standing orders or operating procedures on riot control to align them with both Kenya's constitution and international standards on police use of force.
- Ensure that all future police deployments and operations, including during the expected repeat elections, are lawful.
- Take concrete steps to strengthen community policing initiatives across Kenya, including by refraining from visible deployment of large numbers of police and other security forces in neighborhoods.

To the National Police Service Commission, Independent Policing Oversight Authority and Kenya National Commission on Human Rights

- Urgently and thoroughly investigate the unlawful police use of force during the 2017 post-election period and ensure that all those found to have violated the law are held to account, including by referring cases for prosecution in proceedings which comply with international law and standards on fair trial, without recourse to the death penalty.
- Seek the assistance of the Office of the President in obliging the police to co-operate with ongoing investigations and request appropriate resources from government and donors to carry out the same.

To the Office of the President and the Government of Kenya

- Publicly acknowledge and condemn the unlawful police use of force in Nairobi and western Kenya.
- Direct police and other relevant state agencies such as IPOA to urgently investigate killings by police and use of excessive force in Nairobi and Nyanza during post-election protests.
- Direct police to cooperate and support with information and other relevant material all necessary investigations into police conduct during the 2017 post-election period.
- Establish an independent judicial commission of inquiry to examine the activities of the police in responding to protests following the controversial poll of August 8, 2017.

To Parliament

- Establish a parliamentary inquiry into the excessive use of force by the police in responding to protests after the August 2017 general election.
- Consider adopting a motion to compel the government of Kenya to ensure thorough criminal investigations into the abusive police response following August elections and to refer cases for prosecution in proceedings which comply with international law and standards on fair trial, without recourse to the death penalty.

To Donor Coordination Group on Police Reform (Particularly the United States, United Kingdom and Sweden)

- Condemn rights violations committed following the August election and urge police, ahead of the re-run, to comply with international law and international standards on law enforcement, in particular to exercise restraint in any use of force.
- Consider a substantial expansion in support for community engagement methods and modules in police training.
- Continue to support IPOA politically and financially.
- Urge IPOA to thoroughly and promptly investigate all cases of police killings and beatings in Nairobi and western Kenya following the August election, and to ensure reparation, including adequate compensation, for the victims.

Methodology

This report is based on interviews conducted in some of Nairobi's informal settlements between August 9 and September 12, 2017. Researchers and consultants for Amnesty International and Human Rights Watch interviewed 151 victims, witnesses, health workers, journalists, activists, diplomats, police officers and family members of people killed during the post-election violence in Nairobi, in English, Kiswahili and Dholuo.

In all cases of death reported to the researchers, researchers obtained the name of the deceased, spoke to relatives and witnesses, and in most cases viewed hospital, post-mortem or mortuary records, or the corpse to confirm deaths.

Interviewees shared their testimonies voluntarily, without payment, often despite fear of police or government reprisals. For this reason, the names of interviewees have been kept confidential except where they explicitly asked to be mentioned by name or where they agreed to identifying characteristics, title, office and so on.

In each location, researchers visited the local police posts and police stations. In Kariobangi and Korogocho, local commanders were willing to meet and talk with us. In all other places local commanders referred us to divisional command and ultimately to the police spokesman who refused several requests for an interview.

Amnesty International and Human Rights Watch wrote to the Inspector General of police detailing our concerns and requesting a meeting; but, as of time of publication, we received no response.

I. Policing protests – Kenya’s Obligations Under International Law and Standards

This report describes numerous instances where the police and security forces used excessive force in response to the protests and violence following the elections, in violation of Kenya’s obligations under international law and international law enforcement standards. Protesters engaged in looting, violence and throwing rocks at police, however, the response by the police in many areas was excessive. This report includes cases of unlawful killing by the police in violation of the right to life, beatings in violation of the prohibition on torture and other cruel, inhuman or degrading treatment or punishment, and attempts by authorities to obstruct reporting of those violations, in violation of the right to freedom of expression.

Kenya's obligations to respect and protect the right to life and other rights

Kenya’s obligations under international law (including under the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples’ Rights) to respect and protect the right to life and to ensure that no one is arbitrarily deprived of life¹ include preventing arbitrary killing by its police and other security forces, and ensuring that if it occurs the victims have access to a remedy and reparation, and that the perpetrators are held accountable. International law also absolutely prohibits torture and other cruel, inhuman or degrading treatment.² Kenya also has obligations to respect and protect the rights to freedom of expression, including the right to seek, receive and impart information, and peaceful assembly,³ encompassing peaceful protests, and to ensure that its police and security forces do likewise.

Obligations and responsibilities of police and law enforcement agents

The obligations and responsibilities of police and other security forces which derive from these and other international law obligations are set out in international standards on human rights in the context of law enforcement adopted by the United Nations, notably

¹ ICCPR Article 6; African Charter Article 4.

² ICCPR Article 7, African Charter Article 5.

³ ICCPR, Articles 19 and 21; African Charter Articles 9 and 11.

the UN Code of Conduct for Law Enforcement Officials (UN Code of Conduct) and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (UN Basic Principles). With regard in particular to the policing of protests, these international law obligations and law enforcement standards are encapsulated in the Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa (Policing Assemblies in Africa) adopted in 2017 by the African Commission on Human and Peoples' Rights.

If people commit acts of violence or other lawbreaking, the police and other security forces have a responsibility as far as possible to prevent violence and other illegal acts and arrest lawbreakers, and protect lives and safety of people affected. In doing so they are required to respect and protect human dignity and maintain and uphold the human rights of all.⁴ They are required to seek to avoid the use of force and as far as possible apply non-violent means before resorting to the use of force, which they may use only if strictly necessary – that is, if other means remain ineffective or without any promise of achieving the law enforcement objective.⁵ If the use of force is unavoidable they should use it with restraint and proportionately to the seriousness of the offence and the law enforcement objective; minimize damage and injury and respect and preserve human life, and ensure that those injured or affected receive assistance and medical aid as quickly as possible.⁶

Firearms only as a last resort to protect life

In particular, and crucially, international law and standards are clear that the use of firearms may only be permitted in very narrow circumstances, as a last resort. Police must not use firearms except in defense of themselves or others against the imminent threat of death or serious injury, to prevent a particularly serious crime involving grave threat to life, to arrest or prevent the escape of someone presenting such a danger and resisting their authority, and only when less extreme means are insufficient to achieve this; they should always give an effective prior warning of their intention to shoot, unless that would put themselves or others at risk of death or serious harm.⁷ This principle applies at all times including in demonstrations or protests which have turned violent; firearms should not be used as a tool for dispersing protests, shots fired into the air or other

⁴ UN Code of Conduct Article 2.

⁵ UN Code of Conduct Article 3; UN Basic Principles, Principle 4; Policing Assemblies in Africa, Guideline 21.1.

⁶ UN Basic Principles, Principle 5; Policing Assemblies in Africa, Guideline 21.2.2.

⁷ UN Basic Principles, Principles 9 and 10; Policing Assemblies in Africa, Guideline 21.2.3.

warning shots should not be used, and indiscriminate discharge of firearms into a crowd is a violation of the right to life.⁸

Non-lethal weapons

Governments and other relevant authorities should ensure that law enforcement officials are equipped with a range of less-lethal weapons to allow for a differentiated use of force and firearms, with a view to restraining the use of means which can cause death or injury; they should also be equipped with self-defensive equipment such as shields, helmets, and other protective gear to decrease the need to use weapons of any kind.⁹ Less-lethal weapons for crowd control should only be used when there are legitimate grounds for the use of force, and only when their use is necessary and proportionate and in circumstances when other less harmful means have been attempted and found to be ineffective or will be ineffective under the circumstances.¹⁰

Policing demonstrations and protests

In respect of protests and demonstrations in particular, law enforcement agencies should establish systems for a collaborative and inclusive communication with all stakeholders, and the response of law enforcement officials to issues arising during protests should give priority to de-escalation tactics; if violence occurs they should differentiate between individual and group behavior, and where specific individuals are identified as acting in an unlawful or violent manner, should focus on removing from the group or arresting those individuals.¹¹ Deployment of law enforcement officials in demonstrations or protests should take into account the potential adverse influence that the visible appearance of police and security officers can have on the way in which events develop; generally, they should be deployed only in minimum numbers necessary to ensure the protection and safety of those involved, and take a graduated approach to any increase of visible policing numbers; they should always wear visible individualized identification (name or a unique number).¹²

⁸ UN Basic Principles, Principle 14; Policing Assemblies in Africa, Guidelines 21.2.3, 21.2.4, 22.6.

⁹ UN Basic Principles, Principle 2; Policing Assemblies in Africa, Guideline 21.3.1.

¹⁰ Policing Assemblies in Africa, Guideline 21.2.6.

¹¹ Policing Assemblies in Africa, Guidelines 6.2, 11, 13, and 20.

¹² Policing Assemblies in Africa, Guideline 14.

Accountability

Authorities should establish effective reporting and review procedures for all incidents where police use firearms or where people are injured or killed as a result of any police use of force, with prosecution authorities in a position to exercise jurisdiction in appropriate circumstances.¹³ Arbitrary or abusive use of force and firearms by law enforcement officials must be punished as a criminal offence under the law.¹⁴

Commanders should be held responsible if they know, or should have known, that law enforcement officials under their command have resorted to unlawful use of force and firearms, and they did not take all measures in their power to prevent or report such use.¹⁵

¹³ UN Basic Principles, Principles 22, 6 and 11(f); Policing Assemblies in Africa, Guideline 24.

¹⁴ UN Basic Principles, Principle 7.

¹⁵ UN Basic Principles, Principle 24; Policing Assemblies in Africa, Guideline 5.2.

II. Background

Other than the 2002 poll, every election in Kenya since the introduction of multi-party politics in 1991 has been marred by unrest, particularly the 2007 poll when over 1,100 people were killed in post-election violence and 660,000 were displaced.¹⁶ That history still weighs heavily on Kenyan society.¹⁷ The justice that was promised to victims never arrived, despite the 2010 constitution, the Waki Commission of Inquiry into the violence, the Truth Justice and Reconciliation Commission, and the involvement of the International Criminal Court:

Impunity for that violence, as well as the failure of national reconciliation efforts, have contributed to grievances and poor relations with police, particularly among communities that support the opposition. The informal settlements where the majority of abuses documented in this report occurred are populated by mostly ethnic Luo and Luhya communities that have traditionally supported Raila Odinga.

Conditions in these informal settlements, also known as slums, which host 2.5 million of Nairobi's 3.1 million population are among the worst globally. The people living there have inadequate access to social services, water, housing and employment; typhoid and cholera are common, rates of infant mortality and teenage pregnancy are high and unemployment runs at around 50 percent.¹⁸ The slums are also especially affected by ill-treatment by the police: patterns of extrajudicial executions by various units of police have been extensively documented.¹⁹ In the informal settlements the police are generally

¹⁶ Human Rights Watch, "Ballots to Bullets: Organized Political Violence and Kenya's Crisis of Governance," 2008, <https://www.hrw.org/reports/2008/kenya0308/> and, Human Rights Watch, "High Stakes: Political Violence and the 2013 Elections in Kenya" 2013. (Accessed September 25, 2017).

¹⁷ Amnesty International, "Crying for Justice: Victims' perspectives on justice for the post-election violence in Kenya," 2014, <https://www.amnesty.org/en/documents/afr32/001/2014/en/>. (Accessed September 25, 2017).

¹⁸ Amnesty International, "How the Other Half Lives: Nairobi's Slum-Dwellers, Kenya," 2009 <https://www.amnesty.org/en/documents/afr32/006/2009/en/> see also <http://www.kibera.org.uk/facts-info/>. (Accessed September 25, 2017).

¹⁹ Mathare Social Justice Centre, "Who's Next? A participatory action research report against the normalization of extrajudicial executions in Mathare," 2017, <http://www.matharesocialjustice.org/who-is-next/>. (Accessed September 25, 2017).

not seen as guardians of law and order but, as many witnesses told researchers, they are instead perceived as oppressors.²⁰

Unsurprisingly, it was precisely these areas that the police identified as “hotspots” prior to the 2017 election: Mathare, Kibera, Kariobangi, Korogocho, Kawangware and Dandora.²¹ Police predicted where anger and protest at the election result would erupt, based on low-income neighborhoods where the majority ethnic group tends to support the opposition, as well as on their own record of policing in these communities.²² As both residents and police told researchers, they believed that it would be almost impossible for the police to deploy in the slums in large numbers without encountering serious resistance; their very presence would be a provocation.²³

²⁰ Amnesty International and Human Rights Watch interviews, Nairobi, August 2017.

²¹ The Standard, “Kenyans Apprehensive as Police Map Out Poll Hotspots,” July 16, 2017, <https://www.standardmedia.co.ke/article/2001247711/kenyans-apprehensive-as-police-map-out-poll-violence-hot-spots>. (Accessed September 25, 2017).

²² Ibid.

²³ Amnesty International and Human Rights Watch interviews, Nairobi, August 2017.

III. Killings and Other Abusive Policing in Nairobi Following the Election

President Uhuru Kenyatta of the Jubilee party ran against opposition leader Raila Odinga and his National Super Alliance coalition (NASA) in the presidential race of the August 8 general election.²⁴ The pre-elections period was marked by allegations of fraud and the murder of Chris Msando, the Chief Technology Officer of the Independent Electoral and Boundaries Commission (IEBC). A post-mortem found that he had been tortured prior to his death. In the days after the poll, the Kura Yangu Sauti Yangu (KYSY) coalition of election observers and the opposition coalition, NASA began to report irregularities in the presidential election. Forms used to tally results were slow to trickle into the national tally center.

Protests first erupted in some areas of Nairobi and Kisumu following Odinga's August 9 press conference alleging the hacking of IEBC servers and irregularities in the tallying of results. After the IEBC declared Kenyatta the winner at 10.30pm on August 11, angry demonstrations began in opposition strongholds, informal settlements in Nairobi and across western Kenya and Coast province and lasted for several days.²⁵ On August 16, Odinga announced that NASA would challenge the results in court and on September 1, the Supreme Court ruled that the election had been marred by irregularities sufficient to compromise the integrity of the process, and ordered a fresh presidential poll within 60 days.

Patterns of police deployment and excessive use of force following the vote

Even before election day, security forces deployed around some of Nairobi's many informal settlements. The police and paramilitary presence, at the entrance to slums and the junctions with main roads, appeared to be designed to stop protests – and the

²⁴ There were eight presidential candidates in the August 8 election, but the race as widely seen to be between the incumbent President Uhuru Kenyatta and the leading opposition candidate, Raila Odinga. The other six presidential candidates included Dr Ekuru Aukot, Prof Michael Wainaina, Cyrus Jirongo, Joseph Nyagah, Abduba Dida and Japheth Kavinga; <https://www.capitalfm.co.ke/news/2017/05/iebc-clears-8-presidential-candidates-august-elections/>.

²⁵ Jubilee supporters also went out to the streets that night, celebrating Uhuru Kenyatta's win. Police did not disperse those celebrating the incumbent president's win.

expected attendant violence – from spreading beyond the slums. Witnesses told researchers that police wore green uniforms and riot gear shields, helmets and carried batons, suggesting they were prepared for situations where they would use force. In the days after polling, police informed health providers working in the slums to expect a heavy ‘crackdown’ a term usually understood to be a punitive raid.²⁶

On August 9 and 10, soon after Raila Odinga made an announcement alleging irregularities in the vote, demonstrations and riots began in opposition areas in Kawangware and Mathare. Angry protesters burned tyres and shops belonging to Kikuyus, the ethnic group that was largely supportive of Uhuru Kenyatta, a Kikuyu, barricaded roads and often taunted police.

Demonstrations intensified and spread to the other slums – Kibera, Dandora, Babadogo, Kariobangi, Korogocho – after the IEBC declared Uhuru Kenyatta the winner on the evening of August 11. Riots erupted through the night and police continued to clash with protesters across Nairobi during August 12 and 13.

In Kawangware, Mathare, Babadogo, Kibera and Dandora police actively confronted protesters, breaking up gatherings with tear gas, pepper spray from water cannons, truncheons and live ammunition – sometimes firing into the air but also directly aiming at individuals and as well as firing randomly into crowds and residential areas. In Kawangware, Mathare, and Dandora, police unlawfully killed protestors and engaged in running battles with residents for several days, pursuing protestors into alleyways and homes where fleeing youths were then shot or beaten.

In total, in the period covered in this report, at least 23 people appear to have been shot dead by police, three beaten to death, and three died of asphyxiation from tear gas and pepper spray, two trampled to death, and two of physical and psychological trauma.

Residents and human rights activists told researchers of another 17 cases of deaths resulting from police actions in informal settlements in Nairobi. Witnesses and human rights activists told researchers of at least four bodies that they said they saw being

²⁶ Human Rights Watch interview, Nairobi, August 2017.

removed by police in Kibera,²⁷ the identities of the victims and where they are currently located are unknown. Dozens of others suffered gunshot wounds and severe injuries due to police beatings.

At least two people were killed by armed gangs which clashed along ethnic political lines in Mathare and Kariobangi. Others were injured as a result of violence by armed gangs. The combined statistics of health providers for Eastlands and Kibera stands at 333 people treated for injuries, including gunshot wounds and beating.²⁸ Scores of victims of such violence are now either permanently or temporarily disabled, unable to work and provide for their families in precarious economic circumstances where they were often living hand to mouth.

In some cases, our research suggests that police may have been overwhelmed by violence directed at them and may have used firearms in circumstances that met the criteria for lawful self-defense or defense of others against an imminent threat of death or serious injury. **But every instance of such use of firearms by police should be subject to an independent investigation to scrutinize whether it was lawful in terms of domestic and international law and standards.**²⁹ But in most cases documented by Human Rights Watch and Amnesty International, police appeared to have shot at protesters or others who, even if some of them may at some point have been engaged in violence or other unlawful acts, did not pose a direct threat to life, often shooting them in the back, or in apparently punitive raids into the slums, pursuing people who had thrown stones at them. Such use of firearms by police is a violation of the right to life.

Remarks made by police during many beatings suggested victims were being punished for the way that they had voted, or because of their ethnicity. One man in Mathare told researchers that GSU police beat him saying: "You people will know the government is not yours... You can call your Baba (Raila) to come and help you."³⁰

²⁷ Human Rights Watch and Amnesty International interview with human rights activist, Kibera, September 1, 2017; interview with two witnesses, Kibera, September 29, 2017.

²⁸ See press statements of Kenya Red Cross and MSF as well as Amnesty International interviews with health providers in Kibera, September 2, 2017.

²⁹ See Chapter 1, above.

³⁰ Human Rights Watch interview, Mathare, August 23, 2017.

Unlawful killings

While police undoubtedly faced violent crowds, the use of lethal force was frequently unlawful.

On Saturday August 12, in Mathare, police officers in GSU uniform beat two men to death during these house to house operations in pursuit of youths whom they alleged to witnesses had thrown stones at them.³¹ In one case, according to relatives of the victim, eight police officers stormed into the house of **Silas Owiti Lebo**, kicking the door open, and beating him and his friend with batons and gun butts.³² They hit Lebo on the head with a baton repeatedly as he cried for mercy on the floor, and shouted that they were “just doing the job for which they are paid,” said Lebo’s friend who survived the beating.³³ A relative who was present screamed at the police to stop and said when they left Lebo was “unconscious with blood pouring from his ears.”³⁴ Lebo was admitted in the Intensive Care Unit at Kenyatta National Hospital but died on the morning of August 13.³⁵

In Mathare on August 13, a nine-year-old school girl, **Stephanie Moraa Nyarangi**, was shot dead while standing on her balcony. Residents and neighbors told researchers that policemen on the street deliberately shot at the balcony where children were watching the clashes below “Other girls on the balcony ran inside and told us that police were aiming at them. Stephanie was standing at the railing. I heard a shot and saw that the bullet had hit her and went through to hit the wall,” a witness told researchers.³⁶

On August 9, **Bernard Okoth Odoyo**, 25, a carpenter, and **Victor Okoth Obondo aka Agwambo**, 24, who were close friends who lived close to each other in Mathare 4A, were among four people shot dead around 9p.m. as a combined team of security officers fought off demonstrators at Number 10 area, according to relatives and eyewitnesses.³⁷ An eyewitness said the police at Number 10 area were clearly overwhelmed by protestors

³¹ Ibid.

³² Human Rights Watch interview with witnesses and relatives of victims, Mathare 4A – C area, August 23, 2017.

³³ Human Rights Watch interview with victim and witness of the beating, Mathare 4A – C area, August 23, 2017.

³⁴ Ibid.

³⁵ Human Rights Watch interview with relative of victim, Mathare 4A – C area, August 23, 2017.

³⁶ Ibid.

³⁷ Human Rights Watch interview with relative to Bernard, Mathare 4A – C area, August 23, 2017; interview with relative to Victor, Mathare 4A, August 23, 2017.

and tried to “shoot their way out” of a crowd.³⁸ However, both Odoyo and Obondo were shot in the back and died instantly, while trying to flee from security officers, suggesting that force was at least by that point unnecessary.³⁹

Paul Mungai, a charcoal seller, was shot by police as he was shuttering his shop in the face of violence between police and protesters, according to witnesses.⁴⁰ The bullet pierced the tin wall of his shop and hit him in the abdomen, exiting at the other side of his back. Friends rushed him to a local clinic which was initially reluctant to treat shooting victims for fear of police reprisals, family members said.⁴¹ He was eventually transferred to Kenyatta Hospital where he died from internal bleeding two days later.⁴²

Around 9 p.m. on the evening of August 11 in Babadogo area, moments before Kenyatta was declared winner, police shot dead one boy and two men: **Raphael Ayieko**, 17, his close friend and neighbor, **Privel Ochieng Ameso**, 18, and **Shady Omondi Juma**, 18, according to witnesses. Witnesses claimed the three were watching other youth looting.⁴³

Raphael, a student at Usenge Boys High School in Siaya county who was visiting his parents in Nairobi for holidays, went to carry some groceries to Privel’s house.⁴⁴ Privel’s mother said the two boys then went out to observe youth looting nearby kiosks when they were shot by police. An eyewitness described what happened:

We were together. We saw looting and saw men come in military uniforms, jungle green. I heard one officer shout ‘kill those criminals’ and they shot live bullets. I saw an officer push Raphael, on a wall and then shoot him. Shady was shot in the chest. Privel tried to run away but was shot in the back.⁴⁵

³⁸ Amnesty International interview, Mathare, August 31, 2017.

³⁹ Human Rights Watch interview with relative to Bernard, Mathare 4A – C area, August 23, 2017; interview with human rights activist, Bondeni area, August 23, 2017.

⁴⁰ Amnesty International interview with relatives and neighbours, Kwangware, September 2, 2017

⁴¹ Amnesty International interview, Kawangware, September 2, 2017

⁴² Post-mortem and police report, seen by Amnesty International, September 2, 2017

⁴³ Human Rights Watch interview with family member to Raphael, Babadogo, August 23, 2017; interview with relative to Privel, Babadogo, August 23, 2017.

⁴⁴ Human Rights Watch interview with family member to Raphael, Babadogo, August 23, 2017.

⁴⁵ Ibid.

A relative of Privel confirmed that he was shot in the hip and at the back of his neck and died later; Raphael was shot in the back and died instantly.⁴⁶

Juma's father, a matatu driver, described to researchers how he learned of his son's death: "I was at work with Shady the whole day and dropped him back to the estate in Kasabuni area at around 9.30 p.m....Later at 11 p.m. a fellow matatu driver called to say my son had been shot by police as he knelt in surrender."⁴⁷ The next day he saw his son's body in the City Mortuary with five bullet holes in it: "one on the chest, then lower abdomen, left arm, ribs on the right and another on the right knee, breaking it."⁴⁸

Henry Matete died as a result of beating in Kibera on August 11. Matete, who had an unrelated wound that needed daily dressing, was intercepted by GSU police when returning from a clinic in Bombolulu area in the afternoon when they saw him limping, the officers ordered him to kneel. Witnesses said he raised his hands but the GSU police beat him anyway, on his back, legs and body. The police left him on the road and bystanders carried him home. The next day he died at Muthaiga hospital. The family could not afford a post-mortem and buried him in their ancestral area in Western Kenya on August 26.⁴⁹

Five witnesses told researchers how they saw GSU police shoot four protesters during violent clashes following the announcement of Kenyatta's victory on the night of August 11 whose bodies were taken away by police. Protestors set fire to tires and taunted police who were surrounded at the Olympic area. Witnesses described police repelling protestors with tear gas and firing in the air and into crowds then the protestors regrouping and advancing again. One witness explained:

After a while, when it seemed calm again, we came back and saw a body bleeding on the road. As we came out to look the police were arriving from the other side, they fired tear gas to make us disperse and some police

⁴⁶ Human Rights Watch interview with a relative, Babadogo, August 23, 2017.

⁴⁷ Human Rights Watch phone interview with Shaddy's father, Babadogo, August 23, 2017.

⁴⁸ Human Rights Watch interview with relative of Juma, Babadogo, August 24, 2017.

⁴⁹ Human Rights Watch interview, Kibera, August 29, 2017.

advanced to chase people into alleyways while the ones behind collected the body. They put him in a body bag and threw him into a lorry⁵⁰

In total, four bodies were left on the road after several such exchanges, witnesses said, which police officers zipped into bags and loaded onto lorries⁵¹. "You could tell they were dead, the way they threw them, it was not gentle!" said one woman, watching from an alley.⁵²

Witnesses named one of those killed and his body taken as **Michael Owino**, 28 years old. His body and that of three others are still missing, according to a representative from the chief's office at Sarang'ombe.⁵³ The chief and community leaders have appealed for relatives to come forward but at the time of writing the identities of the others killed and whose bodies were taken, are unknown.⁵⁴

Excessive force

Researchers documented several cases of police shooting at unarmed people from a distance who posed no apparent threat.

In one case, a construction worker returning to Kibera on a motorbike after work on August 12, described:

when we were one hundred meters away, just as we caught sight of the police as we came up the road towards Kiandaa/Bombolulu the police started shooting. We approached them from behind, when they heard the bike they just turned and opened fire with live rounds. There were four police firing. More than 20 shots were fired.

⁵⁰ Amnesty International interview, Kibera, September 3, 2017.

⁵¹ Amnesty International interviews, Kibera, September 3, 2017.

⁵² Amnesty International, interview, Kibera, September 3, 2017.

⁵³ Amnesty International interview, Kibera, September 3, 2017.

⁵⁴ Amnesty International interviews, Kibera, September 3, 2017.

Eyewitnesses confirmed his account of police shooting unprovoked.⁵⁵ The victim was hit in the thigh and hid in the slums before admitting himself to hospital.

The excessive force seemed to follow a pattern of police reprisals for violence by protestors. In Mathare, police went door to door looking for all males. Shouting “wanaume!” (men! In Swahili).⁵⁶ A 32-year-old carpenter in Mathare 4A said police beat and broke both his legs at around 9 a.m. on August 12. “I had closed my door because I heard police chasing youth who were throwing stones. Four police officers kicked my door in. It came off on its hinges and they started beating me. They broke my legs. They beat me for around an hour.”⁵⁷ One of the police officers said, “kill him,” according to the victim, whose wife was also present and took the victim to hospital.

In several alleys of the Ngomongo area of Korogocho on August 13 following the burning of the chief’s office at Waraka, GSU police went house to house looking for men again, shouting “Wanaume!”. They banged on doors one after the other, systematically, and pulled male residents out of their homes, breaking doors and smashing property. In one case, seven GSU officers in helmets pulled all the men in one street, one victim recalled: “outside, they told us to get on our stomachs, saying, ‘ukiinua kichwa ni risasi’ [if you raise your head, you get a bullet].” Then they beat the men, leaving this victim unable to walk or work. Along a neighboring street, GSU also banged on all the doors shouting “tokeni nje” [come out!] and beat a husband and wife who were at home with their small children, injuring the husband so badly. He was still bedridden two weeks later.⁵⁸

Police beat another man, **Gordon Onyango**, an opposition youth leader, on August 12 in Kiandaa on the rail tracks near Kibera Town Centre. Onyango was leading a small protest, holding aloft a stool: “I was in the front line of the demonstration. I went up to the police to talk to them but they just grabbed me and threw me on the ground and they beat me with batons. I was being beaten for about 10 minutes on the ground. As they were doing it one of them said to me: ‘If we had the time, we’d kill you. You are really disturbing people’”⁵⁹

⁵⁵ Amnesty International interviews, Kibera August 25 and September 3, 2017.

⁵⁶ Amnesty International interviews, Mathare, August 25, 2017.

⁵⁷ Human Rights Watch interview with victim of police beating, Mathare 4A – C area, August 23, 2017.

⁵⁸ Amnesty International interview, August 30, 2017.

⁵⁹ Amnesty International interview, Kibera, August 28, 2017.

When Onyango tried to use his mobile phone to film what was happening to him, a police officer smashed it. A foreign photographer, Neil Shea, documented Gordon's beating and a police officer snatched Shea's camera, removed the memory card and smashed the camera too.⁶⁰ His followers threw stones at the police which gave him the opportunity to run away. Onyango sustained broken ribs and head injuries which have affected his vision.

The Geography of Violence

The violations described above took place in areas where the police response was excessive and violence and injury correspondingly higher. In areas such as Kawangware, Mathare and Dandora, where large numbers of paramilitary police – GSU and AP – were deployed, there was a higher level of what appeared to be unlawful police conduct than in some other areas. For example, in Korogocho and Kariobangi, local police chiefs engaged with community and youth leaders personally and either prevented or tried to prevent deploying the GSU reinforcements. In those areas, levels of violence were much lower and there were no deaths.

The following breakdown describes the main patterns of rights violations in each location and details other deaths, beatings and excessive force that merit further investigation.

Dandora

On the night of August 11, police had already deployed in significant numbers around Dandora's "phase 4," and "phase 3," areas populated predominantly by opposition supporters. According to residents, police stationed seven large trucks at key intersections.⁶¹

As the result was announced, protesters in phase 4 set fire to businesses and began looting. They continued throughout the following day.⁶² Police tried to disperse them with tear gas and firing into the air but quickly moved on to firing live ammunition directly at protesters and bystanders, killing at least three in what would appear to be cases of unlawful killing and intentional use of force where it was not necessary.

⁶⁰ Amnesty International interview, Kibera, August 28 and Facebook post of Neil Shea, August 29, 2017.

⁶¹ Amnesty International interviews, Dandora phase 4, August 31, 2017.

⁶² Human Rights Watch interview, Dandora, August 25, 2017.

An eyewitness described how a group of 15-20 police pursued demonstrators, and one of them shot dead Vincent Omondi Okebe, a 27-year-old man at the main junction in phase 4: "I tried talking to the police, then one of them knelt and aimed..." The demonstrators ran away from police, but, "one of the young men fell down."⁶³

Youths in Dandora interviewed by researchers described the scene as "a game of cat-and-mouse," with police firing tear gas and demonstrators throwing stones, running away and coming back again.⁶⁴ Police pursued protesters into the alleys, shooting at body height and aiming at fleeing youths.⁶⁵

"It was as if they knew the damage they wanted to cause, they were deliberately punishing the community. They thought it was a war. They were shooting wildly in Dandora," recalled one health worker.⁶⁶

As the game with police and protestors continued, police shot dead Thomas Odhiambo Okul, age 26, in the back, right outside the gate to his house in an alleyway. A relative told researchers how Thomas had stepped out of his home to see what was happening. A short while later, he came running home again and was shot and killed.⁶⁷

Police also shot Kevin Otieno, age 23, in the stomach, in same neighborhood, about one hundred meters away. Residents said he was trying to get home and avoid the shooting. A witness said that police were walking, aiming and shooting at people on sight.⁶⁸ Kevin's neighbors said they tried to drag his body away but police aimed at them too and they ran away.

Residents said the unit responsible for the fatal shootings of Thomas and Kevin, was a group of 15 or so police dressed in jungle green led by a female officer wearing safari boots.⁶⁹

⁶³ Human Rights Watch interview, Dandora, August 26, 2017.

⁶⁴ Amnesty International interview, August 31, 2017.

⁶⁵ Amnesty International interviews, Dandora, August 31, 2017.

⁶⁶ Amnesty International interview, Dandora, August 31, 2017.

⁶⁷ Human Rights Watch interview, Dandora, August 26, 2017.

⁶⁸ Human Rights Watch interview, Dandora, August 26, 2017.

⁶⁹ Amnesty International interview, Dandora, August 31, 2017.

Vitalis Otieno, a 35-year-old man suffering from tuberculosis, died of shock, according to a relative. A relative told researchers that on August 11, neighborhood youth had come banging on doors calling men to come to defend the neighborhood against “Mungiki” – a banned criminal gang associated with the Kikuyu ethnic group and linked to extortion and political violence. Vitalis looked out of the gate and saw police shooting his friend Thomas in the back. He did not leave the house, but spent the rest of the day and night panicking, struggling to breathe, believing he would be trapped and unable to flee if the Mungiki or the police came house to house. He passed away around 4am on Saturday morning.⁷⁰

Kawangware

In this settlement, witnesses said the police were extremely violent, using abusive force in beating protesters, and firing tear gas canisters and live bullets indiscriminately. The police may be responsible for at least nine unlawful killings here. A full investigation is needed to establish whether in any of these cases there was an imminent risk to the lives or of serious injury of the police or others that would have justified the use of lethal force. The nature of many injuries – from tear gas canisters fired at people, at close range, gunshot wounds of protestors shot in the back – strongly indicates that in many cases the use of force was excessive.

In at least two cases people in their homes were killed by stray bullets from police weapons, which suggests that the police were not complying with international law and standards on the use of firearms. In the cases of two people trampled to death by fleeing protesters the police may not be criminally responsible but their failure to de-escalate the violence and to act in a proportionate manner may have contributed to the chaos which resulted in these deaths.

Protests began in Kawangware earlier than in many other locations. The day after polling, on August 9, youths clashed with police and continued to engage in running battles with them for several days.⁷¹ Residents said that youths taunted police and threw rocks at them while police retaliated with water cannon, tear gas, truncheons and live

⁷⁰ Amnesty International interview, Dandora, August 31, 2017.

⁷¹ Amnesty International interviews, Kawangware, September 2, 2017 and Human Rights Watch interview, Kawangware, September 11, 2017.

ammunition.⁷² Even if protestors are throwing stones at the police, if the police are equipped with protective gear and appropriate non-lethal weapons enabling them to make a proportionate response, as required under international law, it should rarely be necessary for them to use firearms in self-defense.

In the “stage two” area, GSU police clashed with protestors and fired teargas, which contributed to several deaths. A witness said that a 45-year-old businessman, **Sammy Amira Loka**, who sold tea, was hit by a tear gas canister in the chest as he tried to escape the fighting. Bystanders said he was not beaten but he began coughing blood and vomiting and was taken to Kenyatta Hospital where relatives said he died on August 16.⁷³ Later that evening, at the “56 stage⁷⁴” area, police fired teargas cannisters into crowds as they advanced towards demonstrators. **Lilian Khavere**, a 40-year-old house-keeper who was eight months pregnant, fainted and was trampled to death by crowds fleeing the teargas as she was coming home from work in Parklands, according to a witness.⁷⁵

Festo Kivogo, a 33-year-old father of three, was shot dead while in the vicinity of violent protestors throwing rocks at police at around 7p.m. that evening when a bullet hit him behind the left ear and exited through his eye, according to one of the men who tried to help take him to hospital. Witnesses were not sure if police fired the bullet; some said a Kikuyu businessman shot a handgun from an adjoining alley.⁷⁶ Throwing rocks at police is not, in itself, grounds for the use of lethal force, unless such action presents an imminent threat of death or serious injury, and no less extreme means are sufficient to stop that threat. An effective investigation is required to examine whether his killing was lawful. This should include consideration of the post-mortem report. However, police and the government pathologist have so far refused to release the post-mortem report to Kivogo’s family despite repeated requests, including from IPOA.⁷⁷

⁷² Amnesty International interviews, Kawangware, September 2, 2017.

⁷³ Human Rights Watch interviews, Kawangware, September 8, 2017.

⁷⁴ “56 stage” is a terminus for public service vehicles plying Kawangware – Nairobi Central Business District route. The area around there is generally known as “56 stage”.

⁷⁵ Human Rights Watch interview, Kawangware, September 11, 2017.

⁷⁶ Amnesty International interviews, Kawangware, September 2, 2017.

⁷⁷ Human Rights Watch interview, Kawangware, September 8, 2017.

Relatives of **Melvin Mboka Mwangitsi**, a 19-year-old woman, also believe police killed her that night. They found her swollen body at Kenyatta Hospital mortuary three days after she failed to return home. Her phone and money were still in her clothes. She had been shot through the torso from the right side.⁷⁸

On August 10, residents said police clashed with protesters who were throwing rocks at them nearly the whole day.

At around 1p.m., **Zebedeo Mukhala**, a 42-year-old construction worker, was shot in the leg by police according to a witness, then trampled to death by crowds after he fell on the ground.⁷⁹

Eric Kwama, a 30-year-old casual laborer, was killed when police fired a teargas canister at his head at close range, according to a relative. A friend of his said they were trying to run away from the police.⁸⁰ **Violet Khagai**, a 43-year-old woman, first fainted after being inhaling tear gas, and died after being hit on the head by a rock.⁸¹

On August 11, hours before the declaration of Uhuru Kenyatta as winner, **Nelvin Amakove**, a 30-year-old woman, was shot dead upon returning from shopping for food during a lull in the protests, a relative said. A relative found her body, along that of another woman. “[I]t had a small bullet hole at the back – right side,” and a huge exit wound at the front, he recalled.⁸²

In the Kinyanjui area, **Suleiman Khatibu**, a 25-year-old Tanzanian national working at a hotel in Nairobi, died after being hit by a tear gas canister in the chest, according to a relative and a family friend who were with him. A relative said he bled from the nose and struggled to breathe. He died one week later in hospital.⁸³

⁷⁸ Human Rights Watch interview, Kawangware, September 11, 2017.

⁷⁹ Human Rights Watch interview, Kawangware, September 11, 2017.

⁸⁰ Human Rights Watch interviews, Kawangware, September 8, 2017.

⁸¹ Human Rights Watch interview, Kawangware, September 11, 2017.

⁸² Human Rights Watch interview, Kawangware, September 8, 2017.

⁸³ Human Rights Watch interview with relative, Kawangware, September 11, 2017; interview with family friend, Kawangware, September 11, 2017.

At “56 stage” area, Jeremiah Maranga, a 50-year-old watchman, was beaten to death by police. According to witnesses, police caught and beat him so badly that his body was soaked in blood.⁸⁴ He died before he was seen by doctors, who told relatives he had suffered significant internal bleeding and organ damage.⁸⁵

Witnesses also described police grabbing youths and dunking them in the open sewer that runs alongside the main road through Kawangware slum and is full of sticky black, toxic, effluent.⁸⁶

Researchers received 10 other reports of police killings in Kawangware which at the time of writing are still unconfirmed because families are either still upcountry for burials or are too afraid to speak about the killings.

Kibera

In Kibera, police clashed with violent protestors on August 10 and 11 and with a smaller group of protestors on August 12. At least two people were killed in circumstances that appear to be unlawful killings, and dozens were shot and injured. Police used force and firearms that appeared to be excessive, in violation of international law and standards. Residents attributed beatings and shootings, and the removal of bodies of people shot by security forces, to GSU reinforcements from outside the locality.

As in other areas, unrest in Kibera began around Kamkunji and Gatwikera areas as soon as the opposition announced that the IEBC server had been hacked. Protesters at Olympic and Soweto areas in Kiandaa, Kibera, started throwing stones and barricaded the road. Many witnesses described a large, volatile, angry crowd flooding the road from Bombalulu junction in the west to Olympic stage in the east. Police, parked at Olympic and along the southern bypass, deployed to Olympic and Bombalulu in large numbers and began a “cat and mouse game” with the crowds. Police fired tear gas and shots into the air to repulse the crowd that then advanced again.⁸⁷ Some officers also fired into the

⁸⁴ Human Rights Watch interview, Kawangware, September 8, 2017.

⁸⁵ Human Rights Watch interview, Kawangware, September 8, 2017.

⁸⁶ Amnesty International interviews, Kawangware, September 2, 2017.

⁸⁷ Amnesty International interview, Kibera, August 29, 2017.

crowds, killing at least four. As mentioned above, witnesses described GSU officers loading the bodies of four people shot onto trucks.⁸⁸

During these clashes, which continued up to 1 a.m., police beat several people – a local businessman described being beaten and verbally abused by police, losing many teeth in the process.⁸⁹ Researchers spoke to several men who were watching an English Premier League soccer game on Kibera Drive when police made them lie down on the ground and beat them severely.⁹⁰

The following day protests continued, with beatings and shootings of protestors. A university student, was shot in the leg near Olympic primary school as he crept to check if the coast was clear, he said.⁹¹ Another, a carpenter, described police aiming at him from a distance as they battled protestors in his neighborhood. He was shot in the ribs. At the time of interview, the bullet was still lodged in his body.⁹²

Relatives said that during protests on August 10, **Geoffrey Onacha**, a 34-year-old resident in Kibera, was shot dead. We could not establish who fired the gun. His family went to view the body the next day in City Mortuary. His daughter, **Sharon Imenza**, age 10, was so traumatized from seeing the body in the hospital that she collapsed immediately and died, according to a relative. Relatives buried both soon after in western Kenya without reporting to police or IPOA.

In total, during the period, Ushirika hospital at Olympic recorded 31 victims of beatings and gunshot wounds and Kibera South health center recorded 12.

The allegations that security forces in Kibera took away bodies which have not been accounted for are deeply worrying and these incidents need to be speedily and thoroughly investigated by IPOA and other relevant authorities. The authorities have an obligation to ensure that all deaths as a result of police action are fully investigated, and not to cover up such deaths by disposing of bodies without recording the deaths with the

⁸⁸ Amnesty International interviews, Kibera, September 3, 2017.

⁸⁹ Amnesty International interview, Kibera, August 29, 2017.

⁹⁰ Human Rights Watch interviews, Kibera, August 29, 2017.

⁹¹ Amnesty International interview, Kibera, August 29, 2017.

⁹² Human Rights Watch interview, Kibera, August 29, 2017.

proper authorities or revealing the whereabouts of the bodies to the relatives or others with a legitimate interest.

Mathare

Mathare was also a scene of very violent police behavior and nine apparent killings by police. Multiple police units deployed in opposition strongholds of Mathare several days before the voting on August 8. Following the violence in the slum after the poll, they used teargas and water cannons, batons and firearms for several days, leaving at least nine dead between August 9 and 12, with seven of them shot dead and two beaten to death.⁹³ Dozens of people were treated in local clinics and hospitals for gunshot wounds and other injuries sustained as police battled violent protestors and conducted house-to-house raids pursuing protestors in their homes. Violations by police were concentrated in opposition areas, while ruling party areas such as Kiamaiko and Mlango Kubwa remained calm.⁹⁴

Williams Wakā 42, was shot dead on August 11, according to what witnesses told his relatives.⁹⁵ The relatives saw his body the following day with a small entry wound on one side of the ribs and a large exit wound, at City Mortuary. The family members told researchers they could not afford a post-mortem and they buried him on August 17 without reporting to police or IPOA.

Two other men were shot dead in Bondeni area at around 1a.m. on August 12, according to their relatives. **Bonface Ochieng Owino**, 31, a plumber, and his close friend and relative, a restaurant owner, **David Owino**, 28, left their respective houses in Bondeni area of Mathare and went to join demonstrators on Juja road soon after Kenyatta was declared winner at 10 p.m. on August 11.⁹⁶ The next morning, relatives said they received news they had been shot dead. The families later found their bodies at the City Mortuary.

On the morning of August 12, police swept through neighborhoods in Mathare 4A, areas C and T pursuing protestors. They kicked doors open, pulled men out of their houses, and

⁹³ Human Rights Watch interview with community mobiliser, Mathare, August 24, 2017; interview with school teacher and victim of police beatings, Mathare 4A, August 23, 2017; interview with youth leader who assisted several victims, Mathare 4A, August 23, 2017.

⁹⁴ Human Rights Watch interview with human rights activist, Mathare, August 23, 2017.

⁹⁵ Human Rights Watch interview with relative, Kawangware, August 8, 2017.

⁹⁶ Human Rights Watch joint interview with relatives to Bonface and David, Mathare – Bondeni area, August 24, 2017.

beat them with batons and gun butts.⁹⁷ Victims said police shot at residents even where there was no evidence that their lives could have been in danger.⁹⁸

In another case, a human rights activist said police beat to death **Bernard Ochieng Omondi**, 31, a community mobiliser for a community-based organization in Mathare.⁹⁹ Researchers were however unable to establish further details and the circumstances surrounding his beating and eventual death.

According to mortuary records, police took the body of a middle-aged man, **Fanuel Muruka Amule**, to Nairobi's city mortuary from Mathare on August 12 with bullet wounds in the chest. Researchers were however unable to establish the circumstances of his killing.¹⁰⁰

On August 13, a witness said, police shot dead 32-year-old construction worker, **Christopher Samwell Mutua**, after he stepped out of his house in Mathare North at around 8pm.¹⁰¹ A witness and neighbor who was with him told researchers that directly after the shooting, a group of 10 officers in full anti-riot gear and armed with guns and batons emerged from the darkness. "There were no demonstrations in this area or where he was shot," added the neighbor.¹⁰²

Seven other men were shot dead during the post-election period in Mathare. Further investigation is needed to determine this in each case and what were the circumstances of each killing; if they were shot by security forces the investigation needs to examine in particular whether any of those shot posed an imminent threat to life or of serious injury at the time they were killed, or if the security forces acted unlawfully.

Many beatings were extremely severe. A 20-year-old man, who didn't want to give his name for fear of reprisals, was beaten by police and left for dead. Nearly three weeks later

⁹⁷ Human Rights Watch interview with multiple victims, Mathare 4A – C area, August 23, 2017; interview with multiple victims and community leaders, Mathare 4A – T area, August 24, 2017.

⁹⁸ Human Rights Watch interview with relative of victim, Mathare 4A, August 23, 2017; interview with spouse of victim, Mathare North, August 24, 2017.

⁹⁹ Human Rights Watch interview with a human rights activist, Mathare 4A – C area, August 23, 2017.

¹⁰⁰ Records at Nairobi City Mortuary, on file.

¹⁰¹ Human Rights Watch interview with family member, Mathare North, August 24, 2017.

¹⁰² Ibid.

when a researcher interviewed him, he still could not remember what had happened due to beatings on his head.¹⁰³ Another man said he had broken ribs while at least three others said they could no longer work or fend for their families due to beatings.¹⁰⁴

Men believed by witnesses to be plain clothed officers fired at bystanders, including children. At around 9 a.m. on August 12, three men in plain clothes and who residents said they believed to be officers from the Directorate of Criminal Investigations, wounded a 12-year-old primary school boy in Mathare 4A who was out playing with classmates.¹⁰⁵ The boy was later admitted at Kenyatta National Hospital with gunshot injuries in the left leg. “They were shooting at anyone, in most cases those in groups of more than three. The man who shot at the boy had an AK47 and he is a CID officer well known in this area,” said a 22 – year old man and resident of Mathare 4A.¹⁰⁶

Babadogo

In addition to killing three boys in Babadogo described above, the police beat at least two people badly and several other people sustained gunshot wounds after police had deployed to the area and begun shooting.¹⁰⁷

Residents described turning out to defend the community against “Mungiki” but then being shot by people apparently wearing police uniforms. A 40-year-old construction worker from western Kenya said he was among the residents who went out in a large group to defend their neighborhood against Mungiki, and was shot in the back.¹⁰⁸ A second man, a 35-year-old carpenter, was shot in the lower back area that same night. “We thought they were Mungiki because they acted sneaky in the dark. Police in this area are well known and they told us they did not know the people who attacked us that night,” said the victim from Kasabuni side of Babadogo.¹⁰⁹

¹⁰³ Human Rights Watch interview with victim of police beating, name withheld Mathare 4A – C area, August 23, 2017.

¹⁰⁴ Human Rights Watch interview with multiple victims of police beatings, Mathare 4A – C area and Mathare 4A – T area, August 24, 2017.

¹⁰⁵ Human Rights watch interview with relative of victim, Mathare 4A – C area, August 23, 2017.

¹⁰⁶ Ibid.

¹⁰⁷ Human Rights Watch interview with human rights activist, Babadogo, August 23, 2017; interview with two witnesses to the killings, Babadogo, August 23, 2017.

¹⁰⁸ Ibid.

¹⁰⁹ Human Rights Watch interview with victim of shooting, Babadogo – Kasabuni area, August 23, 2017.

Korogocho and Kariobangi

There were house to house operations by GSU police in Korogocho and the officers beat residents arbitrarily and with excessive force. However, the local police chief said he did not request the GSU to come into his area, they came in pursuit of boys who had surrounded the police post at Waraka and burned the chief's office there.¹¹⁰

In Korogocho and Kariobangi, protests erupted following the announcement of the presidential election results but the police reacted in very different fashion to their colleagues in Kawangware, Mathare and elsewhere. In both locations, residents did not report to researchers any deaths at the hands of police

In Korogocho, the OCS of the local police post, a trainer in community policing methods at the police academy, explained that he urged police restraint: "We were provoked a lot but we tried to avoid escalating the situation. We were attacked with stones, but it was just stones."¹¹¹ He stationed GSU reinforcements out of sight and urged them not to deploy, to give him and his local officers a chance to talk to protestors first.¹¹²

In Kariobangi there were clashes along ethnic-political lines between local youths on the night of August 11 after the announcement of results. NASA supporters gathered on the street and told elders and women to go inside, witnesses recalled, and some lit fires as they prepared to clash with "Mungiki" gangs known as "the Hilton group" and the "Kanyama group."¹¹³

But police dispersed the gangs and prevented them from clashing, and intervened in at least one street fight likely saving a young man's life.¹¹⁴

While youth in the Gitathuru area of Kariobangi set shops on fire and destroyed the wall of a school believed belonged to a Kikuyu businessman, there was no loss of life, no reports of gunshot wounds and the disturbance was more short-lived than in other areas. On

¹¹⁰ Amnesty International interview with Chief Inspector, Korogocho Police Post, August 30, 2017.

¹¹¹ Amnesty International interview with Chief Inspector, Korogocho Police Post, August 30, 2017.

¹¹² Ibid.

¹¹³ Amnesty International interview, Kariobangi, August 31, 2017.

¹¹⁴ Ibid.

August 12, police went down into the center of the slum and talked to residents, even handing out water and biscuits.¹¹⁵

Community activists attribute the general avoidance of force by the police in this area to the peace meetings between all candidates, a peace walk prior to the election and a constructive relationship between community leaders and the police command.¹¹⁶

Amnesty International and Human Rights Watch heard similar stories in other areas, of good relationships with local police where community policing approaches, rather than the deployment of paramilitary reinforcements, characterized the state's response to the disturbances following the election.

GSU reinforcements were on standby in Korogocho and in Kariobangi, but in both places, local police chiefs kept them out of sight. The Officer Commanding Station (OCS) in Kariobangi explained: "Because the members of the public, if they see a large number of police, they will want to retaliate."¹¹⁷ Such restraint went a long way to reducing violence, and is a key lesson for the police from the events of August 2017.

Community activists who made lists of victims of police violence at the hands of GSU praised the OCS in Korogocho for his role in averting major violence. The experience of these two areas provides a stark alternative example to police responses elsewhere and shows that police can abide by international standards. It also demonstrates the benefits of the work invested in community relationships by the Kenya police and the support that donors have provided for this work. It is unfortunate that commanders in other areas apparently did not show similar leadership.

¹¹⁵ Amnesty International interviews, Kariobangi, August 31, 2017.

¹¹⁶ Ibid.

¹¹⁷ Amnesty International interview, Kariobangi, August 31, 2017.

IV. Suppression of Freedom of Expression

Police sought to cover up the crackdown by smashing phones and cameras used to document the police response to the protests.

The Committee to Protect Journalists (CPJ) has documented the cases of at least 10 journalists countrywide who reported being harassed by security services and prevented from doing their job during the election period.¹¹⁸ The threats of arrest after the elections from the Nairobi police chief also played a part in intimidating journalists and disrupting their work.

Police smashed the camera of well-known international photographer, Neil Shea, in Kibera when he tried to photograph a youth leader being beaten.¹¹⁹ In Mathare, an activist who tried to capture police on film had his camera snatched and smashed by police. They then beat him for the attempt, saying, he said: “if you film us, it can be used as evidence, we can lose our jobs.”¹²⁰ Such experiences were common during the protests.¹²¹

Police obstructed and ejected from the area journalists who were covering protests in Kibera. Kenya Television Network journalist Duncan Khaemba and cameraman David Okech were arrested for not possessing a permit for their protective clothing, whilst Wall Street Journal correspondent, Matina Stevis was hit with a stick and told to leave the area along with others.

Police also threatened human rights defenders. In Mathare, researchers spoke to four human rights defenders who fled their homes after threats from police who told them to

¹¹⁸ CPJ statement, see https://www.the-star.co.ke/news/2017/08/18/probe-harassment-of-journalists-after-poll-remove-safety-hoops-cpj_c1618950 (accessed October 1, 2017).

¹¹⁹ Amnesty International interview, Kibera, August 28, 2017.

¹²⁰ Amnesty International interview, Mathare, August 27, 2017.

¹²¹ See Human Rights Watch “Not Worth the Risk: Threats to Free Expression Ahead of Kenya’s 2017 Elections” May 30, 2017; <https://www.hrw.org/report/2017/05/30/not-worth-risk/threats-free-expression-ahead-kenyas-2017-elections> (accessed October 1, 2017).

“stop telling lies”.¹²² In the end, seven human rights defenders from Nairobi who reported threats from police were relocated by human rights groups for their safety.¹²³

Linked to the post-election violence and attempts to suppress reporting about it was the government’s attack on human rights organizations, Kenya Human Rights Commission (KHRC) and the Africa Centre for Open Governance (AfriCOG). In mid-August both groups were ordered to close and had their bank accounts frozen by the NGO Coordination Board.¹²⁴ KHRC was part of a coalition of organizations monitoring police behavior, and AfriCOG is one of the foremost funders, supporters and trainers of the many community-based paralegal organizations that offer legal advice and human rights monitoring in the slums.

Some commentaries have focused on the possible role of these organizations in supporting a petition challenging the election result, and an attempt by the government to impede that process, as a possible motivation for the closure. But the impact on their work at the grassroots level was far more significant, and disrupted efforts to document rights violations in informal settlements and Kisumu.¹²⁵ The order also diverted other human rights organizations from the central work of documenting the post-election violence.

¹²² Human Rights Watch interviews, Mathare, August 14, 2017.

¹²³ Amnesty International interview with a human rights defender network, Nairobi, August 28, 2017.

¹²⁴ ‘UN, Amnesty condemn NGO board over AfriCOG, KHRC attacks’ *The Nation*, August 15, 2017
<http://www.nation.co.ke/news/UN-Amnesty-condemn-NGO-board-AfriCOG-KHRC/1056-4058566-8ryftpz/index.html>
 (accessed October 1, 2017).

¹²⁵ ‘Exposed: Why ‘Statehouse’ ordered closure of KHRC, AfriCOG, arrest of activists,’ *Kenya Today*, August 16, 2017
<https://www.kenya-today.com/politics/exposed-statehouse-ordered-closure-khrc-afriCOG-arrest-civil-society-activists>.
 (accessed October 1, 2017).

V. Response of Government Agencies

Under Kenyan law, police may use lethal force only when necessary for self-defence or to save a life. Section 4 of the Sixth Schedule of the National Police Service Act of 2011 requires police officers who use lethal force to report to their immediate superior explaining the circumstances that necessitated the use of force. Section 5 of the same act requires officials to report any use of force that leads to death or serious injury to IPOA for investigation. At time of writing, the police have not complied with this requirement to date.¹²⁶

The government's response has largely been to deny the scale of the violence. Even as the clashes were ongoing, the acting Cabinet Secretary for the interior, Fred Matiang'i, claimed on August 12 that police had not used firearms, nor killed anyone. He claimed all demonstrators were looters and thus implied they were legitimate targets for shooting.¹²⁷ The cabinet secretary suggested that the few people who might have been killed were criminals who were looting shops and that police had only acted to thwart such criminal attempts. Matiang'i said:

Peaceful demonstrations and picketing are protected by the Constitution and our police always act according to the law. Individuals or gangs that are looting shops, that want to endanger lives, breaking into people's businesses; those are not demonstrators, they're criminals.¹²⁸

According to victims at time of writing, IPOA has taken statements from families and witnesses in at least six cases of police shooting so far. IPOA refused to share with researchers information that it said related to ongoing investigations. However, IPOA had a standing arrangement with the NGO Independent Medical Legal Unit (IMLU) during the

¹²⁶ Human Rights Watch, correspondence with IPOA, September 13, 2017.

¹²⁷ 'Matiang'i denies use of live bullets, deaths, in post-election protests,' *The Star*, August 12, 2017, https://www.the-star.co.ke/news/2017/08/12/matiangi-denies-use-of-live-bullets-deaths-in-post-election-protests_c1615392 (accessed October 1, 2017).

¹²⁸ Jeremiah Wakaya, "Matiang'i denies protesters killed by police, warns protesters will be crushed," Capital FM Online, August 12, 2017; <http://www.capitalfm.co.ke/news/2017/08/matiangi-denies-protesters-killed-by-police-warns-violence-will-be-crushed/>.

crisis, which provided IPOA with some insights into the cases of dead and injured referred by monitors. One shooting victim told researchers that IPOA had visited him in hospital.

However, IPOA has to date not proven effective at investigating police, concluding at least seven cases since its inception in 2012.¹²⁹ During those years, rogue police activity, especially by the Anti-Terror Police Unit (ATPU) has gone unchecked.¹³⁰ Donor support for the ATPU, and a wilful blindness to its violations, means that even as donors support and fund community engagement initiatives, they are not speaking with one voice on accountability for police. Police reform in Kenya still has a long way to go.¹³¹

Unsurprisingly, sources within IPOA told Reuters journalists that the police were not cooperating with them in their investigations into police actions in the post-election period.¹³² And the experience of the family of Festo Kivogo, (see above), for whom even the intervention of IPOA could not secure the release of the post-mortem into his death, suggests that IPOA faces an uphill struggle to establish facts and prosecute cases.

Many relatives told researchers that they could not afford a post-mortem, nor did they see the point of reporting the death saying “the police cannot investigate themselves.”¹³³ Ordinarily under Kenyan law, a family needs to register a complaint or express doubt about the cause of death for the state to order a post-mortem.¹³⁴ In practice though, most families are asked to pay.

¹²⁹ Human Rights Watch interview with IPOA, Nairobi, 2016; Under the law, both IPOA and Kenya National Commission on Human Rights, a constitutional commission, have power to investigate police misconduct. IPOA refers cases it has investigated to the office of the Director of Public Prosecutions for prosecution; KNCHR can either refer to the DPP or prosecute by itself. The DPP can order investigations into police misconduct. National Police Service Commission generally does not investigate such abuses, but where information is made available to it, the commission can institute disciplinary proceedings against officers implicated in use of excessive force or unlawful killings.

¹³⁰ See Human Rights Watch, ‘Kenya: Killings, Disappearances by Anti-Terror Police,’ August 18, 2014, <https://www.hrw.org/news/2014/08/18/kenya-killings-disappearances-anti-terror-police>; and Kenya National Commission on Human Rights, ‘The Error of Fighting Terror with Terror’, (2015) <http://www.knchr.org/Portals/0/CivilAndPoliticalReports/Final%20Disappearances%20report%20pdf.pdf>.

¹³¹ Amnesty International, ‘A Drop in the Ocean: Police Reform in Kenya,’ 2013, <https://www.amnesty.org/en/documents/afr32/001/2013/en/2013>.

¹³² ‘Kenya Police not cooperating with watchdog over election deaths: sources.’ Reuters, September, 6, 2017 <http://af.reuters.com/article/africaTech/idAFKCN1BH25Q-OZATP>.

¹³³ Human Rights Watch interview, Kawangware, September 8, 2017.

¹³⁴ The relevant law is the Criminal Procedure Code, 1931.

Neither police nor IPOA have come to visit the families of many victims, especially relatives of those killed in Kawangware.¹³⁵ The potential extent of police killings in the 2017 post-election period, at least 50 nationwide, requires a broader investigation which should include penetrating questions over the planning, deployments, command and orders given. IPOA does not in practice have the requisite independence, nor does it have sufficient powers or resources, for the scope of investigations required, especially given the power of some of the people who must be subject to scrutiny. Hence the need for a judicial inquiry.

As shown in this report, there were far more abuses by police in opposition-populated areas where GSU/paramilitary police deployed. Some residents and rights activists have claimed that the police action was indeed not a preventive response to spontaneous demonstrations and violence, but pre-meditated, selective and punitive. Some weight is added to this claim by a comment made by one police officer interviewed for this report who said that an officer's decision not to deploy GSU in his area – although it may have been sensible and life-saving – might not have been what his superiors wanted.¹³⁶ That such a thought is even possible is cause for grave concern.

¹³⁵ Amnesty International and Human Rights Watch interviews, Kawangware September, 2017.

¹³⁶ Amnesty International interview, Nairobi, date withheld.

Appendix 1: Table of Confirmed Deaths and Alleged Perpetrators During Post-Election Violence in Nairobi, 2017

No.	Name	Location	Date	Description of Violation	Status
1	Francis Njuguna, 31 years old	Kariobangi, Nairobi	August 11, 2017	Shot dead	Body found at City Mortuary
2	Vincent Omondi Okebe, 27 years old	Dandora, Nairobi	August 11, 2017	Shot by police	Died at Kenyatta National Hospital
3	Thomas Odhiambo Okul, 26 years old	Dandora, Nairobi	August 11, 2017	Shot inside his gate by police	Died instantly
4	Kevin Otieno, 23 years old	Dandora, Nairobi	August 12, 2017	Shot outside his gate by police	Died on way to hospital
5	Vitalis Otieno, 24 years old	Dandora, Nairobi	August 12, 2017	Died of shock	Died in his house
6	Sammy Amira Loka, 45 years old	Kawangware Stage Two, Nairobi	August 9, 2017	Hit by a teargas canister – inhaled teargas	Died at KNH on August 10, 2017
7	Lilian Khavere, 40 years old, 8 months pregnant	Kawangware No.56, Nairobi	August 9, 2017	Teargassed, fell and trampled by crowd	Died at KNH
8	Festo Kevogo, 33 years old	Kawangware No. 56, Nairobi	August 12, 2017	Shot through the head by police	Died on way to hospital
9	Melvin Mboka Mwangitsi, 19 years old	Satellite/Kawangware, Nairobi	August 9, 2017	Shot dead by police	Body traced at KNH mortuary
10	Paul Mungai, 33 years old	Kawangware No 56, Nairobi	August 12, 2017	Shot in the abdomen by	Died from internal bleeding at KNH

				police in his house	
11	Zebedeo Mukhala, 42 years old	Kawangware No. 56, Nairobi	August 12, 2017	Shot in the leg, fell and trampled by crowd	Died at Mbagathi Hospital on August 14, 2017
12	Violet Khagai, 43 years old	Kawangware Stage Two, Nairobi	August 12, 2017	Hit by teargas and inhaled pepper spray	Died on way to hospital
13	Eric Kwama, 30 years old	Kawangware Stage Two, Nairobi	August 10, 2017	Hit by teargas fired at close range, inhaled pepper spray	Died at Kenyatta National Hospital (KNH)
14	Nelvin Amakove, 30 years old	Kawangware No. 56, Nairobi	August 11, 2017	Caught up in riots, shot in the back while running away from police	Died instantly; body traced to KNH
15	Suleiman Khatibu, 25-year-old Tanzanian national, employee of San Valencia restaurant in Karen	Kinyanjui area, Wanye, near Kawangware, Nairobi	August 11, 2017	Hit in chest by teargas fired at close range, bled through nose and mouth	Died at KNH on August 18, 2017
16	Jeremiah Maranga, 50 years old, G4S employee	Kawangware No.56, Nairobi	August 11, 2017	Beaten by police and left for dead, body soaked in blood	Died of internal bleeding and severe organ damage while waiting for treatment at KNH
17	Benson Wandera, 47 years old	Kinyanjui area, near Kawangware, Nairobi	August 11, 2017	Shot dead by police	Buried in western Kenya, Busia county
18	Silas Owiti Lebo, 18 years	Mathare 4A – C area, Nairobi	August 12, 2017	Beaten by police	Died on admission in hospital

19	Bernard Okoth Odoyo, 25 years old	Mathare 4A, Nairobi	August 9, 2017	Shot in the back	Died instantly at No.10
20	Victor Okoth Obondo, 24 years old	Mathare 4A, Nairobi	August 9, 2017	Shot in the back	Died instantly at No.10
21	Williams Waka, 42 years old	Mathare North, Nairobi	August 9, 2017	Shot in the chest	Body traced to City Mortuary
22	Boniface Ochieng Owino, 31 years old	Mathare, Bondeni area, Nairobi	August 12, 2017	Shot in the chest	Died instantly along Juja road
23	David Owino, 28 years old	Mathare, Bondeni area, Nairobi	August 12, 2017	Shot in the chest	Died instantly along Juja road
24	Stephanie Moraa Nyarangi, 9 years old	Mathare North, Nairobi	August 12, 2017	Shot in the chest	Died instantly on balcony
25	Christopher Samwell Mutua, 32 years old	Mathare North, Nairobi	August 13, 2017	Shot in the chest at close range	Died instantly near his house
26	Fanuel Muruka Amule, 30 years old	Mathare North, Nairobi	August 12, 2017	Shot in the chest	Body traced to City Mortuary
27	Raphael Ayieko, 17 years old	Babadogo, Kasabuni area, Nairobi	August 12, 2017	Shot in the back	Died instantly
28	Privel Ochieng Ameso, 18 years	Babadogo, Kasabuni area, Nairobi	August 12, 2017	Shot at back of neck and in the hip while on his knees	Died instantly
29	Shaddy Omondi Juma, 17 years old	Babadogo, Kasabuni area, Nairobi	August 12, 2017	Shot dead while on his knees	Body traced to City Mortuary with five bullet wounds
30	Geoffrey Onacha, 34 years old	Kibera, Nairobi	August 10, 2017	Shot dead	Body traced at City Mortuary
31	Sharon Imenza, 10-year-old daughter of	Kibera, Nairobi	August 11, 2017	Collapsed and died upon	Collapsed

	Geoffrey Onacha above			seeing father's body	
32	Henry Onyango Matete	Kibera, Olympic area, Nairobi	August 12, 2017	Beaten by police	Died a day later at Muthaiga Hospital
33	Michael Owino, 28 years old	Kibera Olympic area, Nairobi	August 12, 2017	Shot dead and body taken away in body bag	Boy yet to be found
34	Between 17 to 27 unconfirmed cases from various parts of Nairobi	Kawangware, Kibrera, Mathare, Dandora	August 9 to 13	Allegedly shot by police	Did not document for various reasons – families and witnesses not willing to speak

“Kill Those Criminals”

Security Forces Violations in Kenya’s August 2017 Elections

On August 11, 2017, the Independent Electoral and Boundaries Commission declared incumbent President Uhuru Kenyatta winner of the presidential elections amid claims of fraud. Opposition supporters in Nairobi, the coast and western Kenya protested the results, burning tyres and lighting bonfires, blocking roads and stoning police officers.

Based on one month of research in Nairobi’s informal settlements, this report documents how police used excessive force against protesters, firing teargas in residential areas or inside houses, shooting in the air but also directly into the crowd and carrying out violent and abusive house to house operations, beating and shooting residents.

In Nairobi alone, at least 33 people were killed. There were unconfirmed reports of another 17 dead in Nairobi. Added to 12 killings documented earlier by Human Rights Watch in western Kenya, and 5 new cases reported by KNCHR on October 9 the national death toll could be as high as 67.

The report also describes how police harassed and intimidated journalists and human rights defenders.

Amnesty International and Human Rights Watch call on the Kenyan government to acknowledge, condemn and investigate the killings and excessive use of force by police and other security agencies and to urgently take measures to prevent a repeat in the upcoming fresh election.

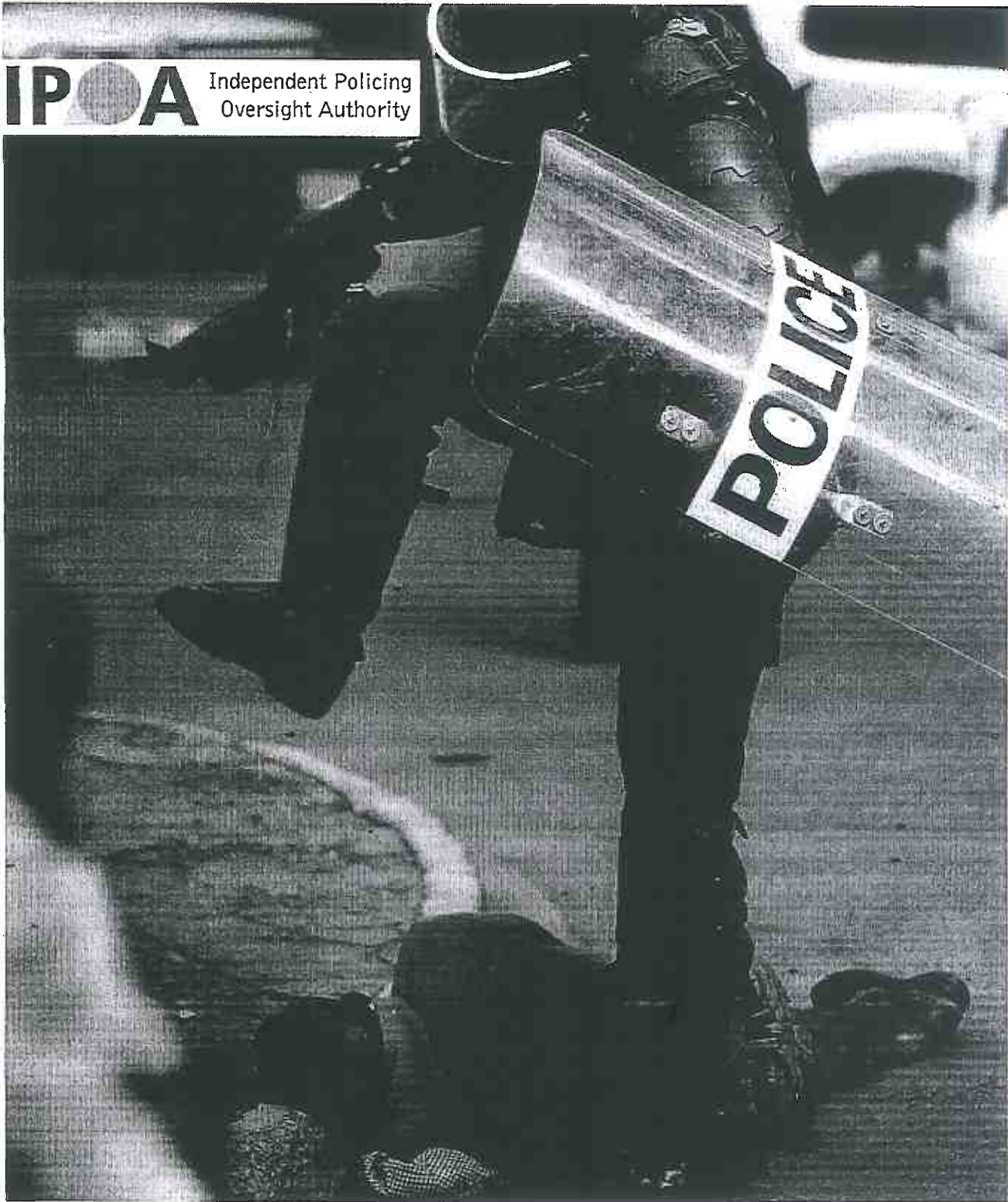


Residents flee as anti-riot policemen pursue opposition protestors in Mathare, Nairobi, on August 12.

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Monitoring Report on Police Conduct during Public Protests and Gatherings

A Focus on the Anti-IEBC Demonstrations (April – June 2016)

Annexed to in the Affidavit/Declaration
Of... *Charles Khakuma*... *KKSA*
Sworn / Declared Before me this... *1st*
Day of... *September*... 20... *23*... at... *Nairobi*
In the Republic of Kenya

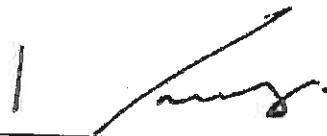
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Commissioner for Oaths

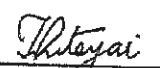
MONITORING REPORT ON POLICE CONDUCT DURING PUBLIC PROTESTS AND GATHERINGS


A Focus on the Anti-IEBC Demonstrations (April - June 2016)

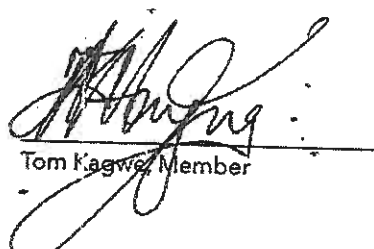
December 2016

BOARD SIGNATURES

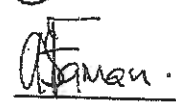

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LIST OF ACRONYMS AND ABBREVIATIONS

APS	Administration Police Service
CORD	Coalition for Reforms and Democracy
GSU	General Service Unit
IEBC	Independent Electoral and Boundaries Commission
IPOA	Independent Policing Oversight Authority
KAPU	Kenya Airport Police Unit
KPS	Kenya Police Service
MCA	Member of County Assembly
NPS	National Police Service
NPSC	National Police Service Commission
RBPU	Rural Border Patrol Unit
RDU	Rapid Deployment Unit
SGB	Security of Government Building

FOREWORD

The Independent Policing Oversight Authority (IPOA) is established to provide oversight, on behalf of the public, in the work of the National Police Service (NPS) and to ensure accountability, impartiality and respect for human rights in policing. Section 6 (c) of the Independent Policing Oversight Authority Act No. 35 of 2011, mandates the Authority to monitor and investigate policing operations affecting members of the public. In case of this Report, the policing operations pertain to public order management prior, during and after public assemblies, demonstrations, picketing and presentation of petitions.



Between April and June 2016, IPOA monitored the police operations relating to the public protests and gatherings; also known as 'anti-IEBC (Independent Electoral and Boundaries' Commission) demonstrations'. Since they began, five (5) demonstrations were held in the entire country; mostly on Monday's and later Monday's and Thursday's.

The Authority has in the past highlighted areas of concern in the way policing is conducted and especially during public order management. It is the Authority's position that public order management should be done in a professional manner, as enshrined in Constitution under Article 37, thus every person has the right, peaceably and unarmed, to assemble, to demonstrate, to picket, and to present petitions to public authorities. This is a right that determines the quality of policing and police professionalism; now and in the future.

Article 38 of the Constitution allows pursuit of legitimate political interests and therefore, the National Police Service cannot interfere with such interests. This however is subject to the parties concerned doing so within the confines of the law; by only notification and not whether any police officer can decline or accept such notification. Indeed, action or inaction by the Service, when such notification is issued, in itself would amount to dereliction of duty.

In policing public protests and gatherings, IPOA expects the Inspector General to ensure discipline amongst the officers that he commands if we are to have a professional National Police Service. Equally, action should be taken against offending members of the Service if they break the law.

It is IPOA's expectation that the National Police Service will act strictly in compliance with the Constitution, other written laws or regulations particularly the National Police Service Act and their Service Standing Orders, and that the use of lethal force should be avoided and if required, be exercised only to the extent that is necessary, ensuring that its minimum, reasonable and proportional to the resistance being faced.

In conclusion, this Report provides candid and frank observations and recommendations, which depicts that the police, in general and in specific circumstances, violated the laws they swore to protect. The recommendations provided should be implemented to ensure realisation of Article 244 of the Constitution.

Macharia Njeru

Chairperson

Independent Policing Oversight Authority

EXECUTIVE SUMMARY

This report is based on the anti- IEBC demonstrations that were organised by the Coalition for Reforms and Democracy (CORD), between April and June 2016, to have the former IEBC disbanded. Since the beginning of the demonstrations in April 25th to 6th June, five demonstrations on every Monday across the county were held. IPOA monitored the police conduct during these five demonstrations.

The main objective of the monitoring was to "monitor and investigate policing operations affecting members of the public" in accordance with Section 6 (c) of the IPOA Act. The monitoring was done to ensure compliance with national, regional and international policing norms.

The Authority applied various methodologies while doing the monitoring. These included doing interviews with various general members of the public who suffered under the hands of the police, members of the NPS who were caught between their superiors' orders and the lawbreakers, and also, IPOA interviewed the public whose property was destroyed. The Authority also partnered with various State and non-State actors in various counties during the monitoring of police conduct or misconduct, to corroborate the information that was gathered. Further, the Authority was able to document through video, photography and hand-written reports, with use of media reports being highly considered.

The key findings were that high levels of police brutality, notoriety, harassment and use of excessive force particularly in Nairobi, Migori, Kisumu, Siaya and Homa Bay Counties was observed. 88 people sustained various forms of injuries raising from minor injuries to serious injuries and arrested persons were detained more than 24 hours and their right to a fair trial was not respected.

Of great concern to the Authority was the use of excessive force on innocent children, women, the disabled and other special interest groups who became victims of police injuries and brutality.

According to Kenya Private Sector Alliance (KEPSA) report¹, each business within the Nairobi Central Business District (CBD) lost at least Kshs. 48,304 per day every time there was a public protest.

Based on these findings, the Authority in line with Article 244 of the Constitution, makes the following recommendations;

1. The National Police Service should urgently establish a comprehensive training on public order management with reference to other international standards as comparatively expressed in Part 7 of this report. This training could seek for external assistance from USA, Sweden and UK, countries that are already involved in the Police Reform Program under the Ministry of Interior and Coordination of National Government. A compulsory section aimed at preparing officers for the psychological challenges and demands required in policing public protests should be introduced beyond the generalized police training.
2. Under the changed policing context, Public Order Management should be made mandatory to all police officers. The abrupt pulling of officers from different units such as General Service Unit (GSU), Security of Government Building (SGB), Kenya Airport Police Unit (KAPU), Rural Border Patrol Unit (RBPU), Rapid Deployment Unit (RDU) among others

¹ http://www.the-star.co.ke/news/2016/08/02/sh48000-revenue-lost-per-business-daily-during-anti-iebc-demos-kep-sa_c1396804 accessed on 25th August 2016

- without proper briefing and training waters down effective and efficient command, control, communication and coordination. Further, contemporary public order management is a skill and all officers involved in it should have common understanding, with commonality of purpose.
3. The National Police Service should proactively be engaging with the conveners / organizers of public protests and gatherings, and come up with written agreements to reduce tensions while ensuring public order policing. These proactive engagements should among others agree on the timings and the routes to take. Further joint conferences with the organizers to assure the public of their security and safety, and enhance community policing in the country.
 4. The National Police Service should enhance intelligence gathering around public order management to map out the criminal elements who might infringe on freedom of assembly, demonstrations and picketing. This should be done with the conveners / organizers of the public protests having their field marshals as well, to promote and protect security of all actors.
 5. 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. This would be in conformity with Rule No. 10 of Part A of the Sixth Schedule to the NPS Act, 2011 and would ensure accountability of individual officers.
 6. Use of force in the service should be graduated as envisaged under the Sixth Schedule to the NPS Act. First, there should be proclamation with audible loud speakers, which should be graduated to use of physical force; then mechanical force with police being literally a few meters in front of the crowd. Use of coercive and deadly force during public order management should be avoided at all costs, and when used, it should be only to immobilize the victim but not to kill. No loss of life should be encouraged under public order management environment.
 7. The National Police Service should abide by Article 239 of the Constitution while performing their functions and exercising their powers. The Service should not act in a partisan manner, further any interest of a political party or cause, or prejudice a political interest of political cause that is legitimate under the Constitution. The Service should remain impartial at all times while carrying out its functions.
 8. Use of modern policing skills such as information technology and videography should be encouraged, with tracking of the errant members of the public for later arrests.
 9. The police should also ensure availability of medical aid at stand by, with all necessary equipment, to give first aid to those injured during public order management.
 10. The communication by policy makers and the ministry of interior prior, during and after public protests and gatherings should be to enhance the rights of Kenyans as enshrined in the constitution and not to curtail them. Public awareness should be enhanced by the Ministry for change of culture, behavior and attitudes of both the police and members of the public.
 11. A policy on public order management, with clear guidelines and procedures for policing of public protests and gatherings must be developed, understood and implemented by all officers. The guidelines and procedures should allow local commanders to take creative initiative when new situation arises, while in adherence to the lines of command and control.

1.0 BACKGROUND: RATIONALE AND OBJECTIVES OF THE MONITORING EXERCISE

1.1 IPOA's Mandate

The Independent Policing Oversight Authority Act, No. 35 of 2011, (the IPOA Constitutive Act) requires the Authority to hold the police accountable to the public in the discharge and performance of their functions. This law requires the Authority to give effect to the provisions of Article 244 of the Constitution, which obligates the National Police Service to:

- a). Strive for the highest standards of professionalism and discipline among its members;
- b). Prevent corruption, promote and practice transparency and accountability;
- c). Comply with constitutional standards of human rights and fundamental freedoms;
- d). Train staff to the highest possible standards of competence and integrity and to respect human rights and fundamental freedoms and dignity; and,
- e). Foster and promote relationships with the broader society.

1.2 Objectives and Rationale of Monitoring

The monitoring was aimed at observing and documenting how the police carry out public order management with a focus on public protests and gatherings. Using both national, regional and international norms on how police should conduct themselves during public protests and gatherings, IPOA isolated the Main Objective of the monitoring as: "to monitor and investigate policing operations affecting members of the public" in accordance with the constitutive IPOA Act.

Thereafter, the Specific Objectives were: to ensure that police adhere to the rule of law, professionalism and discipline as per their constitutive Act; to closely monitor the availability and utility of tools and equipment's on public protests; to identify possible misconduct of police officers when managing public order; to investigate where cases of police misconduct were cited; and finally, to recommend to the NPS, or any other State organ on how to manage public order, using national, regional and international norms, of which Kenya's democratic State and its police in general, should adhere to.

From the foregoing, the Authority's monitoring team sought to objectively monitor, document and give recommendations based on the observations of the monitoring in order to realize IPOA's motto: *guarding public interest in policing*.

2.0 METHODOLOGY OF THE MONITORING EXERCISE

Monitoring, as a mandate area of the Authority, is described as: the close observation of a situation so as to determine what further action needs to be taken. In policing context, it is the close observation of systemic policing issues. In this report, the ongoing theme among the police as a whole is the management of public order, or policing of assemblies, protests and gatherings, which has been an ongoing theme in Kenya for a period of time. The main intention is to point out misconduct, open investigations and also hold individual police officers to account for criminal or disciplinary misconduct, and thereof make relevant recommendations to the Service and various State organs.

This Report documents the monitoring exercise carried out by the Authority in the eight weeks of the public protests and gatherings famously referred to as "anti-IEBC demonstrations," which took place in various Counties in the Republic of Kenya. The demonstrations began on 25th April and ended on 6th June, 2016.

Over this period, the IPOA monitored, with use of a developed tool, the police conduct by physically observing and documenting police conduct or misconduct, particularly how they managed the protests or gatherings in compliance with both national, regional and international norms.

The Authority was able to interview various general members of the public who suffered under the hands of the police; members of the NPS who were caught between their superiors' orders and the hooliganism witnessed, and also, IPOA interviewed the public whose property was destroyed. The Authority also partnered with various State and non-State actors in various counties during the monitoring of police conduct or misconduct.

During the monitoring, the Authority was able to document (through video, photography, and hand-written reports or interviews) high levels of police brutality, notoriety, harassment and excessive use of force particularly in Nairobi, Migori, Kisumu, Siaya and Homabay Counties. Several cases of arbitrary arrests and rounding-up of youth in Mombasa, Nairobi and Kisumu Counties also took place.

The information gathered was analyzed to inform the findings and due to limited reach across the country, the Authority made use of the media (print and audio) to enrich the content of the report, by analyzing the flow of the information as was reported from various parts of the country.

3.0 THE PROTESTS

From 25th April 2016 to 6th June 2016, the Coalition for Reform and Democracy (CORD), leaders and their supporters called for a series of demonstrations against the Independent Electoral and Boundaries Commission (IEBC) across the country. CORD and its supporters sought to have the IEBC disbanded, through public protests, on grounds that it had failed in its mandate of overseeing free, fair, credible and transparent elections. The Commission, it was said, "cannot manage a transparent election"² and "had no trust residue, and the national consensus was that it can't be trusted to oversee credible elections"³. While CORD took this position, those opposed to its disbandment stated that "the Constitution ought to be followed in the disbandment of the Commission"⁴.

In this period, April to June 2016, a series of five demonstrations were held on April 25th, May 9th, 16th, 23rd and June 6th 2016 across the county, and one Cord rally on 1st June in Nairobi. On these occasions, supporters led by their leaders' and also CORD party officials took to the streets bearing twigs and chanting anti-IEBC slogans as they marched in the streets, to have IEBC disbanded.

In these demonstrations, police officers were deployed to disperse the crowds resulting in confrontations between the police and the demonstrators. This resulted in excessive use of force on demonstrators, serious injuries and deaths under the hands of the NPS officers and occasionally, prison warders.

² <http://www.nation.co.ke/news/Cord-declares-no-election-without-reformed-IEBC/1056-3132518-df30cb/index.html> accessed on 5th September 2016

³ <http://www.standardmedia.co.ke/article/2000199792/four-presidential-candidates-say-iebc-has-lost-credibility-should-be-disbanded> accessed on 5th September 2016

⁴ <http://www.the-star.co.ke/news/2016/05/19/follow-the-law-in-disbanding-iebc-protests-will-not-help-uhuru-tells-c1354402> accessed on 5th September 2016



People caught up in the demonstrations (Courtesy www.dailymail.co.uk)

Conversely, police officers were also injured by demonstrators who wielded crude weapons and stones, to repulse members of the NPS. These demonstrators also affected the maintenance of law and order, particularly by some elements being involved in hooliganism, outright theft and all manner of ills against other persons, who were not involved in the public protests or gatherings.

4.0 POLICING NORMS AND STANDARDS

Before embarking on the major findings of this Report, there is need from the onset to highlight some of the policing norms used all over the world, meaning there are international standards some of which are part of the domestic laws. Notably, the right to assemble peacefully applies to all individuals and groups, unregistered associations, legal entities and corporate bodies without any form of discrimination. The right to freedom of peaceful assembly is included in all the major international human rights instruments including Article 20 of the Universal Declaration of Human Rights (1948); Article 21 of the International Covenant on Civil and Political Rights (1966); Article 15 of the UN Convention on the Rights of the Child (1989). This means that states have an obligation not to interfere or restrict people's rights, but to take the necessary actions to respect, protect and facilitate people's rights.

The African Continent is at the stage of developing Principles and Operational Standards for Policing Assemblies by Law Enforcement Officials, but even without the ratification of these standards, there still exist African Regional Standards contained in, and also derived from the African Charter on Human and Peoples' Rights (ACHPR).

The regulations derived from the ACHPR include Resolutions such as: Resolution 281 on the Right to Peaceful Demonstrations, adopted at 55th Session of the African Commission on Human and Peoples' Rights (ACmHPR) of 2014; Resolution 306 on Police and Human Rights in Africa of 2015; and finally, an early Resolution 69 on Police Reform, Accountability and Civilian Police Oversight in Africa of 2004. These and many other Resolutions bind Kenya.

At the national or domestic level, Kenya is committed to the above standards through Article 2(6) of the Constitution where any ratification of the above instruments means they are part

and parcel of Kenyan laws under the Constitution. Further, there are the National Police Service, the National Police Service Commission Act (with amendments) and the Independent Policing Oversight Authority Act that enrich policing norms in Kenya.

The above laws and their annexed schedules, the attendant regulations, subsidiary legislation and also the yet-to-be completed Service Standing Orders among others provide how the National Police Service should operate, including during public order management. The subsections below briefly capture the letter and spirit of these policing norms.

4.1 International Standards

At the global level, there are guidelines that govern how law enforcement officials (read, police) should act, behave or respond when it comes to public order management, especially during policing assemblies. First is the United Nations Code of Conduct for Law Enforcement Officials, which is an important set of principles for accountable policing.

Besides setting out general standards of behaviour for police officials, it specifies in Article 8 that any violation of the Code shall be reported to the superior authorities and, if necessary, to other "[...] appropriate authorities or organs vested with reviewing or remedial power⁵." In the Kenyan context, such other appropriate authorities include the IPOA as an external oversight by civilians, and the Internal Affairs Unit, as an internal oversight by police themselves.

Second, the United Nations Basic Principles for Law Enforcement Officials calls for the government and of course the police officers, even in Kenya, to exercise a lot of restraint when using force and firearms when undertaking their mandate. Indeed, in Principle 4, it is outright clear that police, "in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result."

That is, use of excessive force, pain-starkly as it is defined, refers to: "the use of force greater than that which a reasonable and prudent law enforcement officer would use under the circumstances⁶." Whether force is reasonable or necessary or excessive is measured by what a reasonable and prudent law enforcement officer would use under the circumstances. Further, there is a reiteration of the need for caution when it comes to use of force and firearms. The UN Principles read:

"...whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall: a) exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved; b) minimize damage and injury, and respect and preserve human life; c) ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment; d) ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment."⁷

Throughout this guideline, caution is urged when use of force has to be employed. Thus, in any case an injury or a death is caused by the use of force and firearms by law enforcement officials, the police shall report the incident promptly to their superiors, in accordance with Principle 22. Within our domestic laws, as seen below, this Principle 22, is contained in the

⁵ Amnesty International, Dutch Section, *POLICE OVERSIGHT, Police and Human Rights Programme, Short Paper Series*, No. 2, January 2015

⁶ <http://definitions.uslegal.com/e/excessive-force/> accessed June 20, 2016

⁷ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/UseOfForceAndFirearms.aspx>, in Principle 5, accessed June 29, 2016

Sixth Schedule of the National Police Service Act, and further also provided that the superiors (Officers' Commanding Stations - OCSs) shall promptly report the matter to IPOA⁸.

Specifically, when it comes to policing assemblies, the subject matter of this Report, whether lawful or unlawful (and indeed the Principles address unlawful assemblies), the government of Kenya and its police service are urged, in very strong terms, to adhere to international standards, most of which are also regional and national standards or norms.

These include: a) the assertion of the right of every person to participate in assemblies as guaranteed in the various international covenants and declarations, which Kenya is signatory to; b) in dispersing assemblies, especially where they are unlawful, but non-violent, police should avoid the use of force, and where used, to the minimum extent necessary; and finally, c) where public assemblies turn violent, police shall avoid use of force unless to the extent minimum and necessary, but cautioned is urged that firearms (which are a form of lethal force), shall not be used. Firearms are only permissible only when:

...in self-defense or defense of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives."⁹

To summarize the need for observing this right to assemble, the UN Special-Procedures mechanism on this right, identified in 2015, that: "...[the right to] assembly plays a facilitating role in respect of other rights. In many instances, public protest has been the vehicle through which a wide range of human rights have gained entry into the global human rights project. Protest is a tool primarily used by opposition and minority groups."¹⁰ In so doing, they are able to express their point in the platform that can be accessed and therefore the caution given is that it should not be regulated in favour of those in political power at any given point in time.

In conclusion, international standards are summarized by the Peelian Principles which prohibit police use of force. They provide that policing can never be done without consent of the public; that they (police) too are part of the public; that they cannot act as the judge, jury and the executioner; and also, that police are rated by how they are involved in crime detection and prevention not how they deal with suspected criminals, among other principles. In a nutshell, these international principles have become part and parcel of Kenyan laws, through Article 2 (5 and 6) of the Constitution of Kenya.

4.2 Regional Standards

The African Continent has plenty of democratic principles, which many States signed and have continued to ratify after the post-colonial period. They are not spectacularly different from the international norms, but only to the extent of application within the African States, which seem democratic on paper as the practice leaves a lot to be desired.

As alluded to above, the ACHPR (the Charter) has recognized the right to assemble among

⁸ Pursuant to Section 5 Part B of the Sixth Schedule as read with Section 1 Part C of the Sixth Schedule of the NPS Act, 2011

⁹ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/UseOfForceAndFirearms.aspx>, in Principle 9, accessed June 29, 2016

¹⁰ Christof Heyns, 2011, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, <http://www.icnl.org/research/resources/assembly/Report>, accessed July 07, 2016. Paragraph 31, P 7

many other democratic freedoms and universal human rights, which entered into force 30 years ago after ratification by the requisite State Parties. Specifically, the Charter provides that: "...every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedom of others."¹¹

There is need to understand or acknowledge that rights can not be limited by police action or inaction. Rights can only be limited by law, whereby in Kenya, national security definition includes protection of human rights and fundamental freedoms. For any limitation on rights such as freedom to assemble, there must be a law or judicial review, which should determine how police or government could purport to "stop demonstrations in Kenya", as was seen recently in June 2016, clawing back the constitutional gains. It is crystal clear that a right "shall not be limited except by law, and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom."¹²

On policing assemblies, the ACmHPR (the Commission) is currently working on the Principles and Operational Standards for Policing Assemblies by Law Enforcement Officials in Africa, which shall enhance the realization of this important right in the context of African policing.¹³ There are a number of Resolutions passed within the mandate of the Commission, and of particular emphasis, is Resolution on the Right to Peaceful Demonstrations, No. 281 of May 2014.

The Commission, having considered the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, exercised their mandate and adopted Resolution 281 of the Commission, which among others, provides for protection of peaceful protesters regardless of their political affiliation or any other; refrain from disproportionate use of force and/or firearms against the demonstrators; and also, refrain from conducting arbitrary arrests and detention of demonstrators.¹⁴ Noteworthy of mention is that this Report, in documenting Kenyan police operations of May 2016, (two years after adoption of the Resolution), police were in total violation of the same with impunity.

To demonstrate using a case study of the Republic of South Africa during the former apartheid system of governance and policing, particularly their role in public order management during freedom protests, it is documented by their former Commission on Truth and Reconciliation, that:

"...the creation of a specialized riot control function within South Africa's policing agencies was essentially a reaction to the disorder and political unrest associated with resistance to apartheid... Since the nature of their task was inherently public, the police units tasked with riot control played a prominent role as front line 'enforcers' of apartheid policies, and were viewed with a mixture of fear and loathing by the communities in which they served. The units were para-military in nature (by way of training, operational understanding and culture), and brutal in the enforcement of bans on political protest. They operated within a policy paradigm that accepted and supported the lethal use of force. This, combined with

¹¹ [http://www.achpr.org/instruments/achpr/Article 11](http://www.achpr.org/instruments/achpr/Article%2011), accessed July 07, 2016

¹² Constitution of Kenya, Article 24(1), on limitation of rights and fundamental freedoms, <http://kenyalaw.org/kl/index.php?id=398>, accessed July 10, 2016.

¹³ African Commission on Human and Peoples' Rights, *Policing Assemblies in Africa: Principles and Operational Standards for the Policing of Assemblies by Law Enforcement Officials in Africa, ZERO DRAFT*, 28 June 2016. These Principles, done by APCOF, are for discussion and possible adoption in an Ordinary Session slated for October 2016.

¹⁴ <http://www.achpr.org/sessions/55th/resolutions/281/>, accessed July 10, 2016.

the authorities' complete intolerance of protest action, meant that they frequently used maximum force."¹⁵

The above paragraph seems to define what is the National Police Service, and in particular, the General Service Unit (GSU) and some members of the Administrative Police Service (APS), who through their nature of training and their approach to public order management, has predisposed negative culture and attitude towards the public, as seen below in this Report. This would require urgent redress.

From the foregoing, it is imperative to briefly outline the national standards, most of which are borrowed from the Constitution of Kenya and the international and regional standards on policing, of which the State is party to.

4.3 National Standards

It is evident that whatever international or regional standards that exist, Kenyan police are obligated to underscore and respect, but are in utter disregard. Kenya is failing in meeting the regional and international obligations.

Therefore, despite domesticating these norms into Kenya's Constitution, subsequent legislation and attendant schedules, and subsidiary legislation or regulations among others, both the Kenya Police Service (KPS) and Administration Police Service (APS) are wanting in terms of how they respect and protect freedom of assembly, which our national standard points out that: "... every person has the right, peaceably and unarmed, to assemble, to demonstrate, to picket, and to present petitions to public authorities."¹⁶ Thereafter, the Constitution provides under Article 24 for limitation of those rights based on what was alluded to above, but also factors that include:

"a) the nature of the right or fundamental freedom; b) the importance of the purpose of the limitation; c) the nature and extent of the limitation; d) the need to ensure that the enjoyment of rights and fundamental freedoms by any individual does not prejudice the rights and fundamental freedoms of others; and e), the relation between the limitation and its purpose and whether there are less restrictive means to achieve the purpose."¹⁷

It is against this legal principles of non-limitation of fundamental freedoms and human rights that the not-so-new set of laws were enacted to bring for a fresh and independent police service, where the constitutional Articles 244, 245, and 246 were to be made operational through the work of the IPOA, the independence of the National Police Service, and especially the office of the Inspector General, and the NPSC respectively.

The laws that created this three new entities provide a legal framework that if followed in letter and spirit, then the police transformation process should have begun in 2012. That transformation, according to IPOA never started, and if it did at all, it was nipped in the bud in the year 2014, through many attempts or successful amendments of the same laws (save for the IPOA Act), no to mention the introduction of draconian laws such as the Security Laws (Amendment) Act of December 2014. Beyond the 'hardware' issues of law and lack of modern equipment and tools, not to mention police welfare, the 'software' issues of attitudes, behaviour, culture and

¹⁵ Janine Rauch and David Storey, "The Policing of Public Gatherings and Demonstrations in South Africa 1960-1994, Paper commissioned by The Commission on Truth and Reconciliation (TRC) Research Department, May 1998.

¹⁶ Constitution of Kenya, Article 37, on assembly, demonstration, picketing and petition

¹⁷ *Ibid*, Article 24, on limitation of rights and fundamental freedoms

response of police to public order policing, and their knee-jerk reactions when accountability is demanded, are urgently needed.

Nonetheless, even with the amendments, some solid rules and principles were left intact, since the Constitution has never been amended. Further, amendments to some of the very principles in the subsequent legislation have been declared unconstitutional, particularly the Security Laws (Amendment) Act¹⁸.

This being a Monitoring Report, police were held to account on the basis of the Constitution (especially the Bill of Rights from Article 19 to 59) and subsequent legislation where necessary. Some of these Constitutional principles that still apply and have been used to hold police accountable, from a national (read Constitutional) standards, include:

- (1) Article 26: A person shall not be deprived of life intentionally, except to the extent authorized by this Constitution or other written law.
- (2) Article 28: Every person has inherent dignity and the right to have that dignity respected and protected.
- (3) Article 29: Every person has the right to freedom and security of the person, which includes the right not to be: subjected to any form of violence from either public or private sources; subjected to torture in any manner, whether physical or psychological; and treated or punished in a cruel, inhuman or degrading manner.
- (4) Article 36: Every person has the right to freedom of association, which includes the right to form, join or participate in the activities of an association of any kind.
- (5) Article 37: Every person has the right, peaceably and unarmed, to assemble, to demonstrate, to picket and to present petitions to public authorities.
- (6) Article 38: Every citizen is free to make political choices which includes the right to campaign for a political party or cause.
- (7) Article 49: Every arrested person has the right to be informed of the reason for that arrest, to communicate with an advocate or family of that arrest, not to be compelled to make a confession, or admission that could be sued as evidence against them, and also to be brought before a court within 24 hours of that arrest.
- (8) Article 239: In performing their functions and exercising their powers, the national security organs [including the police] and every member of the national security shall not a) act in a partisan manner, b) further any interest of a political party or cause, or c) prejudice a political interest of political cause that is legitimate under the Constitution.
- (9) Article 244: police should strive for the highest standards of professionalism and discipline among its members; prevent corruption, promote and practice transparency and accountability; comply with constitutional standards of human rights and fundamental freedoms; train staff to the highest possible standards of competence and integrity and to respect human rights and fundamental freedoms and dignity; and, foster and promote relationships with the broader society.
- (10) Article 245: No person may give a direction to the Inspector-General with respect to: the investigation of any particular offence or offenses or the enforcement of the law against any particular person(s).

Generally, with regard to the National Police Service Act, this law prohibits most of what police engaged in, during the public protests and gatherings documented in this Report, by violating provisions of their constitutive Act, including Schedules on Use of Force, Use of Firearms, offenses against discipline among other acts of commission or omission. Therefore, using these

¹⁸ <http://www.nation.co.ke/news/politics/Security-laws-illegal-declares-High-Court/1064-2633342-jw2qp1/index.html> accessed 5th September 2016

national standards, and also the regional and international norms above, the police in Kenya failed woefully as depicted hereunder.

5.0 MAJOR FINDINGS

5.1 Deaths and Serious Injuries

Deaths and serious injuries are violations to the right to life and also right to integrity and security of the person, not to mention right to inherent dignity and protection of the same. Beginning with deaths, four (4) persons lost their life during the anti-IEBC demonstrations as was recorded by the Authority. On 23rd May, Japheth Owiti and Fredrick Ojwang' died as a result of police shooting during the demonstrations in Kisumu County. Similarly, on 23rd May, two (2) young people were fatally shot in Siaya County during the demonstrations, and they included Austin Omuombo and Churchill Odhiambo Ododa. Other organisations¹⁹ recorded at least 5 people who died and 60 wounded by gunfire as police tried to obstruct protests.

Consequently, IPOA went ahead and instituted investigations into the deaths with a view of establishing culpability (or lack thereof) of the police officers responsible for these fatal shootings. Insofar as the international, regional and national standards, police committed killings, which were still suspect, and hence the investigations.

To the Authority, these remain alleged executions since the police cannot, without independent investigations, confirm whether they were saving their own lives or lives of others. Further to be investigated is indeed whether the police made any verbal warnings (audible proclamations) before they were about to use firearms or even whether there were grounds for not giving those warnings in the first place. Part A of the Sixth Schedule to the NPS Act, 2011 requires that

"a police officer shall always attempt to use non-violent means first and force may only be employed when non-violent means are ineffective or without any promise of achieving the intended result".²⁰

Other standards, such as using non-lethal means, which could have been deployed by the officers, have not yet been confirmed. The investigations were still ongoing as this Report was being developed in September 2016, to ascertain whether Part B of the Sixth Schedule to the NPS Act, 2011 was complied with.

On the second, but related aspect of bodily injuries, many as a result of gunshot wounds, the numbers were dumbfounding. Given that police went ahead to use firearms, other than other non-lethal weapons, the number of young people who sustained serious injuries were in their scores. In Homabay County, four (4) women sustained gunshot wounds during the 23rd May demonstrations while in Kisumu's for example Japheth Owiti and David Onyango sustained gunshot wounds²¹. In Nairobi, Shaban Abdulahi sustained gunshot wounds. On 6th June, in Kisumu County alone, 24 people sustained gunshot injuries!

¹⁹ <https://www.hrw.org/news/2016/06/20/kenya-police-killings-during-protests> accessed on 5th September 2016

²⁰ Part A of the Sixth Schedule to the NPS Act, 2011 on Conditions as to the Use of Force.

²¹ See more details from other human rights organisation <https://www.hrw.org/news/2016/06/20/kenya-police-killings-during-protests> accessed on 5th September 2016



AP officer captured severely beating and kicking a helpless demonstrator (Courtesy www.dailymail.co.uk)

Conversely, during the demonstrations particularly in Kisumu and Siaya Counties, several police officers were injured during the demonstrations. Protesters threw stones and other crude weapons at the officers. It was observed that protesters would demonstrate while armed with crude weapons including stone-throwing slings, stones, Molotov cocktails and clubs among others. On 23rd May demonstrations, it is alleged that 28 police officers in Siaya and Kisumu were said to have been injured when they confronted the demonstrators. On 6th June demonstrations, two (2) officers were injured in Kisumu.

In general, regarding bodily injuries, which also have impact of psychological set up of those affected, IPOA initiated investigations into these cases, and with priority being given to those cases whose evidence was easier to collect, with a view of holding police to account. Second, bodily injuries also have possibility of making victims succumb to those injuries. IPOA was, and still is, in liaison with hospitals and other medical facilities where victims were taken with a view to ensure that, where the victims succumb or succumbed to those injuries, accountability is ensured. In case of the victims succumbing to injuries, the nature of the investigations would change from bodily injuries to investigating death. These investigations were ongoing as this report was being developed in September 2016.

5.2 Abuse of firearms

The Sixth Schedule to the NPS Act clearly stipulate conditions under which force may be applied by police officer. Non-violent means shall first be employed and when this fails, a police officer can use force but only in proportion to the objective to be achieved, the seriousness of the offence, and the resistance of the person against whom it is used, and only to the extent

necessary while adhering to the provisions of the law and the Service Standing Orders. These demonstrations saw police use excessive force, abuse of firearms and aimless shootings by police officers.

The case of Jeremy Otieno Adongo, aged 6, who was shot in the back while at their house in Kasule, Manyatta estate, was the most disturbing²². Jeremy was hit by "stray bullet"²³ during anti-IEBC demos on Monday, June 6, 2016. Further six protesters were shot by police during demonstrations in Kisumu Town and underwent surgery to remove bullets²⁴.

The Sixth Schedule to the NPS Act states "Firearms may only be used when less extreme means are inadequate and for saving or protecting the life of the officer or other person; and in self-defense or in defense of other person against imminent threat of life or serious injury". The direction-less shootings by police officers, even to children such as Jeremy, are pointers that training on use of firearms in the training colleges are unsatisfactory and officers need continuous refresher courses, especially those being deployed on public order management issues, not the paramilitary tactics that have been historically witnessed.

5.3 Intelligence gathering and analysis

During the monitoring of the police conduct during anti-IEBC protests and gathering, it was observed that police officers had already developed a negative attitude against the demonstrators. This minimized interactions with the organizers of the anti-IEBC demonstrations. Information gathering and analyzing is a skill which police officers should have to enhance proper public order management.

With already formed opinion influenced by negative attitude, police officers ended up disrespecting Articles 36 and 37 of the Constitution on freedom of association and of assembly, demonstrations and picketing. Due to minimal levels of information gathering and analysis around the anti-IEBC demonstrations to inform the police actions, mapping out the criminal elements within the demonstrators was not possible. Police have a duty to take reasonable steps to protect those who want to exercise their rights peacefully. This applies where there is a threat of disruption or disorder from others.

Further, it was quite evident that anyone who was seen around the Anti-IEBC demonstrations was mistaken to be a protester and could not be allowed to freely assemble. This is despite the constitutional provision that every person has the right to freedom of association, which includes the right to form, join or participate in the activities of an association of any kind and that a person shall not be compelled to join an association of any kind.

These rights were violated even to those who were running businesses around the IEBC offices but due to the partisan nature on policing in the country, informed by poor intelligence-gathering, it was only the opposition that was largely seen as violators of the rights of others. This partisan approach negates the whole essence of freedom of association and assembly as postulated by the constitution.

²² http://www.the-star.co.ke/news/2016/06/06/six-year-old-boy-shot-by-police-in-kisumu-protests_c1364168 accessed on 5th September 2016

²³ A stray bullet is a bullet that, after being fired from a gun, hits an unintended target. Such a shooting accident may occur during crossfire or celebratory gunfire https://en.wikipedia.org/wiki/Stray_bullet. The case here is whether there was crossfire between the child and the officers or it was a case of celebration by the officers.

²⁴ <http://www.nation.co.ke/news/Doctors-remove-bullets-from-six-hurt-in-anti-IEBC-protest/1056-3237120-sjuvctz/index.html> accessed 5th September 2016

For informed public order management, police officers should change their perceptions, behaviours and attitude towards those planning for protests and gatherings. Police officers should be free to engage and interact with the planners and the organizers of public protests, even with the organisers having their field marshals as well, to ensure adequate security arrangements. This would guarantee security of all actors, with adequate information and its analysis to inform actions to be undertaken in case of any eventuality.

5.4 Identification of police officers

During the monitoring, it was observed that police officers involved were not identifiable. Undoubtedly, the anti-IEBC demonstrations had been marred with tension between the National Police Service and the protesters. In the first four demonstrations in the months of April and May, the NPS insisted that the anti-IEBC protests were illegal and hence endeavored to disperse the crowd and prevent the demonstrators enjoying their constitutional rights. The continuous demonstrations saw the police increase their presence and spread in Nairobi in order to prevent the demonstrations from happening.

Many of the officers who were deployed to manage the protests and gatherings could not be identified. They did not have prominently displayed means of identification including visible name tags, officer's service number, even on their helmets. This was against Rule No. 10 of Part A of the Sixth Schedule to the NPS Act, 2011 which requires that "A Police officer in uniform shall at all times affix a name tag or identifiable Service number in a clearly visible part of the uniform". This is meant to enhance accountability of individual officers and reduce police misconduct during public order management. More so, being readily and prominently identifiable is a serious show of professionalism which the Service should embrace to endear to the public.

In modern policing that enhances discipline and professionalism, police officers should set the policing style and tone at the start of an operation with clarity of their identity as police officers while being aware of the potential positive impact this could have on public perceptions. This professional approach can only be possible if police remain impartial, fair, approachable, accessible and legally compliant.

5.5 Communication, coordination, control and command

As public officers, police are bound by Article 232 of the Constitution thus they should exercise high standards of professional ethics; be efficient, effective and ensure economic use of resources; be responsive, prompt, effective, impartial and ensure equitable provision of services; involve the people in the process of policing and policy matters and also be accountable and transparent in provision of public services.

During the monitoring of the anti-IEBC demonstrations, the police acted unprofessionally largely due to poor communication and coordination. Cases of police brutality that were witnessed in several demonstrations including on 16th & 23rd May 2016 and 6th of June 2016 in Nairobi, Kisumu, Migori and Homa-Bay could attest to this. Officers were seen brutally beating up demonstrators as was captured in a clip during the May 23rd demonstrations where an AP officer was captured severely beating and kicking a demonstrator who was helpless on the ground²⁵.

The quick pulling and deployment of officers from different units such as General Service Unit (GSU), Security of Government Building (SGB), Kenya Airport Police Unit (KAPU), Rural

²⁵ <https://www.youtube.com/watch?v=43iBrzyW-Y> accessed on 5th September 2016

Border Patrol Unit (RBPU), Rapid Deployment Unit (RDU) among others without proper briefing and training, waters down the effective and efficient command, control, communication and coordination. It should be noted that proper public order management is a communication, coordination and command skill which involves use of public engagement and dialogue skills, with establishment and maintenance of links with communities, groups and partners to build trust and confidence. Any messaging around public order management should therefore be well planned, unambiguous, clear and coordinated.

Poor communication and coordination, combined with politically inclined utterances from key policy makers, inhibits the professionalization of the police service. These makes the police to be seen as unprofessional, inefficient, ineffective, unresponsive, partial and with excessive display of quantity mightiness rather than quality prowess. Through its policing operations, the Service should be proactive in establishing a sense of trust in others, developing a sense of new identity in society, and helping the next generation prepare for the future.

For professionalization of the service to happen, the police service units to be involved in public order management should have commonality of purpose through proper communication and coordination, with training, use of drills and debriefing of the officers involved. This should be taken seriously in the service, with enhanced training sessions on public order management. Public order commanders must be trained, accredited and operationally competent. The Service should consider use of specialist advice on this area, and the command structure should be appropriate and resilient to meet the requirements of public order operations. Throughout its policing operations, the Service should be proactive in establishing a sense of trust in the public, developing a sense of new identity in society, and helping the next generation prepare for the future.

5.6 Rights of Arrested Persons

During the monitoring, several arrests were made. On 16th May 2016 during the protests, 16 people were arrested and moved to Central Police Station, Nairobi during the demonstrations. They were later charged in a Court OB 105/16/5/2016. On 23rd May 2016, 9 protesters were arrested and charged in Milimani Law Courts for taking part in an unlawful assembly, they were released on bond of Kshs. 10,000 each.

On 23rd May 2016, 3 protesters arrested were arrested in Kakamega and later released on Kshs. 100,000 fine. Also in Mombasa, 12 protesters were arrested while in Nakuru County, 12 protesters were arrested on 6th June 2016, 11 took plea and 1 never took plea.

The Authority was not able to reach all those who were arrested on these various dates but those who were reached and interviewed stated that they were not informed promptly of the reason for their arrest, which was contrary to Article 49 of the Constitution.

5.7 Partisanship and Directives to Police by Ministry

Over the years, police have been accused of being biased, which eventually led to the loss of trust and confidence by the public, on their role and independence, while maintaining law and order. As was evident during the demonstrations, between April and June 2016, the police had not changed.



The police allowed some political parties to demonstrate and embargoed others. (Courtesy www.the-star.co.ke)

When for example, some political parties and their allies notify police and the latter decline receipt of that notification, or when the police outrightly ban political demonstrations, under the guise that the national security would be threatened, while also accepting other notifications, it is a clear and evident disservice under the Constitution, and a total violation of the same. It shows a partisan approach to policing.

Article 239 (3) of the Constitution of Kenya provides that in performing their functions and exercising their powers, the national security organs and every member of the national security organs "...shall not act in a partisan manner; further any interest of a political party or cause; or prejudice a political interest or political cause that is legitimate under this Constitution". Article 239 (1) defines clearly the national security organs which include the Kenya Defence Forces; the National Intelligence Service; and the National Police Service.

Further, it is important to note that police officers work under immense pressure with undue influence even from policy makers who are supposed to ensure that the law is followed and adhered to. During the anti-IEBC demonstrations, various official government statements were issued²⁶. The Cabinet Secretary for Interior Hon. Joseph Nkaissery was quoted saying "the protesters did not comply with the law and had caused loss of lives and destruction of properties"²⁷; that the Ministry had enough teargas at his disposal and that the police had just acquired new equipment to deal with protesters²⁸.

While making some of these statements, the Cabinet Secretary was for instance flanked by the Inspector General of Police, the Attorney General, and other officials²⁹. These are some of the remarks which suggest that public demonstrations are illegal yet they are guaranteed under Article 37 of the Constitution. The remarks are also an indication of subjectivity, and interfere with police work.

²⁶ <https://www.youtube.com/watch?v=EcQ13D2YQig> and <https://www.youtube.com/watch?v=ecaC5XUbCIA> accessed on 5th September 2016

²⁷ <http://www.standardmedia.co.ke/article/2000204389/stalemate-persists-as-state-bans-anti-iebc-protests> accessed on 5th September 2016

²⁸ <http://www.standardmedia.co.ke/article/2000202179/cs-john-nkaissery-directive-comes-to-pass> accessed on 7th September 2016

²⁹ <https://www.youtube.com/watch?v=EcQ13D2YQig> and <https://www.youtube.com/watch?v=ecaC5XUbCIA> accessed on 5th September 2016

Indeed, it worth noting that during the anti-IEBC demonstrations, statements were made that police officers would not stop using force to keep protesters away from Independent Electoral and Boundaries Commission (IEBC) offices. The Nairobi County Commander, Mr. Japheth Koome said "stern action would be taken against those who plan to take part in Monday's' demonstrations, adding that officers engaged to suppress riot or protect persons or property during the protest are justified in using any degree of force, depending on the circumstances"³⁰. With these kind of comments from policy makers and police leadership, police officers get psyched to use any means to ensure loyalty to the policy makers rather than delivering quality services to Kenyans as disciplined and professional officers.

Thus, such comments go against the independence of the police as envisaged under Article 239(3) and 244 of the Constitution, and they influence some of the brutal actions taken by police officers. To ensure accountability, professionalism and discipline amongst the police officers, policy makers and NPS leadership should let the service work under their established channels of communication, coordination, control and command.

5.8 Medical Aid and Police Operations

During the demonstrations especially in most parts of Nairobi County, the Authority did not see any police medical aid van(s). It is essential that the health, safety and welfare of police officers and well as that of the members of the public should be taken with the seriousness deserved. Public order management operations call for on-site strategic, tactical and operational guidance and advice, including provision of medical aid to assist both the police officers and well as members of the public.

The operations saw police officers stopping Public Service Vehicles (PSVs) along major routes to the City, for their usual stop and search, with even use of police aerial surveillance and mobile patrols. However key areas related to medical aid, including first aid kits would be critical for offering first aid in case of any fatality, either to the officers or any member of the public.

This is critical because during the protests, several police officers were said to have been injured, especially in Nyanza, during the demonstrations by protesters. Protesters were observed coming to the demonstrations while armed with crude weapons including slings, stones, petrol, and clubs among others. It was reported that on the 23rd May demonstrations; 28 police officers were said to have been injured while controlling the demonstrators in Siaya and Kisumu³¹ (see appendix 2). 11 of these officers injured in Kisumu, Migori, Kisii, Homabay and Siaya, were airlifted to Nairobi for treatment and the police spokesman said "...the service offered no apologies for how police responded to the rioters, instead, they warned, any attempts to attack a police officer, would be met with the necessary force". This is despite the fact that the police had to deal with the perception that this could be a public relations exercise³².

It is the Authority's considered opinion that if medical aid was availed in all public order management areas, quick response to the injured would see enhanced quality policing in the county. Article 26(1) of the Constitution, on right to life, should have that deeper meaning, to all officers and also members of the public. It is time life was highly valued and to the Authority, no life should be lost around policing issues.

³⁰ <http://nairobi.news.nation.co.ke/news/police-use-lethal-force-anti-iebc-protesters/> accessed 5th September 2016

³¹ <https://www.youtube.com/watch?v=A1kwiVbSnnM> accessed on 6th September 2016

³² Ibid

6.0 OTHER RELEVANT OBSERVATIONS TO STRENGTHEN POLICING

The sections below show other relevant observations by the IPOA on police preparedness and deployment, tooling and equipping and other police concerns that would enhance public order management in accordance with frameworks of the law and modern policing.

6.1 Police Preparedness and Deployment

As was noted in Section 5.5 above, on 25th April 2016, 250 police officers were deployed from the National Police Service (Kenya Police Service and Administration Police Service), drawn from various divisions within in County. The operations were poorly coordinated and supervised by Senior Superintendent of Police (SSP) Wanjama as the Operations Commander/ OCPD Central. However, the physical operational order was not availed to inform the noted gaps due non-cooperation from County Commander, Mr. Japheth Koome. Information obtained through interview with the officers in Nairobi County showed that there was no prior briefing or training.

The operations for 16th May 2016 in Nairobi had 300 police officers from the National Police Service (Kenya Police Service and Administration Police Service) from various divisions in Nairobi County. The operation was poorly coordinated and supervised by the Central OCPD with officers being deployed to all entries to Anniversary Towers and the surrounding streets within the Central Business District. The physical documentation of the operations orders were also not availed due non-cooperation from County Commander, with interviews also being done with the officers deployed. Operations in Migori, Siaya, Kisumu and Homa Bay were not monitored although information was availed to the Authority³³.



Deployed APS officers. (Courtesy www.kenya-today.com)

From interactions with the police officers it was evident that prior briefing was lacking in all the protests monitored. Further, the paramilitary nature of training for the APS, who were largely deployed to manage the protests, was a large constraint to professional approach to public

³³ For details see Appendix 3

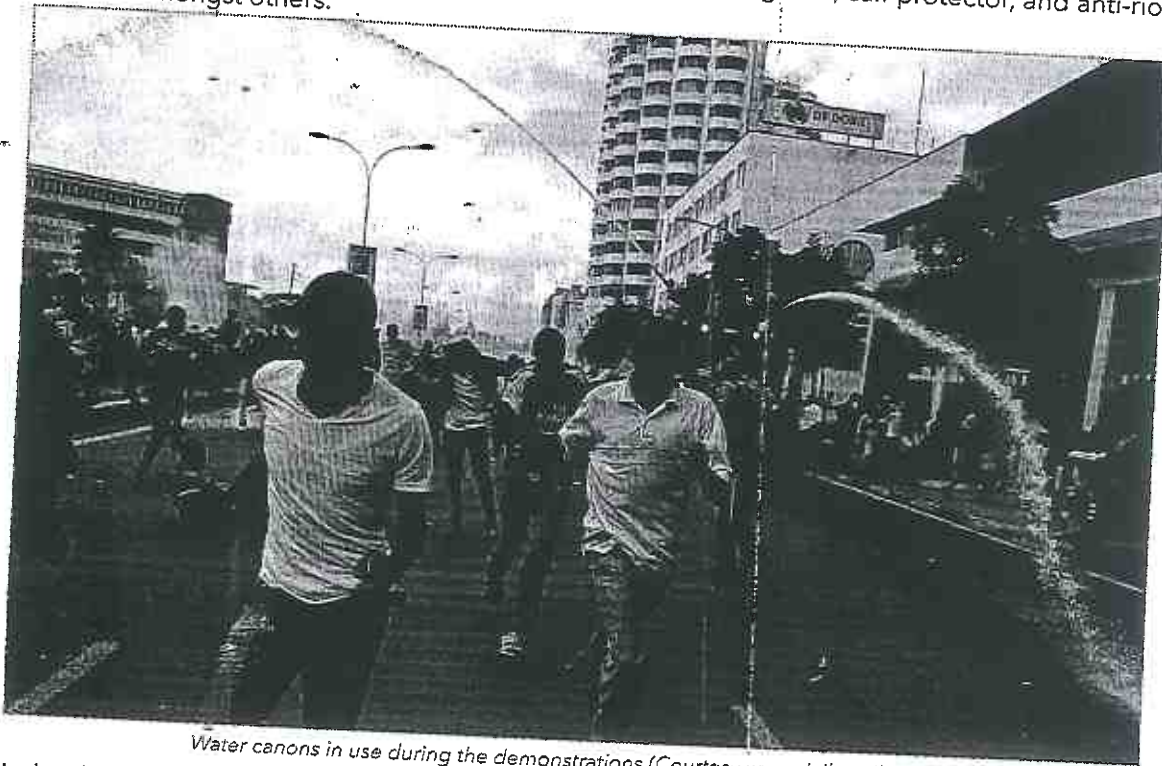
order management. The lack of cooperation from the County Commander meant that many issues could not be confirmed or corroborated, for enhancement of modern policing including deployment concerns, orders and plans; training and facilitation of the officers.

While this is the case, the police should also anticipate spontaneous public protests. These kind of protests do not provide the luxury of planning and sometimes call for immediate reaction. Such situations call for sound judgement and correct assessment of the situation. The Service should facilitate the development of contingency plans up to police station level, providing minimum guidance to respond should such public protests manifest. The standards around deployment of police officers should therefore be informed by intelligence gathered and analyzed for proper public order management. This should also inform the kind of training required.

6.2 Police Tooling and Equipment

It was observed that heavy police equipment including water cannons were deployed for purposes of crowd control. However, upon interviews with the police officers, it clearly emerged that the officers were not well equipped for the demonstrations that were happening. On anti-riot equipment and gears, officers alleged that there had inadequate issue of crowd control equipment's including non-lethal weapons, tear gas, batons, rubber bullets and riot guns.

The Officer Commanding Police Division (OCPD) Central shared with the monitors that per each Division in Nairobi, they had an average of one or two riot guns. In his Division, he had only two riot guns. The officers lacked important protective gears including the back plate, the chest plate, thigh groin protector, leg guard, knee pad, arm guard, calf protector, and anti-riot helmets amongst others.



Water canons in use during the demonstrations (Courtesy www.dailymail.co.uk)

Indeed, this is the reason why most of the police officers would easily be injured during crowd control. Of particular interest, the KPS officers complained that they were not well-kitted.

compared to their counterparts in APS. In addition the officers alleged that the material used to make the new issue of the shield and the riot helmet was fragile compared to the old model which was made of tougher material.

Further, the use of information technology such as videography to track any errant members of the public for later arrests has not been effectively utilized in Kenya. This is a law enforcement skill which is being tried globally with minimal use of force and the NPS should rise to this occasion as well.

The tooling and equipping of the service still remains a matter of concern. However, attention should be turned to quality of policing (with a focus on change of attitude and behaviour) rather than quantity of purchased of equipment. Given the approaches police used on the demonstrators, fostering and promoting good relationships with the broader society still remains a mirage largely due to negative policing culture and attitude.

6.3 Police Actions or Inactions: Destruction of Property

The demonstrations were somewhat characterized by criminal acts by some of the protesters. Roads were barricaded with stones, burnt tires, torched vehicles, destroyed properties, stole and assaulted persons. On June 6th demonstrations in Kisumu, the demos kicked off as early as 5 am and was characterized by barricading of roads with stones, burning tires and chanting of anti-IEBC slogans by the protesters while marching towards the IEBC Offices in Milimani, Kisumu.

The demonstrators were seen armed with crude weapons including stones and slings, petrol, clubs among others. Confrontation with the police ensued and as the crowd was being dispersed, the demonstrations suddenly turned violent, irate protesters turned to destroying property including Naivas Supermarket within Kisumu CBD, Tumaini Supermarket in Kondele village, Safaricom branded mobile shop, Dunga-Auto and Spare parts shop, Jomo Kenyatta Highway Roundabout barriers, private motor cycles, police vehicles, Yatin Supermarket, Water pipes for Kisumu-Water and Sewerage Company among others. In Nairobi, a matatu belonging to one Ms. Agnes Macharia and prime city transporters Sacco was burnt during the protests.

Under the circumstances, police did their best to protect what could have been massive destructions of property. However, because of their inactions in some areas and in the midst of the chaos, business owners in Kisumu used own initiatives to try and protect their properties from the irate crowds. Some, illegally and unfortunately, hired vigilante groups to protect their properties and this led to two people sustaining serious injuries from panga cuts that were being used by the vigilantes to protect the Tumaini Supermarket.

In a study that was done by Kenya Private Sector Alliance (KEPSA) in partnership with TIFA research, businesses in Nairobi experienced higher revenue losses.³⁴ The most affected were from banking and financial sectors that lost an average of Sh166,727 per day while each business within the Nairobi Central Business District (CBD) lost at least Kshs. 48, 304 every time there were anti-IEBC protests which took place in May and June.

³⁴ See <https://www.capitalfm.co.ke/business/2016/08/much-anti-iebc-demos-cost-nairobi-businesses/>



A supermarket destroyed by demonstrators in Kisumu (Courtesy www.nairobiwire.com)

While the National Police Service is legally mandated to protect property and life of all Kenyans, it is worth noting that for these destructions to have happened, it indicts the police in terms of their approaches to people-centred-policing, the quality of policing and how members of the public perceive policing work in view of their roles and responsibilities. This calls for attitude and behavioral change towards policing by both the police and members of the public.

6.4 Officers' long hours

During the demonstrations, officers were required to be at work very early in the morning (as early as 0400hrs) and the demonstrations at times extended till evening. Some of the officers claimed that they had worked at night duties and had again been deployed to contain the protests.

Section 46(2) of the NPS Act on rights of police officers states working hours of police officers shall be reasonable and where excessive overtime is required police officers shall be compensated with commensurate periods of rest, and they shall be allowed a minimum time of rest during and in between shifts. The allegations that were made by the officers should therefore be looked into to comply with this legal provision.

6.5 Policy on public order management

During the monitoring period, it was noted that there were those who were out to loot from businesses and therefore were not there to exercise their rights. This abuse of the constitutional rights led to violation of others' people's rights. With no proper policing policy around policing and public order management, where management of right to assembly, demonstration, picketing, or presentation petitions to public authorities' fall the demonstrations and those organizing them, together with the police, fall victims. The Service should take keen interest to ensure that a policy is developed to guide public order management with respect to the rights of everyone, including businesses. The policy should focus on preparedness, engagements and role of communities, planning, identifications, intelligence gathering, and training even with external assistance, deployment, response among other areas.

7.0 COMPARATIVE APPROACHES ON PUBLIC ORDER MANAGEMENT

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To enhance knowledge around public order management in Kenya, the NPS should benchmark and seek external assistance from other countries on policing around public order management. Some of the countries to benchmark with, and those which have had an advanced systems on public order management could be USA, Sweden and United Kingdom, among others already involved in the Police Reform Program, under the Ministry of Interior and Coordination of National Government.

In the United Kingdom for instance, the Metropolitan Police Service has an extensive and deep public order training, which prepares the officers on any eventualities. Public Order is more defined and can range from a visible presence, to intervention, to resolve violent disorder at public order events, including sports³⁵. The officers are afforded a view that is invaluable at crowded venues, and can spot possible potentially violent confrontations or crush situations. They are trained to alleviate the problem with crowd management tactics³⁶. On what they call Mounted Officer(s), one officer can be as effective as a dozen officers on foot.

On the training around public order management, all officers on the ground (those not in a command role), undergo three levels of Public Order Training. Level 3 is given to all police officers, covering peaceful protest and cordon work. Level 2 includes facilitating peaceful protest, managing hostile crowds, dealing with violent people, shield tactics and other different scenarios and Level 1, the most specialist training, regularly offers officers with the most challenging front line work, with fitness test being mandatory³⁷.

Further, under the College of Policing, there is a whole team comprising of specialist personnel with professional knowledge and experience across public order and public safety policing. These specialists support those involved in public order and public safety policing through the development of public order professional practices. This could include the maintenance and development of public order learning that could inform the content on National Policing Training Curriculum. They also provide support services to public order policing including written guidance and advice; tactical and strategic advice; support through telephone guidance; organizational learning, debriefing services and sharing of good practice around policing. The National Police Service can borrow a leaf from the Metropolitan Police Service in the UK.

In South Africa, there is a policy and guidelines on policing of public protests, gatherings and major events³⁸. The objectives of this policy and guidelines are to promote ideal crowd control and management capacity within the police in order to secure public trust and maintenance of safety during public gatherings. It is also meant to provide a framework and facilitate the development of appropriate guidelines by the South African Police Service (SAPS) on the use of force in relation to crowd control and management that adheres to international accepted standards; to establish the principle of intervention in controlling public protest in order to proportionate the means of force that can be applied by the police; and to facilitate the introduction of appropriate training initiatives which must, amongst others, address the principle of "first responder" guide SAPS operational planning and response, resource

³⁵ <http://content.met.police.uk/Article/Demonstrations-and-Public-Order/1400007129835/1400007129835> accessed on 6th September 2016

³⁶ *ibid*

³⁷ <http://content.met.police.uk/PublicOrderPolicingandTraining.pdf> accessed on 5th September 2016

³⁸ http://www.policesecretariat.gov.za/downloads/policies/policing_public_protests_2013.pdf accessed on 5th September 2016

deployment and physical execution. Such a broad policy and guidelines on policing of public protests, gatherings and major events should be emulated to inform policing public gatherings and protests in Kenya, while at the same time improving these through lessons learnt.

8.0 CONCLUSION

From the monitoring of public protests and gatherings, especially on the anti-IEBC protests, it was evident that Article 244 of the Constitution is far from being realized. The culture, attitude and behaviour of policing has not changed. These software issues of the police and policing demands concerted attention from within and without the Service.

During the monitoring, it was noted that policy makers, including comments by the NPS leadership, have a lot of influence on how police conduct themselves on the ground. A lot of refrain by the policy makers and NPS leaders would see the police exercising due diligence in their operations, ensuring communication, command and control is well understood within the ranks, with independence and accountability. This is the journey the service needs towards eventual professionalism and discipline in the service as expected by Kenyans.

There are so many lessons to learn from other countries and as IPOA, attention now focuses on how police will be prepared, trained, equipped and coordinated to deal with the magnitude policing issues around public gatherings and protests, and especially in the lead to the 2017 general elections and beyond. Proper communication and sensitization will be required to ensure police conduct themselves as required by the law, and IPOA will be doing this with all Kenyans who exercise their rights responsibly.

Based on rule of law as advanced in this report, the Authority will be monitoring the police conduct and misconduct to advance the calls for an independent, professional, accountable and disciplined police service at all levels. These would be guided and informed by the recommendations the Authority has made in this report, as well as earlier ones made to the Service.

9.0 RECOMMENDATIONS TO THE POLICE AND OTHER STATE ORGANS

- 9.1 The National Police Service should urgently establish a comprehensive training on public order management with reference to other international standards as comparatively expressed in Part 7 of this report. This training could seek for external assistance from USA, Sweden and UK, countries that are already involved in the Police Reform Program under the Ministry of Interior and Coordination of National Government. This training should be inculcated in the training curriculum using modern methods and best practices from other countries. The training on this area should take into consideration psychological, social and cognitive skills, where establishing a sense of trust in the public, developing a sense of identity in society, and helping the next generation prepare for the future, should be taken seriously in the service.
- 9.2 Under the changed policing context, Public Order Management should be made mandatory to all police officers. The abrupt pulling of officers from different units such as General Service Unit (GSU), Security of Government Building (SGB), Kenya Airport Police Unit (KAPU), Rural Border Patrol Unit (RBP), Rapid Deployment Unit (RDU) among others, that has been witnessed, without proper briefing and training, waters down effective and efficient command, control, communication and coordination.

Further, contemporary public order management is a skill and all officers involved in it should have common understanding, with commonality of purpose.

- 9.3 The National Police Service should proactively be engaging with the conveners / organizers of public protests and gatherings, and come up with written agreements to reduce tensions while ensuring public order policing. These proactive engagements should among others agree on the timings and the routes to take. Further joint conferences with the organizers to assure the public of their security and safety as they rightly assemble, demonstrate, picket, or even present petitions to public authorities, would go a long way towards promoting community policing in the country. The freedom of assembly, demonstrations, picketing, or even presentation of petitions to public authorities must be constitutionally guaranteed and not seen as a favour.
- 9.4 The National Police Service should ensure intelligence gathering leads their policing around public order management to map out the criminal elements who might infringe on freedom of assembly, demonstrations and picketing. This should be done with the conveners / organizers of the public protests having their field marshals as well, and with adequate security arrangements being put in place, to promote and protect security of all actors.
- 9.5 While a clear chain of command in the management of public gatherings and protests should be ensured for accountability purposes. Guidelines and procedures for the policing of public protests and gatherings must be clearly developed, understood and implemented by all officers involved. The guidelines and procedures should allow local commanders to take initiative when a new situation arises. However, taking of such initiative must be done by the commanders while in adherence to the lines of command and control.
- 9.6 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 tag or identifiable Service number in a clearly visible part of the uniform". This is meant to enhance accountability of individual officers while at the same time ensuring professionalism and discipline in line with Article 244 of the Constitution.
- 9.7 Use of force in the service should be graduated as envisaged under the Sixth Schedule to the NPS Act. First, there should be proclamation with audible loud speakers, which should be graduated to use of physical force being applied such as wrestling to the ground, using wrist locks or arm locks, striking with the hands or feet, or other similar methods of hand-to-hand confrontation, with use of latest best practices. This can then be graduated to mechanical force where use of some devices or substances, other than a firearm, to overcome a subject's resistance are tried. Some of these could be use of a baton or other object, canine physical contact with a subject, or chemical or natural agent spraying, where police should be literally a few meters in front of the crowd. Use of coercive and deadly force during public order management should be avoided at all costs, and when used, it should be only to immobilize the victim and not to kill. No loss of life should be encouraged under public order management environment.
- 9.8 The National Police Service should abide by Article 239 of the Constitution while performing their functions and exercising their powers. The Service should not act in a partisan manner, further any interest of a political party or cause, or prejudice a political interest of political cause that is legitimate under the Constitution. The Service should remain impartial in carrying out its functions.
- 9.9 Use of modern policing skills such as information technology and videography should

- be encouraged, with tracking of the errant members of the public for later arrests. This is a law enforcement skill with use of modern technology and the NPS should raise to the occasion as well.
- 9.10 The police should also ensure availability of medical aid at stand by, with all necessary equipment, to give first aid to those injured during public order management and in case of unlikely event. The minimum equipment for any public order management should include body armour and helmets; shields; batons; water cannons; communication and video equipment; mobile operational centers among other key ones.
- 9.11 The communication by policy makers and the ministry of interior prior, during and after public protests and gatherings should be to enhance the rights as enshrined in the constitution and not to curtail them. The Minister of Interior should not encourage rights violations but should come up with an initiative to educate the public on how to conduct themselves during protests and gatherings without abusing the police as well. Public awareness should be enhanced through such an initiative for change of culture, behavior and attitudes.
- 9.12 A policy on public order management, where management of right to assembly, demonstration, picketing, or presentation petitions to public authorities' falls, should be developed.

10.0 APPENDICES

APPENDIX 1: Summary of the Dead and Seriously Injured in the Entire Anti-IEBC Protests

DATE	COUNTY	DEATH	INJURY
25/4/2016	NAIROBI	0	1
16 th May 2016	NAIROBI	0	1
23 rd May 2016	NAIROBI	0	1
	SIAYA	2	28
	HOMABAY	Records not available	4
	KISUMU	1	2
	MIGORI		7
6 th June 2016	KISUMU	1	44

APPENDIX 2: Police Officers who were injured

Date	County	Officers injured	Remarks/ information source
25/4/2016	NAIROBI	1	Incident booked at Central Police Station OB. 67/25/4/2016. Officer was treated at KNH where he was treated and discharged. Officer was treated at Nairobi City Clinic, treated and discharged. Incident report CRI/4/3/18 to Ops Center Vigilance House
	MIGORI		Not monitored
	SIAYA		Not monitored
	KISUMU		Not monitored
	HOMABAY		Not monitored
16/5/2016	NAIROBI		No records available for injuries
	MIGORI		Not monitored
	SIAYA		Not monitored
	KISUMU		Not monitored
	HOMABAY		Not monitored
23/5/2016	NAIROBI		No injury records available
	MIGORI		Not monitored
	SIAYA	28	Incident booked at Siaya Police station vide OB 38/23/5/2016. In the Occurrence Book above, it is indicated the officers were initially attended by Red Cross paramedics in Siaya and discharged in good condition. The incident is also mentioned in a recorded statement by a Police Officer. According to the Statement, on the 24th of May 2016, 11 AP officers were brought to Nairobi and admitted in Nairobi West Hospital.
	KISUMU		Not monitored
	HOMABAY		Captured in the investigations report
6/6/2016	NAIROBI		
	MIGORI		Not monitored
	SIAYA		Not monitored
	KISUMU		Names received by monitoring officers after interviewing police officers in Kisumu.
	HOMABAY		Not monitored
	HOMABAY		Not monitored

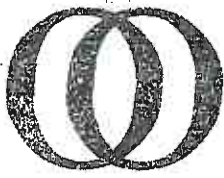
Date	County	Availability of Operational Orders	Nature/summary details of the operations order:	Remarks
25/4/2016	NAIROBI	No	250 police officers were deployed from the National Police Service (Kenya Police Service and Administration Police Service), drawn from various divisions within in Nairobi. Operation was properly coordinated and supervised.	Physical documentation of the orders not availed due to non-cooperation from County Commander. Information obtained through interview with the Operation Commander
	MIGORI			Not monitored
	SIAYA			Not monitored
	KISUMU			Not monitored
	HOMABAY			Not monitored
	HOMABAY			Not monitored
16/5/2016	NAIROBI		300 police officers from the National Police Service (Kenya Police Service and Administration Police Service various divisions in Nairobi. Operation was properly coordinated and supervised.	Physical documentation of the orders not availed due to non-cooperation from County Commander. Information obtained through interview with the Operation Commander.
	MIGORI			Not monitored
	SIAYA			Not monitored
	KISUMU			Not monitored
	HOMABAY			Not monitored
	HOMABAY			Not monitored
23/5/2016	NAIROBI			No information was vailed to the monitors by the Operation Commander.
	MIGORI			Not monitored
	SIAYA			Not monitored
	KISUMU			Not monitored
	HOMABAY			Not monitored
	HOMABAY			Not monitored

Date	County	Availability of Operational Orders	Nature/summary details of the operations order	Remarks
6/6/2016	NAIROBI			No information was vailed to the monitors by the Operation Commander.
	MIGORI			Not monitored
	SIAYA			Not monitored
	KISUMU	Yes	Operation orders availed	Deployment was done in 7 sectors. No more details were given.
	HOMABAY			Not monitored
	HOMABAY			Not monitored

People caught up in the demonstrations (Courtesy www.businessinsider.sg)



**Guarding
Public
Interest in
Policing**

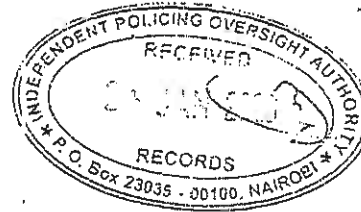


OTIENO OGOLA
& COMPANY ADVOCATES

This is the exhibit marked... **KK6A**
Annexed to in the Affidavit/Declaration
Of **Khelef Khalifa**
Sworn / Declared Before me this... **1st** 2
Day of **September 23** 20... **23** at... **Nairobi**
in the Republic of Kenya

Commissioner for Oaths

24th January 2023



The Secretary
The Independent Policing Oversight Authority
1st Ngong Avenue,
ACK Garden Annex, 2nd floor
P.O. Box 23035 – 00100
NAIROBI.
E-mail: info@ipoa.go.ke

The Chairperson
The Independent Policing Oversight Authority
1st Ngong Avenue,
ACK Garden Annex, 2nd floor
P.O. Box 23035 – 00100
NAIROBI.
E-mail: info@ipoa.go.ke

RE: REQUEST FOR INFORMATION UNDER ARTICLE 35 OF THE CONSTITUTION, ON THE INQUIRY ON THE MURDER OF PEACEFUL PROTESTERS IN KENYA AFTER THE 2017 PRESIDENTIAL ELECTIONS

The above matter kindly refers.

We have been instructed by our Client, Khelef Khalifa, the Chairman of Muslims for Human Rights (hereinafter MUHURI), a registered Non-Governmental Organization that works on promoting and protecting human rights amongst the most vulnerable in the Society.

We write regarding the police killings of innocent Kenyans who were killed by police officers in the aftermath of the 2017 presidential elections. We attach herewith this letter the names of the innocent Kenyans killed by police bullets and acts of brutality as some were exercising their rights to freedom to demonstrate and picket while others were killed by police officers in their homes and places of abode.

Our Client has noted with concern that despite the high profile and publicity of the killings including public reports, documenting the police killings, your agency has not taken any administrative or criminal justice measures to bring to book the police perpetrators and the commanders responsible for the units that committed the heinous acts against unarmed innocent civilians.

Office B11, 11th floor CMS Africa House
Chania Avenue off Marcus Garvey Road, Killmani, Nairobi
P. O. Box 22671-00100 Nairobi, Kenya
+254 (0)718 950 946, +254 (0)721 976 194, +254 (0)723 161 882
info@otienoogolaadvocates.co.ke

PARTNERS
Willis Evans Otieno (Adv) LLB (Moi Uni) Dip. Law (KSL)
Ogola Bonyo (Adv) LLB (Moi Uni) Dip. Law (KSL)

PIN NO.: P051387070K

Justice delayed is justice denied, the families of the victims of police killings and the Kenyan people have waited for an inordinately long period of time for your office to take action against the perpetrators of these killings. It is over five years since the said heinous acts were committed and your office is yet to give a public report on the status of any investigations that may have been undertaken against the perpetrators of the crimes and those with command responsibility over the said officers.

Due to the foregoing, on behalf of the victims, their families and the people of Kenya, our Client, instructs us to write to you to request the following information that is in your custody relating to investigations of the killings;

- a) All the witness statements recorded by your officers in relation to the cases;
- b) All medical and post-mortem reports conducted on the deceased persons;
- c) Report of the investigations conducted by yourself in relation to the deaths.

The purpose of the information sought is to enable the families and the people of Kenya to seek justice for the unfortunate killings.

Please do note that we will be seeking legal recourse against your office if you do not heed to the request herein within fourteen (14) days of the date of this letter.

This matter has taken quite a while and a prompt response on the same will be highly appreciated.

We undertake to meet your reasonable administrative charges that may be necessary to process the information sought.

We have taken the liberty to copy this letter to the Commission of Administrative Justice for follow up with yourself as the agency tasked with the responsibility to ensure the right of access to justice.

Yours sincerely,
OTIENO OGOLA & CO. ADVOCATES


W.E.O. K'Ochieng

CC

1. Client
2. Commission of Administrative Justice
NAIROBI

Chairperson: Hon. Florence Kajuju, MBS
 Vice-Chairperson: Mr. Washington Sati
 Commissioner: Mrs. Lucy Ndung'u, EBS, HSC



THE
 COMMISSION ON ADMINISTRATIVE JUSTICE
 "Office of the Ombudsman"

Our Ref: CAJ/ATI/IPOA/131/4/23-SC

31st January, 2023

The Chief Executive Officer
 The Independent Policing Oversight Authority
 1st Ngong Avenue
 ACK Garden Annex, 2nd Floor
 P.O Box 23035-00100
NAIROBI.

This is the exhibit marked... *KK7A*
 Annexed to in the Affidavit/Declaration
 Of... *Khelef Khalifa*
 Sworn/Declared Before me this... *12th*
 Day of... *September* 20... *23*... at... *Nairobi*
 in the Republic of Kenya

Dear Sir,

**RE: REQUEST FOR INFORMATION ON THE INQUIRY ON THE MURDER OF PEACEFUL
 PROTESTERS IN KENYA AFTER THE 2017 PRESIDENTIAL ELECTIONS**

The Commission is the Oversight and Enforcement Agency of the Access to Information Act, 2016. (ATI, Act 2016).

The Commission is in receipt of a letter dated 24th January, 2023 from Otieno Ogola & Company Advocates on behalf of Khelef Khalifa, Chairman of Muslims for Muslims for Human Rights (MUHURI) (copy enclosed).

The request for information relates to the inquiry on the murder of peaceful protesters in Kenya after the 2017 presidential elections and particularly on:

- All the witness statements recorded by your officers in relation to the cases;
- All medical and post-mortem reports conducted on the deceased persons;
- Report of the investigations conducted by yourself in relation to the deaths.

This is therefore to request you to respond to the Applicant soonest in line with section 9(4) of ATI, Act 2016.

Your prompt response will be highly appreciated.



Our Ref: MHR/GE/1

Wednesday, 05 April 2023

Independent Policing Oversight Authority
ACK Garden Annex (2nd Fl)
1st Ngong Avenue
P. O. Box 23035 - 00100 Nairobi
Nairobi
Email: info@ipoa.go.ke

Attention: The Chairperson/Secretary

Dear Sirs,

RE: REQUEST FOR INFORMATION UNDER ARTICLE 35 OF THE CONSTITUTION ON THE MURDER OF PEACEFUL PROTESTORS IN KENYA AFTER THE 2017 PRESIDENTIAL ELECTIONS

We refer to the letter dated 24th January 2023, which is addressed to you by Otieno Ogola & Company Advocates on the above noted subject matter. A copy of the said letter is annexed hereto for your ease of reference. We have instructions to take over the conduct of the matter and to follow up on the same.

We note that it is now more than two (2) months since the request for information was made to you vide the aforesaid letter dated 24th January 2023. We have the following concerns, *inter alia*:

- 1) The non-responsiveness of the Authority to the request in contravention of among others Articles 10, 21(1), 35 and 47 of **The Constitution of Kenya**; and
- 2) The **Access to Information Act No 31 of 2016** stipulates that an application for access to information should at the maximum be processed within twenty-one (21) days. The Authority is therefore, further in breach of a statutory obligation.

This letter therefore serves as a reminder of the request made vide the letter dated 24th January 2023. Kindly let us have the information sought within fourteen days (14) of the date hereof.

PLEASE TAKE NOTICE that in addition to any other legal remedies and/or avenues available to our Clients for redress, we have instructions to pursue appropriate remedies and/or enforcement measures under section 28 of the **Access to**

Your Ref: TBA

This is the exhibit marked **KKA**
Annexed to in the Affidavit/Declaration

Of: **Khelet Khalita**
Sworn/Declared Before me this **12th**
Day of **September 2023** at **Nairobi**

in the Republic of Kenya


.....
Commissioner for Oaths

Advance copy by email

Information Act No 31 of 2016 against the responsible officers of the Authority.
Be advised accordingly.

By a copy of this letter, the Commission on Administrative Justice is hereby notified of the failure, neglect and/or refusal by the Authority to comply with the request made on 24th January 2023; and the follow up letter of the Commission thereto dated 31st January 2023.

Yours faithfully,
SOWETO & COMPANY ADVOCATES


Julie SOWETO AJELLO | Advocate
(Julie@sca.co.ke)

Cc: The Commission on Administrative Justice
West End Towers (2nd Fl)
Waiyaki Way, Westlands
P. O. Box 20414 - 00200
Nairobi

Cc: Client
Nairobi



This is the exhibit marked... **KK9A**
 Annexed to in the Affidavit/Declaration
 Of **Shahet Shahita**
 Sworn / Declared Before me this... **12th**
 Day of **September 23**... at... **Nairobi**
 in the Republic of Kenya



IPOA/DI/HQ/1/1/077

Commissioner for Oath

12th April, 2023

Julie Soweto Aullo,
 Soweto & Company Advocates,
 Biblica House, 1st Floor,
 Dennis Pritt Road,
 P.O Box 44287 -00100,
Nairobi.



Dear Madam,

REF: REQUEST FOR INFORMATION UNDER ARTICLE 35 OF THE CONSTITUTION ON THE MURDER OF PEACEFUL PROTESTORS IN KENYA AFTER THE 2017 PRESIDENTIAL ELECTIONS

The Independent Policing Oversight Authority (IPOA) is a State Agency established under the Independent Policing Oversight Authority (IPOA) Act, No. 35 of 2011 (IPOA Act), with the object and purpose among other things, holding the police accountable to the public in the performance of their functions.

The Authority acknowledges receipt of your letter dated 5th April 2023 the contents whereof are duly noted. We also acknowledge receipt of letters from Otieno Ogolla & Company Advocates and from the Commission on Administrative Justice dated 24th and 31st January 2023 respectively on the same subject.

Upon review of the appendix attached to the letter from Ogolla and Company Advocates, the Authority notes that fifteen (15) cases out of the list of thirty-three (33) have been reported to the Authority and taken up for investigations (refer to the attached annexure).

In order to provide you with a comprehensive status update on the cases, the Authority requests that you avail duly executed consents by the complainants or where applicable families of the deceased persons, consenting to having the Authority divulge information to you regarding status of investigations into their complaints.

With regard to your request for witness statements, medical and post-mortem reports where available this will be provided to you with regard to concluded investigations once you avail requisite consents from the complainants or where applicable families of deceased persons.

However, please note that pursuant to section 24 (15) of the IPOA Act and section 6 of the Access to information Act, these documents cannot be availed to you with regard to matters under active investigations or currently in court.

With regard to the other eighteen (18) cases referenced in the appendix the same were not reported to the Authority. The complainants or families of deceased persons, may lodge complaints with the Authority.

For any clarification, please contact the Authority on Email: info@ipoa.go.ke or Tel: 254 20 490 6100.

Yours Faithfully,



ANNE MAKORI, (MRS), EBS
CHAIRPERSON

Copy to:

1. Otieno Ogolla & Company Advocates
We acknowledge receipt of your letter dated 24th January 2023 and have noted the contents thereof. The contents of this letter also apply to your request for information.
2. The Commission on Administrative Justice,
West End Towers, 2nd Floor,
Waiyaki Waki, Westlands,
Nairobi.
Attention: Lucy Ndung'u, EBS

ANNEXURE II : THE FOLLOWING DECEASED PERSONS ON THE LIST FROM OGOLLA WERE NOT REPORTED TO AUTHORITY

NAME OF DECEASED	DESCRIPTION AND LOCATION OF THE INCIDENT	DATE OF THE INCIDENT,
1. Francis Njuguna 31, Years Old	Fatally shot at Kariobangi Nairobi county	11 th August 2017
2. Kevin Otiwn 23 Years Old	Shot by police and died while being taken to Hospital	11 th August 2017
3. Vitalis Otiemo 24 Years Old	Died of Shock at Dandora in his house	12 th August 2017
4. Sammy Amira Loko 54 Years Old	Hit by teargas at Kawangware on 9 th August 2017 died at KNH on 10 th August 2017.	9 th August 2017 died at KNH on 10 th August 2017.
5. Lillian Khavere 40 Years Old, Expectant	Teargassed at Kawangware on 12 th August 2017 died at KNH	12 th August 2017 died at KNH
6. Melvin Mboka Mwangitsi 19 Years Old	Fatally shot at satellite on 9 th August 2017	9 th August 2017
7. Zebedeo Mukhala 42 Years Old	Shooting causing injuries on 12 th August 2017 died at Mbagathi on 14 th August 2017	12 th August 2017 died at Mbagathi on 14 th August 2017
8. Violet Khogai 43 Years Old	Hit by teargas at Kawangware on 12 th August 2017 died while being taken to hospital	12 th August 2017 died while being taken to hospital
9. Erick Kwama 30 Years Old	Hit by teargas at Kawangware on 12 th August 2017 Died at KNH on 10 th August 2017	Died at KNH on 10 th August 2017

10.	Nelvin Amokove 30 Years Old	Shot while in riots in Kawangware on 11 th August 2017,	11 th August 2017
11.	Suleiman Khalibu 25 Years old Tanzanian	Hit by teargas at Kawangware on 11 th August 2017 Died at KNH on 18 th August 2017	11 th August 2017 Died at KNH on 18 th August 2017
12.	Jeremiah Maranga 50 Years Old	Assaulted by Police in Kawangware on 11 th August 2017	11 th August 2017 Died at KNH on 11 th August 2017
13.	Benson Wandera 47 Years Old	Fatally shot by police at Kawangware on 11 th August 2017	11 th August 2017
14.	William Waka 45 Years Old	Fatally shot by police at Mathare on 9 th August 2017	9 th August 2017
15.	Geoffrey Onacha 34 Years	Fatally shot by police in Kibera Nairobi County on 10 th August 2017	10 th August 2017
16.	Sharon Imenza 10 Years daughter of Geoffrey Onacha	Collapsed and died on 11 th August 2017, after seeing the body of his father Geoffrey Onacha	11 th August 2017.
17.	Henry Onyango Matete 28 Years	Assaulted by police on 12 th August 2017 at Kibera died at Muthaiga Hospital on 13 th August 2017	12 th August 2017 at Kibera died at Muthaiga Hospital on 13 th August 2017
18.	Michael Owino 28 Years Old	Fatally shot at Kibera on 12 th August 2017 body yet to be found	12 th August 2017

ANNEXURE I: 2017 POST ELECTION DEATHS RESULTING FROM POLICE ACTION IN NAIROBI

	Complaints Number	Region	Nature	Victim	Position in Otieno Ogolla The List
1.	IPOA/INV/0906/2017	Nairobi	Fatal shooting	Stephanie Moraa Gisemba	24 in the list
2.	979-INV-NAIROBI-C-000710-2017	Nairobi	Assault causing death	Silas Lebo - Mathare	18 in the list.
3.	IPOA/CMU/971/2017	Nairobi	Fatal shooting	Christopher Mutua	25 in the list
4.	IPOA/CMU/0947/2017	Nairobi	Fatal shooting	Bernard Okoth Odoyo and Victor Okoth Obondo	19&20 in the List
5.	IPOA/CMU/981/2017	Nairobi	Fatal Shooting	Fanuel Muruka Amule	26 in the list
6.	IPOA/CMU/0982/2017	Nairobi	Fatal shooting	David Owino Otieno	23 in the list
7.	IPOA/CMU/1015/2017	Nairobi	Fatal shooting	Vincent Omondi Okebe	2 in the list
8.	IPOA/CMU/00982/2017	Nairobi	Fatal shooting	Boniface Ochieng Owino	22 in the list
9.	688-INV-NAIROBI-001077-2017	Nairobi	Fatal shooting	Raphael Ayieko	27 in the list
10.	IPOA/CMU/1077/2017	Nairobi	Fatal shooting	Sheddy Omondi & Privel Ochieng	28 &29 in the list
11.	IPOA/CMU/981/2017	Nairobi	Fatal Shooting	Fanuel Muruka Amule	26 in the list
12.	IPOA/CMU/973/2017	Nairobi	Fatal Shooting	Thomas Odhiambo – Dandora	3 in the list
13.	IPOA/CMU/1976/2017	Nairobi	Shooting causing injuries	Paul Mungai	No 10 in the list

**MBUGUA MUREITHI & CO.
ADVOCATES**

257

Commissioners for Oaths & Notaries Public

Mbugua Mureithi Woodlands Business Park Tel: 0722-527229
1st Floor mbugua.mureithi@yahoo.com
Victor Olewe Kiambere Road gikonyolw@hotmail.com
Upper Hill wanjikuvictoria@yahoo.com
P.O. Box 52969-00200 mbugua_mureithi99@gmail.com
Nairobi

Associates:

Desire Njamwea
Leah W. Gikonyo
Victoria W. Kariuki

Annexed to in the Affidavit/Declaration

Of... *Khelef Khalifa* ...

Sworn / Declared Before me this... *2th* ...

Day of... *September 23* ... at... *Nairobi* ...

in the Republic of Kenya

Our Ref: MM/KK/3/023

Your Ref:

Date: 26th July 2023

Japhet N. Koome, EBS, HSC 'ndc'(K)
The Inspector General of
The National Police Service
Police Headquarters
Nairobi.



**RE: REQUEST FOR INFORMATION ON INVESTIGATIONS AND REMEDIAL
ACTIONS TAKEN INTO THE KILLINGS OF PEACEFUL PROTESTERS
IN NAIROBI OVER THE 2017 PRESIDENTIAL ELECTION RESULTS**

The above matter refers.

We have been instructed by our client Mr. Khelef Khalifa, a senior citizen of Kenya and a director in the board of Muslims for Human Rights (MUHURI), a duly registered human rights non-governmental organization whose main object is the promotion, advancement and protection of human rights and fundamental freedoms of all vulnerable persons.

Our instructions is to request for information from your office regarding investigations into the killings of the eighteen (18) deceased persons appearing on the Annex enclosed herewith who were killed by police officers through unlawful use of force and firearms by shootings immediately before or soon after the announcement of results of the presidential election of August 2017, while exercising their constitutional right to peaceful demonstrations, pickets and protests over the said results of the presidential election, or pulled from their houses or places of work and executed in cold blood.

Our client is deeply concerned that more than five (5) years since the said killings, the apparent failure to investigate and punish those crimes has bred impunity that is now in

full display in the current shootings using live bullets in containing the ongoing *maandāmanos*. Consequently, our client urgently seeks the following information:-

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- i. Status of investigations conducted by your office under paragraph 5 of Part A of the Sixth Schedule of the National Police Service Act (on Conditions as to the Use of Force) and paragraph 6 of Part B of the same Schedule (on Conditions as to the Use of Firearms) concerning the killings of the eighteen (18) deceased persons.
- ii. Particulars of any disciplinary cases taken against the officers who failed to report the killings of the said deceased persons herein as provided for under paragraph 8 of Part A of the Sixth Schedule (on Conditions as to the Use of Force).
- iii. Particulars of any disciplinary cases and/or criminal cases initiated by the National Police Service under paragraph 2(2) of Part C of the Sixth Schedule (on Specific Responsibilities of Superiors) against officers who gave orders that led to the unlawful use of force that led to the killing of the deceased persons herein.
- iv. Particulars of any criminal cases initiated by the National Police Service under paragraph 2(3)(d) of Part C of the Sixth Schedule (on Specific Responsibilities of Superiors) against station commanders and their direct superior officers who failed to investigate, secure evidence of the killings of the deceased persons herein and, also failed to furnish the Independent Policing Oversight Authority (IPOA) with reports of such investigations within the time and in the manner prescribed.
- v. Particulars of any murder or manslaughter cases recommended to the Director of Public Prosecutions for prosecution of police officers who unlawfully shot dead the deceased persons herein.
- vi. Particulars of any judicial inquest cases initiated by the National Police Service through your station commanders concerning the killings of the deceased persons herein as required by section 386(1)(b) and (c) and 387(1) of the Criminal Procedure Code (CPC).
- vii. Confirmation that the National Police Service neither investigated nor took any remedial action against its officers under the provisions of the said Sixth Schedule of the National Police Service Act, the Penal Code or the Criminal Procedure Code.

We are further instructed that our client seeks the above information to facilitate the families of the deceased and the people of Kenya generally to access justice and to seek effective remedies for the brutal and unlawful termination of the lives of the deceased.

Take Notice that we are instructed to take out appropriate Court proceedings before the High Court against you if you do not furnish us with the said information within the next **259** seven (7) days from the date hereof.

We have taken the liberty of copying this letter to the Commission on Administrative Justice which is the statutory body responsible for facilitation of the constitutional fundamental right of access to information.

Yours faithfully,
(For Mbugua Mureithi & Co.)



Mbugua Mureithi
Advocate.

Encl

Cc

1. Khelef Khalifa
C/o MUHURI
Mombasa.
2. The Chairperson
Commission on Administrative Justice
West End Towers, 2nd Floor
Waiyaki Way, Westlands
Nairobi.

ANNEX:

**TABLE OF CONFIRMED DEATHS PERPETRATED BY POLICE OFFICERS
DURING POST-ELECTION VIOLENCE IN NAIROBI IN AUGUST 2017**

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No.	Name	Location	Date	Description of violation	Status
1	Francis Njuguna, 31 Years Old	Kariobangi, Nairobi	August 11, 2017	Shot dead	Body found at City Mortuary
2	Kevin Otiwn, 23 Years Old	Dandora, Nairobi	August 11, 2017	Shot Outside his gate by police	Died on his way to the Hospital
3	Sammy Amira Loka, 54 Years Old	Kawangware stage Two, Nairobi	August 9, 2017	Hit by teargas canister-inhaled teargas	Died at KNH on August 10, 2017
4	Lilian Khavere, 40 Years, 8 months pregnant	Kawangware no. 56, Nairobi	August 12, 2017	Teargassed fell and trampled by crowd	Died at KNH on August 12, 2017
5	Melvin Mboka Mwangitsi, 19 Years Old	Satelite, Kawangware, Nairobi	August 9, 2017	Shot dead by police	Body traced at KNH mortuary
6	Vitalis Otieno, 24 Years Old	Dandora, Nairobi	August 12, 2017	Died of shock	Died in his House
7	Zebedeo Mukhala, 42 Years Old	Kawangware no. 56, Nairobi	August 12, 2017	Shot in the leg, fell and trampled by crowd	Died at Mbagathi hospital on August 14, 2017
8	Violet Khagai, 43 Years Old	Kawangware stage Two, Nairobi	August 12, 2017	Hit by Teargas and inhaled pepper spray	Died on way to hospital
9	Eric Kwama, 30 43 Years Old	Kawangware stage Two, Nairobi	August 10, 2017	Hit by Teargas fired at close range, inhaled pepper spray	Died at KNH
10	Nelvin Amakove 30, Years Old	Kawangware no. 56, Nairobi	August 11, 2017	Caught up in riots, shot in the back while running away	Died instantly body traced at KNH
11	Suleiman Khatibu, 25 Years Old	Kinyanjui area, Wanye, near Kawangware, Nairobi	August 11, 2017	Hit in the chest by Teargas fired in close range, bled through mouth and nose	Died at KNH on August 18, 2017
12	Jeremiah Maranga, 50 Years Old	Kawangware no. 56, Nairobi	August 11, 2017	Beaten by police and left for dead, body soaked in blood	Died of internal bleeding and severe organ damage while waiting for

					treatment at KNH
13	Benson Wandera, 47 Years Old	Kinyanjui area near Kawangware, Nairobi	August 11, 2017	Shot dead by police	Buried in western Kenya Busia County
14	William Waka, 45 Years Old	Mathare North, Nairobi	August 9, 2017	Shot in the Chest	Body traced at city mortuary
15	Geoffrey Onacha, 34 Years Old	Kibera, Nairobi	August 10, 2017	Shot Dead	Body traced at city mortuary
16	Sharon Imenza, 10 Years daughter of Geoffrey Onanacha	Kibera, Nairobi	August 11, 2017	Collapsed and died on seeing father's body	Collapsed
17	Henry Onyango Matete, 28 Years Old	Kibera Olympic area, Nairobi	August 12, 2017	Beaten by police	Died a day later at Muthaiga hospital
18	Michael Qwino, 28 Years Old	Kibera Olympic area, Nairobi	August 12, 2017	Shot dead and body taken away in body bag	Body yet to be found

DATED AT NAIROBI THIS

25th DAY OF July

2023

MBUGUA MUREITHI & CO.
ADVOCATES

DRAWN BY:-

MBUGUA MUREITHI & CO. ADVOCATES

1ST FLOOR

WOODLANDS BUSINESS PARK

KIAMBERE ROAD

UPPER HILL

P.O. BOX 52969-00200

NAIROBI.

Chairperson: Hon. Florence Kajuju, MBS
Vice-Chairperson: Mr. Washington Sati
Commissioner: Mrs. Lucy Ndung'u, EBS, HSC



THE
COMMISSION ON ADMINISTRATIVE JUSTICE ²⁶²
"Office of the Ombudsman"

Our Ref: CAJ/ATI/NPS/015/34/23-MW

31st July 2023

Inspector General

National Police Service
Jogoo House 'A', 4th Flr
P.O. Box 44249-00100

NAIROBI

Dear Sir,

This is the exhibit marked **KK11A**
Annexed to in the Affidavit/Declaration
Of **Khelef Khalifa**
Sworn/Declared Before me this **27th**
Day of **September** 20**23** at **Nairobi**
in the Republic of Kenya

Commissioner for Oath

RE: REQUEST FOR INFORMATION BY MBUGUA MUREITHI & CO. ADVOCATES ON BEHALF OF MR. KHELEF KHALIFA

The Commission is the Oversight and Enforcement Agency of the Access to Information Act, 2016 (ATI, Act 2016).

An initial request for information dated 26th July 2023 (copy enclosed) has been received by the Commission from Mbugua Mureithi & Co. Advocates on behalf of Mr. Khelef Khalifa addressed to your Office.

The request for information relates to the status of investigations and remedial actions taken into the killing of peaceful protesters in Nairobi over the 2017 Presidential election results.

This is therefore to request you to respond to the requester soonest in line with section 9(4) of ATI, Act 2016.

Your prompt response will be highly appreciated.

LUCY NDUNGU, EBS

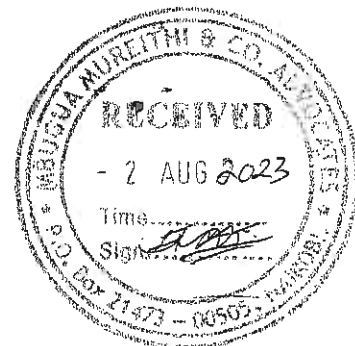
ACCESS TO INFORMATION COMMISSIONER

CC:

Mbugua Mureithi & Co. Advocates

Woodlands Business Park
1st Flr Kiambere Rd, Upper Hill
P.O Box 52969-00200

NAIROBI



MBUGUA MUREITHI & CO.
ADVOCATES

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Commissioners for Oaths & Notaries Public

Mbugua Mureithi	Woodlands Business Park 1 st Floor	Tel: 0722-527229 mbugua.mureithi@yahoo.com
Victor Olewe	Kiambere Road Upper Hill P.O. Box 52969-00200	gikonyolw@hotmail.com wanjikuvictoria@yahoo.com mbugua.mureithi99@gmail.com
Associates:	Nairobi	
Desire Njamwea		
Leah W. Gikonyo		
Victoria W. Kariuki		

Our Ref: MM/KK/3/023 **Your Ref:** **Date:** 15th August 2023

Japhet N. Koome, EBS, HSC 'ndc' (K)
The Inspector General of
The National Police Service
Police Headquarters
Nairobi.

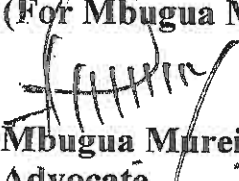
This is the exhibit marked... **KK12A**
Annexed to in the Affidavit/Declaration
Of... **Shelaf Khalifa**
Sworn/Declared Before me this... **2th**
Day of **September** 20... **23**... at... **Nairobi**
in the Republic of Kenya

**RE: REQUEST FOR INFORMATION ON INVESTIGATIONS AND REMEDIAL
ACTIONS TAKEN INTO THE KILLINGS OF PEACEFUL PROTESTERS
IN NAIROBI OVER THE 2017 PRESIDENTIAL ELECTION RESULTS**

We refer to the above matter and our letter of 26th July 2023 served on your office on 27th July 2023, and the letter of the Commission on Administrative Justice (CAJ) dated 31st July 2023 addressed to you and copied to us requesting you to comply with the applicable law regarding our client's request for the information sought in our said letter. Enclosed herewith is a copy of the said letter of the CAJ for your ease of reference.

We note with disappointment your lack of response to our said letter. We also have no information that you have responded to the said letter from the CAJ to date.

Please Take Notice that we are instructed to promptly proceed to Court if you do not furnish us with the said information within the next **seven (7) days** from the date hereof.

Yours faithfully,
(For Mbugua Mureithi & Co.)

Mbugua Mureithi
Advocate.

Encl

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Cc

Khelef Khalifa
C/o MUHURI
Mombasa.

This is the exhibit marked **KK13A**
Annexed to in the Affidavit/Declaration
Of **Shelley Khairifa**
Sworn Declared Before me this **12th**
Day of **September** 20**23** at **Nairobi**
In the Republic of Kenya



**OFFICE OF THE INSPECTOR GENERAL
NATIONAL POLICE SERVICE
NAIROBI - KENYA**

Telegraphic Address:
"IG, NPS"
Telephone: Nairobi

Jogoo House "A"
P O Box 44249-00100
NAIROBI

Ref. No. NPS/IG/ORG/6/10(51)

15th August, 2023

Mbugua Mureithi & Co. Advocates,
Woodlands Business Park,
1st Floor,
Kiambere Road,
Upper Hill,
P.O. Box 52969-00200
NAIROBI

Dear Sir,

**RE: REQUEST FOR INFORMATION ON INVESTIGATIONS AND REMEDIAL
ACTIONS TAKEN INTO THE KILLINGS OF PEACEFUL PROTESTERS IN
NAIROBI OVER THE 2017 PRESIDENTIAL ELECTIONS RESULTS**

Please, further to your letter ref.MM/KK/3/023 dated 15th August, 2023 regarding the above stated matter, note that the law does not allow this Office to comment on matters under investigations by Independent Police Oversight Authority.

Consequently, kindly we have no further comments regarding the same.

Japhet Koome
JAPHET KOOME, EBS, HSC, ndc (K)
**INSPECTOR GENERAL
NATIONAL POLICE SERVICE**

