

KILL THOSE CRIMINALS

Security Forces Violations in Kenya's August 2017 Elections

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ACRONYMS

WORD	DESCRIPTION
IPOA	Independent Policing Oversight Authority
GSU	General Service Unit
AP	Administration Police
NASA	National Super Alliance coalition
IEBC	Independent Electoral and Boundaries Commission
KYSY	Kura Yangu Sauti Yangu coalition
OCS	Office Commanding Station
ATPU	Anti-Terror Police Unit

1. EXECUTIVE SUMMARY

On 8 August 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, 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, in 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 (IPOA), 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 other killings confirmed by the Kenyan National Human Rights Commission, the national death toll could be as high as 64. 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 elections references "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 there were no deaths and few injuries.

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 and Coordination of the National Government have denied reports of excessive force and unlawful killings by police and, at time of writing, were not co-operating with the Independent Policing Oversight Authority, 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 elections 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 elections unless certain conditions are met, the stakes are high for the revote.

As the country prepares for fresh elections currently slated for 26 October 2017, 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 planning and responding to the August elections violence, support 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.

2. 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 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 of 2011.
- 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 police 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 POLICE OVERSIGHT AUTHORITY AND KENYA NATIONAL COMMISSION ON HUMAN RIGHTS

- Urgently and thoroughly investigate the unlawful police use of force during the 2017 post-elections 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 western Kenya during post-elections protests.
- Direct police to cooperate and support with information and other relevant material all necessary investigations into police conduct during the 2017 post-elections period.

- Establish an independent judicial commission of inquiry to examine the activities of the police in planning and 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 elections.
- 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 THE DONOR COORDINATION GROUP ON POLICE REFORM (PARTICULARLY THE UNITED STATES, UNITED KINGDOM AND SWEDEN)

- Condemn rights violations committed following the August 2017 elections 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 elections, and to ensure reparation, including adequate compensation, for the victims.

3. METHODOLOGY

This report is based on interviews conducted in 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 evidence 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, and 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 receive us and to talk. 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, received no response.

4. 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 killings 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 (ACHPR) to respect and protect the right to life and to ensure that no one is arbitrarily deprived of life¹ include preventing arbitrary killings by its police and other security forces, and ensuring that if it occurs the victims have access to 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 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

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.

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, arrest lawbreakers, and protect the 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 defence 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 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 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 behaviour, and where specific individuals are identified as

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.

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.

acting in an unlawful or violent manner, should focus on removing them 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 individualised identification (name or a unique number).¹²

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

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

¹² Policing Assemblies in Africa, Guideline 14.

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.

5. BACKGROUND

Other than the 2002 poll, every elections 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-elections 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%.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 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 elections: Mathare, Kibera, Kariobangi, Korogocho, Kawangware and Dandora.²¹ Police predicted where anger and protest at the elections result would erupt, based on low-income neighbourhoods 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

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

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/>

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/>

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/>

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>

²² 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>.

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

6. KILLINGS AND OTHER ABUSIVE POLICING IN NAIROBI FOLLOWING THE ELECTIONS

President Uhuru Kenyatta of the Jubilee party ran against opposition leader Raila Odinga and his National Super Alliance (NASA) coalition in the presidential race of the August 8 general elections. 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 elections observers and the opposition coalition, NASA began to report irregularities in the presidential elections. Forms used to tally results were slow to trickle into the national tally centre.

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 region and lasted for several days. On August 16, Odinga announced that NASA would challenge the results in court and on September 1, the Supreme Court ruled that the elections 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 elections day, security forces deployed around 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 expected attendant violence – from spreading beyond the slums. Witnesses told researchers that police wore green uniforms and riot gear: shields, helmets and 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' – the word police in Kenya use for an operation to restore order, more usually understood to be a punitive raid.²⁴

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

²⁴ Human Rights Watch interview, Nairobi, August 2017.

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, and 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 removed by police in Kibera,²⁵; 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.²⁶ 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-defence or defence 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.²⁷ 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.”²⁸

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 house-to-house operations in pursuit of youths whom they alleged to witnesses had thrown stones at them.²⁹ In one case, according to relatives of the victim, eight police officers stormed into the house of **Silas Owiti Lebo**,

²⁵ Human Rights Watch and Amnesty International Interview with human rights activist, Kibera, September 1, 2017; interview with two witnesses, Kibera, September 29, 2017.

²⁶ See press statements of Kenya Red Cross and MSF as well as Amnesty International interviews with health providers in Kibera, September 2, 2017

²⁷ See Chapter 4, above.

²⁸ Human Rights Watch interview, Mathare, August 23, 2017

²⁹ Ibid.

kicking the door open, and beating him and his friend with batons and gun butts.³⁰ 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.³¹ 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.”³² Lebo was admitted in the Intensive Care Unit at Kenyatta National Hospital but died on the morning of August 13.³³

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.³⁴

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.³⁵ An eyewitness said the police at Number 10 area were clearly overwhelmed by protestors and tried to “shoot their way out” of a crowd.³⁶ 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.³⁷

Paul Mungai, a charcoal seller, was shot by police as he was shuttering his shop in the face of violence between police and protestors, according to witnesses.³⁸ 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.³⁹ He was eventually transferred to Kenyatta Hospital where he died from internal bleeding two days later.⁴⁰

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.⁴¹

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.⁴² 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.”⁴³

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.⁴⁴

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

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

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

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

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

35 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.

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

37 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.

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

39 Amnesty International interview, Kawangware, September 2, 2017

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

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

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

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

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

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."⁴⁵ 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."⁴⁶

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 26.⁴⁷

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 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 lorry."⁴⁸

In total, four bodies were left on the road after several such exchanges, witnesses said, which police officers zipped into bags and loaded onto lorries⁴⁹. "You could tell they were dead, the way they threw them, it was not gentle!" said one woman, watching from an alley.⁵⁰

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.⁵¹ 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.⁵²

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 metres 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."

Eyewitnesses confirmed his account of police shooting unprovoked.⁵³ 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).⁵⁴ A 32-year-old

⁴⁵ Human Rights Watch phone interview with Shedy's father, Babadogo, August 23, 2017.

⁴⁶ Human Rights Watch interview with relative of Juma, Babadogo, August 24, 2017.

⁴⁷ Human Rights Watch interview, Kibera, August 29, 2017.

⁴⁸ Amnesty International interview, Kibera, September 3, 2017.

⁴⁹ Amnesty International interviews, Kibera, September 3, 2017.

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

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

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

⁵³ Amnesty International interviews, Kibera August 25 and September 3, 2017.

⁵⁴ Amnesty International interviews, Mathare, August 25, 2017.

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.”⁵⁵ 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 neighbouring 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.⁵⁶

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’”⁵⁷

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.⁵⁸ 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.

⁵⁵ Human Rights Watch interview with victim of police beating, Mathare 4A – C area, August 23, 2017.

⁵⁶ Amnesty International interview, August 30, 2017

⁵⁷ Amnesty International interview, Kibera, August 28, 2017

⁵⁸ Amnesty International interview, Kibera, August 28 and Facebook post of Neil Shea, August 29, 2017.

7. 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.⁵⁹

As the result was announced, protesters in “phase 4” set fire to businesses and began looting. They continued throughout the following day.⁶⁰ 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 killings and intentional use of force where it was not necessary.

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.”⁶¹

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.⁶² Police pursued protesters into the alleys, shooting at body height and aiming at fleeing youths.⁶³

“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.⁶⁴

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

⁵⁹ Amnesty International interviews, Dandora phase 4, August 31, 2017

⁶⁰ Human Rights Watch interview, Dandora, August 25, 2017

⁶¹ Human Rights Watch interview, Dandora, August 26, 2017

⁶² Amnesty International interview, August 31, 2017

⁶³ Amnesty International interviews, Dandora, August 31, 2017

⁶⁴ Amnesty International interview, Dandora, August 31, 2017

out of his home to see what was happening. A short while later, he came running home again and was shot and killed.⁶⁵

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.⁶⁶ Kevin's neighbours 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.⁶⁷

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, neighbourhood 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.⁶⁸

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.⁶⁹ Residents said that youths taunted police and threw rocks at them while police retaliated with water cannons, tear gas, truncheons and live ammunition.⁷⁰ 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-defence.

In the "stage two" area, GSU police clashed with protesters 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 16.⁷¹ Later that evening, at the "56 stage"⁷² area, police fired teargas cannisters into crowds as they advanced towards demonstrators. **Lilian Khavere**, a 40-year-old house-keeper who was eight months

⁶⁵ Human Rights Watch interview, Dandora, August 26, 2017

⁶⁶ Human Rights Watch interview, Dandora, August 26, 2017

⁶⁷ Amnesty International interview, Dandora, August 31, 2017

⁶⁸ Amnesty International interview, Dandora, August 31, 2017

⁶⁹ Amnesty International interviews, Kawangware, September 2, 2017 and Human Rights Watch interview, Kawangware, September 11, 2017

⁷⁰ Amnesty International interviews, Kawangware, September 2, 2017

⁷¹ Human Rights Watch interviews, Kawangware, September 8, 2017

⁷² "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".

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.⁷³

Festo Kivogo, a 27-year-old father of three, was shot dead while in the vicinity of violent protesters 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.⁷⁴ 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.⁷⁵

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.⁷⁶

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.⁷⁷

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.⁷⁸ **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.⁷⁹

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.⁸⁰

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.⁸¹

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.⁸² He died before he was seen by doctors, who told relatives he had suffered significant internal bleeding and organ damage.⁸³

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 and toxic effluent.⁸⁴

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.

⁷³ Human Rights Watch interview, Kawangware, September 11, 2017

⁷⁴ Amnesty International interviews, Kawangware, September 2, 2017

⁷⁵ Human Rights Watch interview, Kawangware, September 8, 2017

⁷⁶ Human Rights Watch interview, Kawangware, September 11, 2017

⁷⁷ Human Rights Watch interview, Kawangware, September 11, 2017

⁷⁸ Human Rights Watch interviews, Kawangware, September 8, 2017

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

⁸⁰ Human Rights Watch interview, Kawangware, September 8, 2017

⁸¹ Human Rights Watch interview with relative, Kawangware, September 11, 2017; interview with family friend, Kawangware, September 11, 2017.

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

⁸³ Human Rights Watch interview, Kawangware, September 8, 2017

⁸⁴ Amnesty International interviews, Kawangware, September 2, 2017

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 use of force and firearms 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 Bombolulu junction in the west to Olympic stage in the east. Police, parked at Olympic and along the southern bypass, deployed to Olympic and Bombolulu 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.⁸⁵ Some officers also fired into the crowds, killing at least four people. As mentioned above, witnesses described GSU officers loading the bodies of four people shot onto trucks.⁸⁶

During these clashes, which continued up to 1 a.m., police beat several people including a local businessman as described being beaten and verbally abused by police, losing many teeth in the process.⁸⁷ 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.⁸⁸

The following day protests continued with beatings and shootings of protestors. One, a university student, was shot in the leg near Olympic primary school as he crept to check if the coast was clear, he said.⁸⁹ Another, a carpenter, described police aiming at him from a distance as they battled protestors in his neighbourhood. He was shot in the ribs. At the time of interview, the bullet was still lodged in his body.⁹⁰

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 centre 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 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 unlawful 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, 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.⁹¹ 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

⁸⁵ Amnesty International interview, Kibera, August 29, 2017.

⁸⁶ Amnesty International interviews, Kibera, September 3, 2017.

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

⁸⁸ Human Rights Watch interviews, Kibera, August 29, 2017.

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

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

⁹¹ 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.

protestors in their homes. Violations by police were concentrated in opposition areas, while ruling party areas such as Kiamaiko and Mlango Kubwa remained calm.⁹²

Williams Waka 42, was shot dead on August 11, according to what witnesses told his relatives.⁹³ 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 11.⁹⁴ 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 beat them with batons and gun butts.⁹⁵ Victims said police shot at residents even where there was no evidence that their lives could have been in danger.⁹⁶

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.⁹⁷ 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.⁹⁸

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.⁹⁹ 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.¹⁰⁰

Seven other men were shot dead during the post-election period in Mathare. Further investigation is needed to determine this in each case and 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 when a researcher interviewed him, he still could not remember what had happened due to beatings on his head.¹⁰¹ 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.¹⁰²

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.¹⁰³ 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

⁹² Human Rights Watch interview with human rights activist, Mathare, August 23, 2017.

⁹³ Human Rights Watch interview with relative, Kawangware, August 8, 2017.

⁹⁴ Human Rights Watch joint interview with relatives to Bonface and David, Mathare – Bondeni area, August 24, 2017.

⁹⁵ Human Rights Watch interview multiple victims, Mathare 4A – C area, August 23, 2017; Human Rights Watch interview with multiple victims and community leaders, Mathare 4A – T area, August 24, 2017.

⁹⁶ Human Rights Watch interview with relative of victim, Mathare 4A, August 23, 2017; interview with spouse of victim, Mathare North, August 24, 2017.

⁹⁷ Human Rights Watch interview with a human rights activist, Mathare 4A – C area, August 23, 2017.

⁹⁸ Records at Nairobi City Mortuary, on file.

⁹⁹ Human Rights Watch interview with family member, Mathare North, August 24, 2017.

¹⁰⁰ Human Rights Watch interview with family member, Mathare North, August 24, 2017..

¹⁰¹ Human Rights Watch interview with victim of police beating, name withheld Mathare 4A – C area, August 23, 2017.

¹⁰² Human Rights watch interview with multiple victims of police beatings, Mathare 4A – C area and Mathare 4A – T area, August 24, 2017.

¹⁰³ Human Rights watch interview with relative of victim, Mathare 4A – C area, August 23, 2017.

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.¹⁰⁴

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.¹⁰⁵

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 neighbourhood against “Mungiki”, and was shot in the back.¹⁰⁶ 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.¹⁰⁷

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.¹⁰⁸

In Korogocho and Kariobangi, protests erupted following the announcement of the presidential elections 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.”¹⁰⁹ 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.¹¹⁰

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.”¹¹¹

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.¹¹²

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 August 12, police went down into the centre of the slum and talked to residents, even handing out water and biscuits.¹¹³

¹⁰⁴ Human Rights watch interview with relative of victim, Mathare 4A – C area, August 23, 2017.

¹⁰⁵ Human Rights Watch interview with human rights activist, Babadogo, August 23, 2017; interview with two witnesses to the killings, Babadogo, August 23, 2017.

¹⁰⁶ Ibid.

¹⁰⁷ Human Rights Watch interview with victim of shooting, Babadogo – Kasabuni area, August 23, 2017.

¹⁰⁸ Amnesty International interview with Chief Inspector, Korogocho Police Post, August 30, 2017

¹⁰⁹ Amnesty International interview with Chief Inspector, Korogocho Police Post, August 30, 2017

¹¹⁰ Ibid.

¹¹¹ Amnesty International interview, Kariobangi, August 31, 2017.

¹¹² Ibid.

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

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.¹¹⁴

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."¹¹⁵ 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.

¹¹⁴ Amnesty International interviews, Kariobangi, August 31, 2017.

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

8. SUPPRESSION OF THE 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 were prevented from doing their job during the election period.¹¹⁶ 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.¹¹⁷ 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.”¹¹⁸ Such experiences were common during the protests.¹¹⁹

Police obstructed and ejected from the area journalists who were covering protests in Kibera. KTN 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 “stop telling lies”.¹²⁰ In the end, seven human rights defenders from Nairobi who reported threats from police were relocated by human rights groups for their safety.¹²¹

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.¹²² KHRC was part of a coalition of organizations monitoring police behavior,

¹¹⁶ CPJ statement, see https://www.the-star.co.ke/news/2017/08/18/probe-harassment-of-journalists-after-poll-remove-safety-hoops-cpj_c1618950

¹¹⁷ Amnesty International interview, Kibera, August 28, 2017

¹¹⁸ Amnesty International interview, Mathare, August 27, 2017

¹¹⁹ See <https://www.hrw.org/report/2017/05/30/not-worth-risk/threats-free-expression-ahead-kenyas-2017-elections>

¹²⁰ Human Rights Watch interviews, Mathare, August 14, 2017

¹²¹ Amnesty International interview with HRD defender network, Nairobi, August 28, 2017

¹²² ‘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>

and AfriCOG is one of the foremost funders, supporters and trainers of 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.¹²³ The order also diverted other human rights organizations from the central work of documenting the post-election violence.

¹²³ '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>

9. 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 the time of writing, the police have not complied with this requirement to date.¹²⁴

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 and Coordination of National Government, 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.¹²⁵ 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."*¹²⁶

According to victims at the 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 the researchers information that it said is related to ongoing investigations. However, IPOA had a standing arrangement with the NGO Independent Medical Legal Unit (IMLU) during the 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 2012.¹²⁷ During those years, rogue police activity, especially by the Anti-Terror Police Unit (ATPU) has gone unchecked.¹²⁸ Donor support for the ATPU, and a wilful blindness to its violations, means

¹²⁴ Human Rights Watch, correspondence with IPOA, September 18, 2017

¹²⁵ '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

¹²⁶ 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/>.

¹²⁷ 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.

¹²⁸ 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>

that even as donor's 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.¹²⁹

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.¹³⁰ 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."¹³¹ 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.¹³² In practice though, most families are asked to pay.

Neither police nor IPOA have come to visit the families of many victims, especially relatives of those killed in Kawangware.¹³³ 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 were 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.¹³⁴ That such a thought is even possible is cause for grave concern.

¹²⁹ Amnesty International, 'A Drop in the Ocean: Police Reform in Kenya,' 2013, <https://www.amnesty.org/en/documents/afr32/001/2013/en/2013>

¹³⁰ 'Kenya Police not cooperating with watchdog over election deaths: sources.' Reuters, September, 6, 2017 <http://af.reuters.com/article/africaTech/idAFKCN1BH25Q-OZATP>

¹³¹ Human Rights Watch interview, Kawangware, September 8, 2017

¹³² The relevant law is the Criminal Procedure Code, 1931.

¹³³ Amnesty International and Human Rights Watch interviews, Kawangware September, 2017.

¹³⁴ Amnesty International interview, Nairobi, date withheld.