KENYA NATIONAL COMMISSION ON HUMAN RIGHTS

A HUMAN RIGHTS MONITORING REPORT ON THE 2017 REPEAT PRESIDENTIAL ELECTIONS
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THE REPEAT PRESIDENTIAL ELECTION

1.0 Introduction
The Kenya National Commission on Human Rights (KNCHR) is a Constitutional Commission established under the Article 59 of the Constitution of Kenya 2010, and operationalized by the KNCHR Act No. 14 of 2011 with the core mandate of protecting and promoting the observance of human rights in Kenya.

KNCHR embarked on monitoring the electoral process for the 2017 elections and began by drawing a strategy and a road map for the process. Thereafter, the KNCHR put in place the infrastructure including operationalizing the central coordination point dubbed the hub at the head office. This followed the development of tools and a digital documentation system was and the same was used to train monitors and staff on the application of the same.

KNCHR, noting that the party primaries as an important phase in the elections started off by monitoring the political party primaries as documented in a report titled “The Fallacious Vote: A Human Rights Account of the 2017 Political Party Primaries’.”

KNCHR continued to monitor the electoral campaigns and compiled the information gathered highlighting the human rights account of the polling process and the post elections scenarios that emerged. This was compiled in a preliminary report which was released on 9th October 2017 titled, Mirage at Dusk: A Human Rights Account of the 2017 General Elections.

With the courts nullifying the presidential election results and ordering for a repeat election, the KNCHR continued to monitor the campaigns, the polling process and the post poll outcome.

KNCHR notes that this report captures the last chapter (Chapter 6) of the preliminary report dubbed Mirage at Dusk and will be merged and published together.

READER DISCRETION
THE REPORT CONTAINS GRAPHIC IMAGES WHICH MAY BE DISTURBING

2 file:///C:/Users/User/Downloads/Documents/KNCHR%20PRESS%20STATEMENT-%20ELECTION%20REPORT%202017.pdf
1.1 KNCHR Repeat Presidential Election Monitoring Strategy
As a National Human Rights Institution (NHRI) mandated with monitoring the adherence of human rights standards in the country, the Kenya National Commission on Human Rights (KNCHR) embarked on monitoring the 26\textsuperscript{th} October 2017 repeat Presidential Election to ensure that the relevant human rights and electoral principles guided the rights of Kenyans in this exercise.

Notably, the Commission’s election monitoring system integrated various data collection and analysis tools that were tailor-made for the specific stages and phases of the electoral cycle. Data captured in the form of images, audios, videos and documents was received from the field monitors and uploaded onto the KNCHR Elections Monitoring Portal (KEMP) for verification, in-depth analysis and timely follow up on electoral malpractices and human rights incidences recorded.

For the repeat Presidential Election, the Commission deployed a team of 540 monitors comprising of one hundred and thirty-one (131) staff, one hundred and thirty-nine (139) full-time observers and two hundred and seventy (270) short term observers spread out in all the forty-seven (47) Counties. The team was able to capture and collect information in relation to one thousand, two hundred and twenty-seven (1,227) Form 34As and two hundred and twenty-nine (229) Form 34Bs in areas where repeat Presidential Election took place.

To augment the Commission’s election monitoring system, other strategies and platforms that were utilised included rolling out of a Toll-Free line 0800 720 627, an SMS Platform 22359, Social media; Twitter and Facebook, the Commission’s corporate website (www.knchr.org) and a dedicated election email address: elections2017@knchr.org

1.3 The Legislative, Political and Electoral Contexts Ahead of the Repeat Presidential Poll.
In its majority decision, the Supreme Court of Kenya (SCOK) declared that the 8\textsuperscript{th} August 2017 Presidential Election was not conducted in accordance with the principles laid down in the Constitution and the written law on elections in that it was, among other shortcomings, neither transparent nor verifiable. The Supreme Court of Kenya held that the election was fraught with illegalities and irregularities that rendered its results unverifiable and thus uncertain. The Court emphasised that elections were not only about numbers but rather a holistic process that consisted of various stages that had a bearing on the final electoral results.
In terms of the legislative context and in response to the Supreme Court’s *Majority Decision* annulling the Presidential Election results, Parliament (mostly through the Jubilee Party Members of Parliament relying on the reasoning of the *Minority Decision* of the Supreme Court) made efforts to enact amendments to the Elections Act and the Election Offences Act to address what it termed as the gaps in law that had emanated from the Supreme Court’s decision that had nullified the 8th August 2017 Presidential Election. A Joint Parliamentary Committee (JPC) drawn from both the Senate and the National Assembly was established to spearhead the process. However, unlike previous JPCs on matters elections that were bipartisan in composition, the constitution of this Committee did not have Members of Parliament from the NASA Coalition as the latter declined to participate in the amendment process.

On 28th September 2017, the NASA Coalition MPs stormed out of the Chambers after losing a vote on the fast-tracking of the Bill and did not return to the House when the Nine-Member Committee was formed as approved by the MPs from the Jubilee Party. The proposed Bill was to shorten the publication period for the Election Laws (Amendment) Bill 2017, the Election Offences (Amendment) Bill 2017 and two others, allowing their formal introduction in the legislative pipeline.

The Opposition MPs accused Jubilee MPs of changing the rules of the electoral process midway in order to help President Uhuru Kenyatta rig the repeat election. They voted 144 (*for*) and 53 (*against*), based on their parliamentary numerical strength. The MPs from the Opposition staged a walk-out from the Chambers. The NASA Coalition MPs blamed their Jubilee counterparts of trying to turn Parliamentary affairs into a Jubilee Party affair, and asserted that Parliament was being used to merely rubber-stamp the agenda of their Party as directed by State House. A number of key stakeholders and actors in the electoral process including the IEBC, the KNCHR, the Members of the Clergy, the EU Election Observer Mission as well as Members of the Diplomatic Community weighed in on the proposed changes to the Election and the Election Offences Laws by advising that the same were not necessary ahead of the scheduled repeat Presidential Election.

However, despite the stiff opposition from the NASA Coalition and despite the advice given on the matter by the stakeholders mentioned above, the Jubilee Party went ahead and enacted the controversial amendments into law. The amendments sought to make the following changes:
1. The qualification of the Chairperson of the IEBC; so as not to make the position be filled by a lawyer;

2. The Vice Chairperson to take up the duties of the Chairperson in his or her absence in that the other Commissioners would nominate one to act as the Chairperson;

3. A reduction of numbers for a quorum in the conduct of meetings by members was amended such that half of the existing members of the Commission and a quorum of not less than three (3) members were required. A unanimous decision would be reached by a majority present by voting;

4. Where there would be a discrepancy between the electronically transmitted and manually transmitted results, the manually transmitted result shall prevail;

5. Any failure to transmit or publish the election results in an electronic format shall not invalidate the results as announced and declared by the respective Presiding and Returning Officers at the polling stations and constituency tallying centres;

6. The IEBC shall facilitate public information and establish a mechanism for the live-streaming of results as announced at polling stations and the results so streamed shall be for the purposes of public information only and not the basis for a declaration of the final results by the Commission and

7. A Presiding or Returning Officer who in relation to the prescribed document knowingly fails to sign, complete document, submits an incomplete document or alters or falsifies a document commits an offence and shall be liable upon conviction to imprisonment of a term not exceeding five years.

President Uhuru Kenyatta did not assent to these laws when they were presented to him for signature, which prompted some Members of Parliament to argue that the same would automatically become law by dint of the self-implementation provision of the Constitution on the law-making process in accordance with Article 115 (6).

As for the political context and following the release of the Supreme Court’s final judgement on the 20th September 2017, the NASA Coalition stated that the judgement affirmed their fears that the IEBC, as it was then constituted, could not be relied upon to conduct a free, fair and credible election. Consequently, and as a precondition to participate in the repeat Presidential Election, the NASA Coalition called for election reforms —which they dubbed as the “irreducible minimums”—within the election management body to guarantee free and fair
The IEBC, in response to the demands made by the NASA Coalition, concurred with some of their proposals save for matters that included the disengagement of the ICT Company Safran & OT Morpho and the printing of ballots by the Al Ghurair Company; the dismissal of the staff alleged to have been complicit in committing the irregularities and illegalities that led to the nullification of the election results; the management of the electoral ICT framework by independent international experts and the provision of information of the stored procedures of database plus procedure bodies.  

However, despite failing to give in to NASA’s demands on the resignation of IEBC personnel alleged to have bungled the August 8th Presidential Election, the IEBC Legal Officer went on retirement on 22nd September 2017. On the flip side, the IEBC CEO chose to proceed on temporary leave on 20th October 2017, which was a few days before the repeat Presidential Election of 26th October 2017.

Holding that most of their “irreducible minimums” had not been met, Hon. Raila Odinga, the NASA Presidential candidate and his running mate Hon. Kalonzo Musyoka withdrew their Candidature on 10th October 2017 from the repeat Presidential Election that was slated for the 26th October 2017 by way of a letter addressed to the IEBC. Through this withdrawal, the NASA Coalition expected that the IEBC would cancel the scheduled repeat Presidential Election and conduct fresh nominations within ninety (90) days in compliance with section 13 (1) of the Elections Act. However, contrary to the foregoing expectation and in response to NASA’s withdrawal of candidature, the IEBC noted that the NASA Candidate had not legally withdrawn. The IEBC held that if NASA was not interested in participating in the repeat Presidential Election, then it would have tendered its withdrawal using the prescribed Form 24A via a Notice of Withdrawal of Candidature after Nominations in compliance with Regulation 52 of the Election (General) Regulations. In view of this, the IEBC decided that it would not remove the name of the NASA candidate from the ballot papers as he had not validly withdrawn.

The IEBC, in response to the electoral context that had been triggered following the decision by the Supreme Court to annul the August 8th 2017 Presidential Election due to various irregularities and illegalities, came out and stated how it had dealt with or how it planned to address the various issues that had been raised by the Supreme Court. In safeguarding the right...
to vote and be voted for, the compliance and adherence to the provisions of the law at every stage of the electoral cycle is paramount in the determination of the validity of an elective position. Therefore, pursuant to the implementation of the Supreme Court Orders, the IEBC initially issued a Gazette Notice stating that the fresh Presidential Election would be held on 17th October 2017. However, the detailed judgement issued on the 20th September 2017 raised certain expectations on the part of the IEBC that saw the Chairperson postpone the election from 17th October to the 26th October 2017. The IEBC Chairperson cited the deployment of technology as one of the key issues which needed fixing as it was expected to have a big effect on the repeat Presidential Election.

In view of the foregoing determination, the Chairperson of the IEBC constituted a Project Committee which was expected to spearhead the conduct of the fresh Presidential Election. Through press statements dated 11th October 2017 and 25th October 2017 respectively, the IEBC also highlighted the various changes it had put in place ahead of the repeat Presidential Election. For instance, amongst the array of issues that had been raised by the Supreme Court during its ruling of the August 8th, 2017 Presidential Election, results transmission came up as key area that needed fixing. There were concerns that the IEBC had failed to electronically transmit results from the polling stations to the national tallying center. This was in line with the provisions of the Elections Act that provided for the electronic transmission of the Presidential Election results from the Polling Station to the Constituency Tallying Center and the National Tallying Center in the prescribed form. The IEBC made available Safaricom sim cards for all the KIEMS kits to boost network coverage for better transmission of results. The IEBC also reported modifications of the Results Transmission System (RTS) to have a mandatory transmission of both the text and image result from the Polling Stations to the RTS Servers. Display of provisional results also showed Polling Stations where results were streaming from.

In instances where the Results Transmission failed at the Polling Station, the Presiding Officer (PO), accompanied by agents, was required to move to the nearest point from the Polling Station that had good network and transmit accordingly. Where KIEMS Kit failed completely,

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5 Gazette Notice No. 8751 of 2017, Vol. CXIX–No. 130, published on 5th September, 2017 by the IEBC Chairperson
7 Paragraph 269 and 272 of the supreme court observations
8 Section 39(1c) (a) of The Elections Act, 2011
the PO was to inform the Returning Officer (RO) of the failure of the Kit and ask for replacement of the KIEMS. In the event that the KIEMS Kit could not be repaired or replaced, the PO was to document the incident in the Polling Station Diary (PSD), signed by all the agents. The PO was then expected to proceed to deliver the hard copy of Form 34A and PSD to the RO.

However, despite putting the measures above in place, the IEBC faced some serious challenges ahead of the 26th October 2017 repeat Presidential Election. For instance, the IEBC experienced challenges of security of its staff in some Counties where they encountered hostile communities that made it impossible for the IEBC to successfully conduct training, distribute election material and access the gazetted Polling Stations. The IEBC stated that in some Counties, its Staff had been hijacked and tortured while others had their homes broken into and looted.\(^9\)

Regulation 64 (1) of the Elections (General) regulations makes provision for postponement of elections within a Constituency, ward for a period considered necessary if there was sufficient reason that there would be serious breach of peace or natural disasters that make it impossible to carry out elections. Further the Commission is empowered to declare results in absence of the votes of the affected areas if it satisfied that the votes yet to be received from the affected Polling Stations will not affect the results of the elections. It was based on the foregoing regulation that the IEBC opted not to conduct elections in 27 Constituencies\(^10\) which affected 3,635 Polling Stations which had 1,770,475 voters as a result of the hostility and violence they encountered. The IEBC declared the final result of the 26th October 2017 repeat Presidential Election without the votes from these affected areas. In places where the election did take place, they were mostly characterised by low voter turnout. The IEBC declared President Uhuru the winner of 26th October 2017 repeat Presidential Election with 7,483,895 votes which was 98.2% of the valid votes cast.\(^11\)

1.4 Judicial Processes and Interventions Ahead of the Repeat Presidential Election

In exercise of the judicial power to determine election disputes emanating from the 8th August 2017 General Election, the Judiciary continued to play its role in the determination of the

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\(^9\) The Chairperson Wafula Chebukati in a statement “Chairman’s Address on the Status of the Fresh Presidential Election” on 27th October 2017.


\(^11\) [https://www.standardmedia.co.ke/article/2001258851/uhuru-kenyatta-wins-repeat-election-with-7-4-million-votes](https://www.standardmedia.co.ke/article/2001258851/uhuru-kenyatta-wins-repeat-election-with-7-4-million-votes) visited on 30th November 2017
validity of various elective positions. The Chief Justice appointed select Judges and Magistrates across various Court Stations in Kenya to preside over petitions arising from the other five elective positions namely the Governor, Senator, Member of Parliament, Women Representative and the Member of County Assembly seats via a gazette notice on 5th October 2017.

As part of building clarity on what was required of the National Returning Officer in handling the Presidential Election results, the IEBC Chairperson sought clarification from the Supreme Court regarding his role in the tallying and verification of the results of the Presidential Election results. The Chairperson contended that there was uncertainty emanating from the determination of the Lower Courts regarding the role of the Chairperson of the IEBC as the National Returning Officer who was to verify the results in accordance with the earlier determination in the Maina Kiai Case. The Supreme Court clarified the position that the role of the Chairperson was limited to aggregating the results from the 291 Constituencies as captured in the constituency result forms 34B without making any amendments to the same.12

At the time the IEBC Chairperson was seeking this clarification, there were only two (2) candidates who were slated to participate in the 26th October 2017 Presidential Election. On 11th October 2017, this changed after the High Court issued a ruling concerning the participation of other Presidential candidates. The IEBC was ordered to include the Third Way Alliance candidate who had petitioned the High Court claiming that the meaning of fresh election was to the effect that other Presidential candidates were also entitled to participate in the said election.13 The Learned Judge found in favour of the Petitioner that there was no legal basis to justify the IEBC’s decision to exclude the candidate from contesting the fresh Presidential Election. The Court went further to issue orders by declaring that the rights of the candidate under Articles 27, 38, and 140(3) of the Constitution were and continued to be infringed, violated and/or denied by the IEBC in failing to include the candidate in the fresh Presidential Election slated for the 26th October 2017. The Court also ordered the IEBC to immediately issue a fresh Gazette Notice or amend the previous one to include the candidate for the Third Way Alliance.

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12 Petition 1 of 2017 in Raila Amolo Odinga & another v Independent Electoral and Boundaries Commission & 2 others [2017] eKLR
13 Constitutional Petition No. 471 of 2017 between Dr. Ekuru Aukot vs. IEBC and 3 Others
In compliance with the Court Orders, the IEBC issued a Gazette Notice on the 13th October 2017 to include five (5) candidates in the fresh Presidential Election. One Candidate was excluded after a Commercial Court had adjudged him bankrupt, which made him not eligible to participate in the said election. However, on 17th October 2017 through a media brief, Commissioner Abdi Guliye of the IEBC stated that the candidate would be included in the elections after he had appealed to the IEBC against the decision. This followed after the High Court set aside the bankruptcy order pending the determination of the proceedings on the 23rd October 2017. This allowed the candidate to continue in his quest for the Presidential position.

Another matter that came before the Courts for adjudication arose out the action taken by the IEBC when it appointed Constituency Returning Officers and their deputies on 9th October 2017 through a Gazette Notice. This decision was challenged in the High Court where it was determined that the IEBC was under a constitutional and statutory obligation, pursuant to Regulation 3(2) of the Elections (General) Regulations, 2012 to provide the list of persons proposed for appointment to political parties and independent candidates at least fourteen (14) days prior to the proposed date of appointment to enable them make any representations. The IEBC did not provide the list of the proposed Constituency Returning Officers for appointment to political parties and independent candidates at least fourteen days prior to the proposed date of appointment to enable them make any recommendations. Through the foregoing omission, the High Court held that the IEBC had violated Regulation 3(2) of the said Regulations as read with Articles 38 and 81 of the Constitution. The Learned Judge however declined to cancel the fresh Presidential Elections since no prayers were sought on the same.

It was based on the above decision that the IEBC appealed against the decision before a three judge bench who set aside the decision of the High Court and pointed out that it had jurisdiction to grant orders in the prevailing circumstances to forestall a constitutional crisis. The impugned decision of the High Court had the potential of rendering the Presidential Election irregular even before it was held. The court went further to note that for the avoidance of doubt the

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14 Gazette notice no 10152 of Vol. CXIX—No. 153 published on 13th October 2017
16 Kenya Gazette Notice 9977 Vol. CXIX, dated the 12th October 2017 titled Appointment of Constituency and Deputy Constituency Returning Officers.
17 Republic v Independent Electoral and Boundaries Commission Ex Parte Khelef Khalifa & another [2017] eKLR
orders meant that the constitutional and statutory functions of the Returning Officers and their Deputies relating to the Presidential Election slated for October 26th were not invalid. The Commission noted other key happenings during this period that touched on the Judiciary, notably the shooting incident involving the Deputy CJ’s driver on 24th October 2017 and the lack of quorum by the Supreme Court Judges to preside over a case that sought to block the 26th October 2017 Presidential Election. The place and space of judicial processes during electioneering period cannot be undermined and thus further safeguards must be employed to ensure their independence is guaranteed.

2.0 KNCHR’s Findings on Violations Arising out of the Repeat Presidential Election

2.1 Pre-Election Campaigns
During the fresh Presidential Election period, the Commission continued to monitor the adherence to human rights. This was done through focusing on the following issues; violence, misuse of public resources, incitement, conduct of security agents i.e. positive and negative, appropriateness/ accessibility of meeting venues, use of children and displacement. Below is a description of findings under the areas of focus:

2.2 Electoral Violence
Any electoral cycle marred with violence, negatively affects the full spectrum of human rights enjoyment to include the right to vote and be voted for. Violence manifests itself in different forms to include physical assault, killings and destruction of property. During the fresh Presidential election cycle, incidents of excessive use of force by police officers, directed to civilians were evident. A number of civilians were shot and hospitalized with various forms of injuries. The KNCHR also documented cases where protesters broke into the business premises; looted and destroyed goods. In other instances, civilians also assaulted and injured security officers and IEBC officials and blockaded roads.

During the fresh Presidential Election, the KNCHR recorded incidents of violence in various Counties such as; Nairobi City, Kisumu, Kitui, Bungoma, Busia, Kakamega, Mandera, Meru, Migori and Siaya Counties. The recorded cases were as a result of intolerance between the two main political factions, i.e. the National Super Alliance (NASA) Coalition and the Jubilee Party, while others emanated from anti-IEBC demonstrations. Unlike the campaigns period

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leading to the August 8th 2017 General Election where the Commission documented eight (8) various forms of violence, during the repeat Presidential Election campaigns, the KNCHR documented two main forms of violence; those involving the youth, and those directed towards political leaders. The incidents were witnessed during political rallies and social functions that included funerals, while others were intertwined with demonstrations under the “no reforms no elections” agenda.

KNCHR documented twenty-five (25) new cases of deaths in the period between 1st September 2017 and 25th October 2017. Twenty (20) of these cases were tagged as unknown with two (2) bodies being recovered from Lake Victoria. There were over one hundred (100) injuries treated and discharged at various hospitals in Kisumu and Nairobi City Counties. Eleven (11) cases of police injuries were also recorded. The cases were recorded during the anti-IEBC demonstrations. The Commission recorded statements from the victims and other figures were obtained expressly from the hospital. The forms of injuries included soft tissue injuries, deep cuts on body parts to include the limbs, groin, legs and back among others. KNCHR recorded cases where the Police Officers sustained various injuries on the neck, legs, thighs, eyes and shoulder among others.

(a) Case of Electoral Violence at Funeral and Burial Functions

i. Matthew Austine Wafula Wamunyinyi funeral:

On 16th September 2017, the NASA coalition led by Hon. Raila Odinga, Kalonzo Musyoka, Musalia Mudavadi and Moses Wetangula attended the burial of the late Matthew Austin Wafula Wamunyinyi, father to the Member of Parliament for Kanduyi Constituency, Hon. Wafula Wamunyinyi. The function was held at Buema in Kanduyi constituency. Those in attendance included Governor Wycliffe Wangamati, Hon. Chris Wamalwa, James Orengo, Shakir Shabbir, Bwifoli Wakoli, Didmus Barasa, Moses Mabonga and Eseli Simiyu among others.

The fracas started when the Member of the National Assembly for Kimilili Constituency Hon. Didmus Baraza, who is aligned to the Jubilee Political Party took to the podium to address the attendees. The gathering started chanting the NASA slogan, throwing stones and water bottles demanding that Hon. Didmus leaves the event immediately. The burial ceremony was stopped for approximately twenty minutes as Hon. Didmus Baraza was escorted out of the venue by security officers. Some of the NASA supporters had also blocked the MP for Bumula Constituency Hon. Moses
Mabonga from accessing the venue due to the remarks he made in a bid to support President Uhuru Kenyatta’s re-election on 8th August 2017.

Mourners at the Burial of Matthew Wamunyinyi at Bwema Ground protested when pro-Jubilee MP. Hon. Didmus Baraza was called to address them. (Photo courtesy: KNCHR)

ii. Dr. Cleophas Wekesa Kubasu burial in Kanduyi Constituency:

On 4th October 2017, the former Kanduyi Constituency Member of Parliament, Hon. Alfred Khangati who was a gubernatorial candidate during the 8th August 2017 General Election on ODM party ticket for Bungoma County attended the burial of Dr. Kubasu in Machimeru village. During his address to mourners, he stated that “Bungoma residents should support the Jubilee Party and re-election of President Uhuru Kenyatta and his Deputy William Ruto”.

Hon. Khangati further said that “Nitapigana na Wetangula kisiasa mpaka mmoja wetu akufe ndio tujue ndume ya Bungoma ni wakina nani.” Loosely translation as “…I will fight politically with Wetangula, until one of us die, so that we may know the main man of Bungoma…?” These remarks disrupted the burial programme as youth allied to NASA chanted “…Jubilee tawee…” meaning “no to Jubilee”. Hon. Khangati was then escorted away from the venue by his security officers. The Commission learnt that Hon. Khangati was heckled by NASA mourners because he had defected and joined Jubilee Party, and on a previous occasion he was officially received by the Deputy President at a function held at Khangati’s home in Kanduyi Constituency.
**Electoral Violence Involving the Youth:**
The Commission documented instances where the groups of youths disrupted meetings under the guise of flushing out individuals perceived to be buying national identification cards in the opposition strongholds. The youths were also involved in running battles with the police during the anti-IEBC demonstrations. Such instances included the following:

i. **Attacks on a Religious Meeting Gathering in Kisumu County**

On 12th September 2017 the *Nyanza Women of Faith Network* had organized a faith based meeting at Jumuiya Hotel in Kisumu County. According to organizers, the meeting brought together about a hundred and sixty (160) participants from the Nyanza region to discuss the past post-election incidents and strategize on how to avoid the recurrence of the same during the 2017 General Election.

The event details were circulated on social media which the youths construed to mean that Jubilee women in the event were buying IDs from participants to reduce the number of those likely to vote in the region to give advantage to the Jubilee Party. The youths allegedly allied to NASA stormed the Hotel and threatened to burn it down. They also demanded the Hotel management to direct them to the place where the alleged IDs buying was occurring. Upon accessing the meeting room where proceedings were going on, they proceeded to harass and forcefully evicted the participants.

The police officers were called in. They shot in the air and lobbed tear gas canisters to disperse the rowdy youths. Efforts by the politicians present to calm the rowdy youths did not work. Instead, the youths proceeded to disrupt the meeting. The rowdy youths also took advantage of the situation and looted and destroyed the Hotel’s property. They destroyed furniture and smashed windows. In the ensuing melee, some participants were injured. They were later taken to hospital. Others were rescued by the police and taken to Kisumu Central Police Station for safety.
Jumuiya Hotel in Kisumu on 12th September 2017. The women participants in the meeting had their belongings stolen in addition to being physically harassed – (Photo courtesy - Capital FM)

ii. Anti - IEBC Demonstrations

Article 37 of the Constitution of Kenya 2010 guarantees that every person has the right, peaceably and unarmed, to assemble, to demonstrate, to picket, and to present petitions to public authorities. Following the calls by leaders of the National Super Alliance (NASA) for reforms at the Independent Electoral and Boundaries Commission (IEBC) ahead of the repeat Presidential Election in October 2017, some NASA supporters heeded to the calls and staged a series of demonstrations in major towns in the following Counties: Nairobi City County, Kakamega, Kisumu, Siaya, Migori and Homa Bay. Some of the demonstrations turned violent and led to deaths, injuries, destruction of property and restrictions in movement and public transport.

For instance, in Kisumu County, protests were witnessed in Kondele, Manyatta, the Central Business District and Nyalenda areas and daily activities in the area were paralyzed. During the fracas, besides the civilians being injured, some police officers were also injured. KNCHR confirmed five (5) deaths allegedly resulting from use of excessive force by police during the protests which took place on October 2nd, 5th, 10th, 11th, 12th 13th and 16th October 2017. These breakdown of the bereavements were as follows; one (1) in Kisumu and four (4) in Siaya County. KNCHR documented cases of gunshot wounds, soft tissue injuries and fractures.
A two-year old child was shot and had to undergo surgery at JOOTRH to remove the bullet lodged in her shoulder (See the X-ray image on the right). (Photo courtesy: KNCHR)
A young man who was fatally shot in the neck on October 16th October, 2017 (Photo courtesy: KNCHR)

The Commission also documented cases where the IEBC officials were physically assaulted by youths in various parts of the country. For instance, in Kisumu County, while undertaking training in preparation for the repeat Presidential Elections, IEBC officials and police officers were injured during the NASA protests. The KNCHR recorded eleven (11) cases of police officers’ injuries in Kisumu and Homa Bay Counties. In Kisumu County, two (2) police vehicles had their windscreens destroyed by the demonstrators and one (1) in Homabay County.

Below is sample illustration of the anti-IEBC demonstrations documented by the KNCHR:
a) Demonstrations in Kisumu Central

On 11th October 2017, the Kisumu Governor, Hon. Anyang’ Nyongo led NASA supporters in the anti-IEBC demonstrations. The demonstrators barricaded the Kakamega-Kisumu road at Kondele. They also lit bonfires on the highway paralyzing movement and transportation to and out of Kisumu town for members of the public, goods and services. On that day, the same scenario was witnessed at Kachok roundabout, near the Kisumu Boys High School roundabout where roads were barricaded with stones and logs causing huge traffic snarl ups. The demonstrators later proceeded to the Kisumu CBD and finally to the IEBC County Offices where Governor Nyong’o, together with other leaders, addressed the public and delivered their irreducible minimums to the electoral body.

The Governor of Kisumu, Hon. Peter Anyang Nyong’o while addressing the crowd, stated that following the withdrawal of NASA’s Presidential candidate from the October 26th, 2017 repeat polls, election will not take place in Kisumu County as scheduled by the IEBC. He further added that NASA would, ‘not participate in an election whose outcome is already predetermined to favor the Jubilee candidate.’

After addressing the gathering at the IEBC offices, the Governor led the procession back towards Kondele. However, upon reaching at Kondele Police Station precincts, the protesters started pelting stones towards the Station an action that forced the police to come out in a bid to restore order. In the process, the police hurled tear gas canisters and fired live bullets in the air to disperse the protesters. This led to running battles between the police and the demonstrators for close to three (3) hours. During the commotion, three (3) people sustained gunshot wounds.
Kisumu Governor, Prof. Anyang Nyongo addresses the “no reforms no elections” demonstration at Kondele on 11th October 2017 (PHOTO courtesy: KNCHR)

b) Demonstrations in Meru County, Laare town

On 17th October 2017, the NASA campaign dubbed "no reforms no elections" scheduled to take place in Meru County Igembe Constituency Laare town was halted following protests by rowdy youth in the area. The Jubilee and NASA supporters clashed ahead of the rally which was set to be addressed by Hon. Raila Odinga. The youth barricaded roads using stones and burning tires. At some point the supporters of both Jubilee and NASA engaged in physical fights leading to the intervention by the police who used teargas to disperse them. The podium that was set to be used by the NASA leaders was dismantled and destroyed by the rowdy Jubilee supporters while chanting “Meru is a Jubilee zone”.

The NASA supporters alleged that the Meru Jubilee leaders financed and incited the youths to disrupt the scheduled meeting. KNCHR did not record any injuries resulting from the occurrence, although the skirmishes led to the closure of most businesses in Meru Town as owners’ feared incidences of looting and destruction.
Demonstrations in Laare town, Meru County, that led to skirmishes by opposing political groups. This was before a planned visit of NASA leaders in Meru County on "No reforms no elections" campaign (Photo Courtesy: KNCHR)

c) Demonstrations in Siaya County, Ng’iya market

On 25\textsuperscript{th} October 2017, KNCHR documented anti-IEBC demonstrations in Siaya County, Alego Constituency, Ngiya Market. This involved a group of youths and NASA supporters going around the market chanting “Raila” and “No October elections”. The group encountered police officers from Ng’iya Police Station who hurled teargas to disperse them. As the youths ran away, one of them sustained injury from an iron sheet cut and was rushed to Ng’iya Health Centre, where he was treated and discharged.
A young man who was injured during anti-IEBC administrations at Ng’iya market, Siaya County (Photo courtesy: KNCHR)

The following are deaths and injuries recorded by KNCHR.

_Disclaimer: Where victims are known, the names have been withheld for confidentiality and security purposes._

### 2.2.1 Log of Death Cases

<table>
<thead>
<tr>
<th>No.</th>
<th>Location of Incident</th>
<th>Alleged Perpetrator</th>
<th>Complaint</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kisumu County</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>Kisumu</td>
<td>Unknown</td>
<td>According to the hospital records, between 8th August 2017 and 20th August 2017, sixteen (16) unknown bodies were taken to Jaramogi Oginga Odinga Teaching and Referral Hospital (JOOTRH) mortuary by the police. Two of the bodies had been collected from Lake Victoria.</td>
</tr>
<tr>
<td></td>
<td>Location</td>
<td>Type</td>
<td>Description</td>
</tr>
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<td>---</td>
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<td>------------</td>
<td>-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>2</td>
<td>Kisumu</td>
<td>Unknown</td>
<td>According to the hospital records, between 22&lt;sup&gt;nd&lt;/sup&gt; August 2017 and 25&lt;sup&gt;th&lt;/sup&gt; August 2017, four (4) unknown bodies were taken to JOOTRH mortuary by the police. The police allege that the deaths were as a result of mob justice.</td>
</tr>
<tr>
<td>3</td>
<td>Kondele</td>
<td>Police</td>
<td>On 16&lt;sup&gt;th&lt;/sup&gt; October 2017, a Form Four student at Vihiga Boys High School who had been sent away from school due to fees balance was shot by the police. The incident occurred as he ventured out of the house to buy ice cream. He died on the spot and his body was taken to JOOTRH Mortuary. Upon confirming his death, it’s alleged that the police officer who shot him used a knife to cut the deceased's neck to remove the bullets.</td>
</tr>
<tr>
<td>4</td>
<td>Nyalenda</td>
<td>Police</td>
<td>On 16&lt;sup&gt;th&lt;/sup&gt; October 2017, the police shot a young man who was at his welding shop. The victim died on the spot. His body was taken to JOOTRH mortuary.</td>
</tr>
<tr>
<td>5</td>
<td>Nyamasaria</td>
<td>Police</td>
<td>On 22&lt;sup&gt;nd&lt;/sup&gt; October 2017 at around 7pm. A 23-year-old male victim succumbed to his injury after being hit by the police with a blunt object on the head close to the left eye. The police had caught up with him while the former was going to help his sister carry her shopping into the house. His body was taken to JOORTH mortuary by police from Kondele. He was a student from Maseno University but had deferred his studies due to lack of fees. At the time of his death was a student at Imperial Driving School.</td>
</tr>
<tr>
<td>6</td>
<td>Kisumu Central</td>
<td>Police</td>
<td>On 25&lt;sup&gt;th&lt;/sup&gt; October 2017 at around 8pm; a 35 years old male victim died after allegedly being hit by the police using a blunt object on the neck, hand and spinal cord. His body was taken to the JOOTRH mortuary</td>
</tr>
</tbody>
</table>

**Nairobi City County**

| 7 | Bridge connecting Mathare North and Huruma | Police | On 25<sup>th</sup> October 2017, at around 10:30pm, a male victim was allegedly shot by the police while on his way home from church fellowship. The body was collected and taken to City Mortuary. |
2.2.2 Injuries
In the days leading to the repeat Presidential Election, demonstrations were experienced in several areas perceived to be NASA strongholds. The demonstrations were characterized by violent clashes between police and protesters that led to several persons being injured. The police used live ammunition, tear gas and water cannons to keep the rowdy demonstrators at bay.

Protesters used car tyres to light bonfires, blocked roads and destroyed various private property. The protesters accused police for having escalated the situation in the affected areas, citing the use of excess force including the beating of commuters and shooting at demonstrators. The KNCHR documented cases where victims sustained soft tissue injuries and fractures from gunshot wounds and blunt objects.

A victim of political demonstrations recuperating at JOOTRH, Kisumu County.
(Photo courtesy: KNCHR)

2.2.3 Log of Injuries Resulting from Anti-IEBC Demonstrations
The table below illustrates a sample of incidents of injuries which resulted from the anti-IEBC demonstrations and which were documented by the KNCHR:

<table>
<thead>
<tr>
<th>No.</th>
<th>Location of Incident</th>
<th>Alleged Perpetrator</th>
<th>Complaint</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Kisumu County</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
1. Kisumu central Business District Police On various dates of: October 2\textsuperscript{nd}, 5\textsuperscript{th}, 10\textsuperscript{th}, 11\textsuperscript{th}, 12\textsuperscript{th}, 13\textsuperscript{th} and 16\textsuperscript{th} October 2017, ninety-one (91) victims were treated and released at JOOTRH. Out of the ninety (91) cases, twelve (12) had gunshot wounds while the rest had various degrees of injuries due to blunt force trauma.

2. Kisumu central Business District Police On 16\textsuperscript{th} October 2017, according to records obtained by KNCHR from Nightingale Hospital in Kondele within Kisumu County, the facility received five (5) victims for emergency treatment and later referred to JOOTRH for specialized treatment. Out of the five victims, one (1) suffered injuries from a rubber bullet allegedly shot by the police while others were injuries inflicted by use of police batons.

3. Nyalenda Police On 17\textsuperscript{th} October, 2017 at around 3:30pm, the police shot and injured a two-year-old girl on the neck while she was playing outside her home with friends in Nyamasaria area. The incident happened during anti-IEBC demos in the area. By the time of recording the statement the victim was recuperating at JOOTRH.

4. Chemelil-Kopere Shopping Centre Administration Police On 26th October 2017 at around noon, a number of officers dragged a male victim from his house, took him to the road and beat him senselessly. He sustained injuries on both hands, thighs and the back. The incident happened on allegation that the victim had barricaded the road. By the time of
<table>
<thead>
<tr>
<th>No.</th>
<th>Location</th>
<th>Field</th>
<th>Incident Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.</td>
<td>Mamboleo Police</td>
<td></td>
<td>On 25th October 2017, a female civilian was shot on the head as she went out shopping at Mamboleo Centre. The police also stepped on her thighs and stomach. She was picked by an ambulance which took her to JOOTRH. By the time of documenting the incident, the victim was hospitalized at JOOTRH.</td>
</tr>
<tr>
<td>6.</td>
<td>Arina Police</td>
<td></td>
<td>On 25th October 2017 at around 2p.m, a 24-year-old male civilian was passing by Manyatta when he heard gunshots but did not realise that he had been shot until he felt pain on the right side of his stomach. A motorcycle rider took him to JOOTRH. By the time of recording the statement, the victim was hospitalized at JOOTRH.</td>
</tr>
<tr>
<td>7.</td>
<td>Chemelil-Kopere Shopping Centre Administration Police</td>
<td></td>
<td>On 26th October 2017 during the Presidential Elections day, at around 10:30 am, police officers picked a male victim from his home and forcefully made him remove the stones that had barricaded the road. In the process the officers assaulted the victim using batons and he sustained injuries on his hands, back and thighs. By the time the victim recorded the statement with KNCHR he had not gone to the hospital.</td>
</tr>
<tr>
<td>8.</td>
<td>Kondele Police</td>
<td></td>
<td>On the evening of 25th October 2017, protesters were throwing stones at the police and in the process a 23-year-old male was hit on his buttock. He fell down and injured his knee and elbow. His leg was</td>
</tr>
</tbody>
</table>
numb. Three of his friends assisted and took him to Nightingale Hospital in Kondele. By the time of recording the statement with the KNCHR, the victim was still hospitalized.

2.2.4 Assault on Police Officers by civilians

The KNCHR held interviews with the security agents within Kisumu County to establish the injuries suffered by eleven (11) law enforcement officers. From the interviews, KNCHR was able to document incidents of police officers that were assaulted by the civilian as documented below:

1. On 2\textsuperscript{nd} October, 2017- three (3) police officers were injured at Kondele. Two sustained injuries after stones were thrown at them by protesters. One (1) sustained injuries to the neck and other injuries to the left leg. During the skirmishes the third officer sustained injuries to his left thigh after a tear gas canister exploded on his leg. They were all treated and discharged at JOOTRH.

2. On 5\textsuperscript{th} October, 2017- at Kondele, one (1) police officer sustained deep cut wounds around the left eye. He was treated at St. Consolata hospital and later referred to JOOTRH for X-ray. The windscreen of a car Reg. No. GK A63T was also stoned and destroyed.

3. On 11\textsuperscript{th} October, 2017- at Kondele, one (1) police officer of the rank of an Inspector sustained injuries to his left eyebrow after a bottle was thrown at him by a protester. The police driver’s shoulder was injured after a stone was thrown at him. Both were treated and discharged at JOOTRH. A car with registration number GK 294 R was stoned.

4. On 13\textsuperscript{th} October, 2017- at Nyalenda, one (1) police officer sustained injuries on his right hand and upper eye after a protester threw a stone at him. He was treated and discharged at JOOTRH.

5. On 14\textsuperscript{th} October, 2017- at Nyalenda, one (1) AP officer sustained injuries on his left hand and left leg after a stone was thrown at him. Furthermore, one (1) OCS sustained injuries on his left hand. Both were treated and discharged at JOOTRH. It is alleged that the protestors had intended to break into Nyalenda Police Post and were restrained by the police.
6. On 11th October 2017, three (3) Police Officers at Kisumu town (two (2) from AP unit and one (1) from Kenya Prisons Service) were injured after stones were hurled at them by protesters. Two of the officers suffered serious head injuries.

7. On 13th October 2017 at Kisumu town, one (1) Police Officer suffered injuries and a police gun was burnt down by protesters. A police vehicle was pelted with stones leading to the shuttering of its windscreen.

2.2.5 Sexual and Gender Based Violence in the 2017 Election

In the 2017 General Election the Commission documented cases of sexual and gender based violence that occurred as a result of the civil unrest and political protest following the 8th August General election and the 26th October fresh Presidential Election. The violence was against both women and men in Nairobi City, Migori and Kisumu County. Specifically, Uthiru, Kibra, Dandora, Mathare, Ngomongo, Kariobangi, Kawangware, Baba Dogo, Apida, Suna East, Suna West, Nyalenda, and Mowlem. The alleged perpetrators being both the civilian and police. Within Nairobi City County, Dandora recorded the highest number of cases. From the statements only two (2) victims reported the matter to the police. Due to the magnitude of such violations, the Commission has embarked on a robust investigations exercise in various regions across the country and shall be launching a separate report on its findings.

2.3 Fair Electoral Campaign Opportunities and Practices

Electoral cycles in Kenya are usually a hotly contested affair. The scramble for the available positions usually leads to the contestants using whatever means within their power to ensure that they emerge victorious. As much as the fair electoral competition is welcome as a sign of mature democracy, the affinity for aspirants to engage in illegal and underhand tactics to gain an upper hand in the electoral process must not be tolerated. The repeat Presidential Election narrowed the electoral environment to only Presidential contestants. KNCHR sought to monitor the contest to ensure it was free and fair and that all the aspirants stuck by the rules and regulations as stipulated in the Elections Offences Act, 2016. Compared to the August 8th General Election, the repeat polls did not have the same flurry of activities where political players held campaign rallies all over the country. The campaign mood was subdued and the numbers of campaign events held were quite few considering it that was only the Presidential contest that was being repeated. Among the key issues that KNCHR continued to monitor were:
Misuse of public office and officers, bribery, inducement, incitement, right to security, rights of special interest groups such as persons with disability and children.

2.4 Misuse of Public Office and Officers, Bribery and Inducement

The power of incumbency and previous acts of impunity that have gone unpunished continue to encourage the misuse of public resources by both National and County level leaders during the electioneering period. Launch of government projects while campaigning, use of government vehicles for campaigns, distribution of relief food and the fine line of Cabinet Secretaries campaigning for the President are some of the practices that tilt the electoral environment in favour of the incumbent. Although the foregoing practices are prohibited by law during the electioneering period, they continue to be perpetrated and as long the same remain electoral violations, the Commission will continue calling for accountability from the perpetrators. Through our monitoring efforts, KNCHR was able to capture the cases below, which point to the misuse of public resources, during the repeat Presidential Election campaign period:

i) On 24th September 2017, the Deputy President visited Ndurio Secondary School in Nandi County to donate a school bus. He was accompanied by the Nandi Governor Stephen Sang and his Deputy Dr. Yulita, Senator Samson Cheragey, Uasin Gishu Governor Jackson Mandago, the area MCAs and a few other politicians. However, after handing over the bus to the school, he addressed members of the public who had gathered at the school and urged them to vote for Uhuru Kenyatta on October 26th, 2017. The Governor, his Deputy, the Senator and other politicians present at the event also addressed the public asking them to vote for Uhuru Kenyatta.
ii) On Friday 29th September 2017, the Jubilee Party led by President Uhuru Kenyatta and His Deputy William Ruto attended the home-coming party of the Speaker of the Senate Hon. Ken Lusaka at Pan Paper Stadium, Webuye East Constituency. Misuse of public resources was evident during the event since majority of those who attended were being ferried to and from the venue by school buses from different regions in Western and Rift valley. KNCHR monitors were able to capture such incidences involving; St Paul's Miluki Girls Secondary School-KAN 618U, Friends Secondary School - Misemwa- KCE 548D, St Francis Kongit High School-KCH 882Q.

Buses belonging to St Paul's Miluki Girls Secondary School-KAN 618U, St Francis Kongit High School- KCH 882Q, Friends Secondary School-Misemwa- KCE 548D during a campaign meeting in Webuye. (Photo courtesy: KNCHR)

iii) On September 27th 2017, a campaign rally to drum up support for the re-election of President Uhuru was organized by seven Tiaty MCAs at Nginyang Market. Apart from the MCAs, others present were the Deputy County Assembly Speaker Baringo County, County Executive for Environment and County Executive for Trade Tiaty Deputy County Commissioner and Assistant County Commissioner for Mondi Division. During the rally, a
GK vehicle registration GK A 151G belonging to Tiaty NG _CDF was used to ferry people. Its number plates were however interchanged and replaced with civilian plates KBS 600Z.

Image of official vehicle (white land rover) ferrying Jubilee supporters to a political rally. It belongs to Tiaty NG _CDF. Its official number plates (GK A 151G) which were replaced with civilian plates KBS 600Z on this occasion. (Photo courtesy: KNCHR)

iv) On 25th September 2017, the Keekonyokie Ward MCA Moses Saoyo Kusero together with Kajiado Deputy Governor Martin Moshisho, National Drought Management Authority’s Kajiado County Co-ordinator Mr. Abdi Omar crisscrossed Keenyokie Ward campaigning for President Uhuru Kenyatta and gave out fuel for boreholes’ water pumping and animal feeds in the several stopovers. Due to the impending drought, the Authority launched the program in collaboration with national government to mitigate the drought. They urged residents to vote for Uhuru as he was the only one who will take care of their interest. As shown in the pictorial, they were using state resources to campaign, which is illegal as per Elections Offences Act. They used a government lorry, registration number GK B408, to carry the fuel and the animal feeds.
v) On 17th October 2017, while at Kwa Kadogo Primary School, Kinango Constituency, Kwale County Devolution Cabinet Secretary Hon. Mwangi Kiunjuri accompanied by Kwale Governor Salim Mvuria distributed relief food while campaigning for the re-election of President Uhuru Kenyatta. He asked those who did not vote for Uhuru to vote for him this time and went ahead to state that the government has decided to be giving out food from now until December 2017 even if they will not vote for them.

vi) On 26th September, 2017 at Tana River County, Garsen Constituency, Garsen Grounds the Cabinet Secretary for Devolution Hon. Mwangi Kiunjuri together with Tana River County Commissioner Mr. Ole Ososo, former Tana River Governor Mr. Hussein Dado, Mr. Mungatana Danson and all Chiefs within the constituency conducted a campaign meeting and also distributed relief food to Garsen resident donated by the national Government. The food commodities include cooking oil, maize and beans. Mr. Kiunjuri and Mr. Dado pleaded with Garsen people to vote for Uhuru Kenyatta on 26th October 2017 so that he can finish what he started and they will receive more food in future.

2.5 Incitement

With a highly polarized and a highly divided voters following the annulment of the August 8th Presidential Election, the country experienced a highly charged and polarized political environment split along Jubilee and NASA supporters. Accusations and counter-accusations by these two political protagonists have increasingly seen the country sharply divided with increasing calls on the need for dialogue to stem down the political tensions.
KNCHR observed that, in a bid to out-do each other, citizens and politicians alike took advantage of the divide to threaten or incite acts of political violence along ethnic and partisan political divides. Words of incitement were recorded throughout by our monitors who remained on the ground until November 2017. Below are some of the documented cases of incitement recorded by KNCHR.

i. On 5th October 2017, while at a meeting at the Jubilee offices in Milimani Estate Nakuru, the Jubilee Party Chairman, Nakuru County Mr. David Manyara Njuki stated that there was information going round that the elected MCAs were planning to elect a speaker who is from the NASA Coalition. He categorically warned the MCAs that they should not dare electing anybody from NASA and that they would be dealt with if they did so. Stating in Kiswahili he said that “mkijaribu kuchagua mtu ya NASA mtajua sisi ni nani. Mtajua hasira yetu na mtatuona. Serikali ya Jubilee Nakuru itafanya kazi yake” 19

ii. On 24th October 2017, leaflets were circulated in Kakamega Town warning the Kikuyu community to leave the town by Wednesday failure to which their property will be destroyed.

19 http://www.knchr.org/david_manyara_addressing_supporters_at_the_jubilee_offices_nakuru.mov
iii. On 19th October 2017, a Presiding Officer together with another staff who was being trained as Deputy Presiding Officer for one of the polling centers in Nyali Constituency were threatened for having accepted to work for IEBC despite the call by Opposition(NASA) leader Raila Odinga not to participate in the repeat Presidential Election. The perpetrators threatened to kill the two as well as harm their families claiming they knew where they lived.

iv. On 25th October 2017 at Nakuru Railways ground, the Mbele Iko Sawa team was campaigning for the re-election of Uhuru Kenyatta in Nakuru County. Among the leaders was Gatundu South MP Hon. Moses Kuria who said that Boinett (IGP) should use his gun properly and if he does not have one, wananchi will get one for him. He went ahead to ask Mr. Boinett to ensure he has enough bullets so as to shoot he who goes against the law

v. On 13th October 2017, Nakuru County residents woke up to leaflets warning NASA supporters against holding Anti-IEBC demos in Kaptembwa area, Jualako area and around Telkom offices. The leaflets read; “onyo! Onyo! Onyo! Notice! Notice! Notice! Luo-nasa hooligans be warned!!!Msijaribu kufanya maandamano nakuru county!!!!!Kutawaka moto!! Thaai thaaii!!!”. (Warning, Warning, Warning, Luo-NASA hooligans be warned. Do not hold demonstrations in Nakuru County or else there will be consequences).
A leaflet warning NASA Supporters against holding anti-IEBC demonstration in Nakuru County. (Photo courtesy: KNCHR)

2.6 The Right to Security during the Fresh Presidential Election

General Election, anywhere, is an intensive public participation exercise. Both political campaigns embody high stakes as far as losing or winning is concerned. At the same time, political campaigns and General Election pose potential security risks to aspirants, the electorate as well as property. One of the primary guarantees of a free fair and credible election, and integrity of the entire process is determined by security of the electoral environment. The Article 29 (a) (c) of the Kenyan Constitution envision in part that “Every person has the right to freedom and security”. The Article discourages deprivation of freedom and subjection of any person from any form of violence.

During the pre and post 26th October 2017 fresh Presidential Election period, security was a high priority consideration for the State. There was a sustained call for electoral reforms before a fresh election could be held, calls that brought about divisions which posed a threat to the enjoyment of the right to security in the country. In addition, the withdrawal of National Supper Alliance (NASA) leader from participating in the October 26th Presidential Election and the planned demonstrations posed a threat to the enjoyment of security. Moreover, order to participate in the fresh poll, NASA leadership and its supporters cited irreducible minimums with which the Independent Electoral and Boundaries Commission (IEBC) needed to meet
first. This withdrawal and eventual boycott by NASA supporters in those regions meant that security was required to secure both IEBC preparations as well as securing the right to protest. While IEBC arranged to conduct elections in all constituencies, supporters from NASA strongholds disrupted polling processes in their areas. This called for security deployments both in the NASA strongholds and across the country to facilitate the repeat Presidential Election. During the Mashujaa Day celebration, President Uhuru Kenyatta assured the nation of security during the October 26th polling day. However, it was not clear how many officers were to be deployed in preparation for the fresh poll.

In its election monitoring projects, the Kenya National Commission on Human Rights developed parameters to observe the fresh Presidential Election; presence of security was a key one. Monitoring activities covered availability of security before, during and after the October 26th 2017 polling day. In its findings, the Commission noted that there was enhanced security presence and strategies covering a number of critical areas and aspects around the country. Some of the activities that called for security measures included: Anti-IEBC protests in Nairobi and Western Kenya region, solidarity for judicial independence and counter opposition protests.

KNCHR made the following security observations during the repeat Presidential Election period:

i. On 3rd September 2017 the Deputy President William Ruto and Jubilee Party supporters had a stopover around Thika town after attending service at the ACK Church. They were campaigning peacefully and the police maintained order where public reciprocated accordingly;

ii. On 8th September 2017 at Gilgil town in Nakuru County at around 1500 hours, the President held a campaigning rally attended by Jubilee Party supporters, and the area Member of Parliament Martha Wangari, Nakuru County Governor Lee Kinyanjui and the Deputy President. The security officers coordinated the traffic while maintaining law and order;

iii. On 6th September 2017 Meru residents took to the streets to demonstrate against Peter Munya’s move as a NASA principal. The demonstration was peaceful thus there was no use of force by the police.
iv. On 19th October 2017, NASA team led by Hon. Raila Odinga attended a campaign rally that was held at Misikhu market, Webuye East constituency in Bungoma County. Other political leaders present were Hon. Musalia Mudavadi, Bungoma Governor Wycliffe Wangamati, Bungoma Senator Moses Wetangula, Women Representative Catherine Wambilianga and Kanduyi Member of Parliament Wafula Wamunyinya. The security was adequate during the rally and no incident was observed during the entire period.

v. On 20th September 2017, protests in defense of CJ Maraga were held in Kisii. Police disrupted the demonstrations but no violence or destruction of property was reported and the demonstrations ended peacefully gathering.

vi. On 19th October 2017, protesters assembled near the Kerugoya Law Courts and blocked Narc-Kenya leader Martha Karua and her lawyer Mr. Gitobu Imanyara from accessing the Courts for the hearing of her petition against the election of Kirinyaga Governor Anne Waiguru demanding that she withdraws her case against the Governor. The rowdy protestors also burned a framed photo, and lesso encrypted with her name and posters of Karua outside the court premises, accusing her of being a NASA agent in the county. The commotion interfered with the court proceedings. Police were called in to disperse the protesters before the court session could proceed and after the hearing of the inter-party application, Karua and Imanyara did not address the media and they just drove off. Protesters that included the bodaboda operators were still outside the court and escorted her out of the town.

vii. On 12th September 2017, a caravan for Uhuruto campaign was attacked in Mwingi town. The youth pelted the caravan with stones damaging five (5) vehicles.
Mwingi OCS Peter Ndung’u inspects one of the damaged vehicles. Adjacent is another car which was also damaged after youths pelted a Jubilee campaign team with stones in Mwingi, Kitui County on September 12th, 2017 (Photo courtesy: Daily Nation, September 13th, 2017)

Other vehicles damaged during the September 12th Mwingi incident. (Photo courtesy: KNCHR)

In general, KNCHR observed that security officers, to a large extent, made commendable attempts to secure political rallies for both NASA and Jubilee Party political campaigns. The most visible acts of security by police officers towards civilians came by way of dispersing protesters who were calling for IEBC reform. Here, the KNCHR documented cases for of force and injuries.

2.7 Special Interest Groups

The Constitution of Kenya was keen to provide for the protection of the rights of vulnerable persons in the country. Specifically, Articles 52 to Article 57 identify and provide for specific application of rights to special interest groups. They include women, children, Persons with Disability (PWDs), youth, minorities and marginalized groups and older members of the society. One of the guarantees for human rights in the Kenyan Constitution is the inclusion of these groups in public participation and freedom from discrimination by the State. The spirit of non – discrimination is envisaged in Article 27 (4) (5) where it prohibits discrimination on race, sex, pregnancy, marital status, health status, ethnic or social origin, color, age, disability and religion.

In the run up to the fresh Presidential Election, KNCHR was interested in monitoring the ways in which special interest groups enjoyed their rights or had the same infringed.
2.7.1 Persons with Disability (PWDs)

Irrespective of their challenges, Persons with Disability (PWD’s) have been safeguarded under the Constitution to ensure their full enjoyment of human rights, to include the right to participate in political activities. Further, Article 54 of the Constitution grants PWDs equal treatment with dignity and respect as well as being addressed and referred to in a manner that that is not demeaning. In Article 13 of the African Charter, it is guaranteed that every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law. Thus, in monitoring the compliance of both the local and international instruments that safeguard PWDs in the electoral process, KNCHR was interested in finding out whether PWDs participated in events leading to the fresh poll.

Only one (1) case that involved PWDs was recorded where on 2\textsuperscript{nd} October 2017, a Kakamega County officer, Godliver Omondi, who is a MCA Kholera ward and deputy minority leader who is a woman and person with disability was tear-gassed inside her vehicle. Despite her coming out of the car to show her condition before the security personnel they went ahead and exposed her to the restraining gas.

2.7.2 Violation of Children's Rights

In January 2017, the Kenyan government, through the Ministry of Education, Science and Technology was categorical is discouraging participation of children in political activities. The Cabinet Secretary stated that is was wrong for pupils to be made to suspend school activities in order to entertain or host politicians at political functions.

The Commission’s findings show that the August 8\textsuperscript{th} 2017 poll, had documented cases where school children were removed from their schedules to entertain and attend political functions. The Commission prepared advisories to the Ministry of Education at the time in a bid to curb the risks of electoral violence that may affect children as was witnessed at the August 2017 General Election.

During the repeat Presidential Election, however, the involvement of children in the campaigns was noted to be minimal, perhaps an indication of a level of compliance to the advisories and directives issues by both the KNCHR and the Ministry of Education respectively. The
Commission will continue to call for electoral reforms and agenda that strengthen the entrenchment of specific laws which will safeguard children, educational institutions and infrastructure from electoral activities.

3.0 THE POLLING PROCESS
3.1 Security During the Polling Process
The Country went into the repeat Presidential Election of 26th October 2017 following the nullification of the 8th August 2017 Presidential elections results. This was after a successful petition by the NASA. The opportunity presented through the ordering of the repeat Presidential Election provided the much required impetus for the conversation on the requisite electoral reforms considering that the Supreme Court had based its decision for the annulment of the elections on illegalities and irregularities that were allegedly committed by the Electoral Management Body, that is, the Independent Electoral and Boundaries Commission. The order of the repeat Presidential Election was the beginning of a long drawn battle between Jubilee Party, the ruling coalition, and the opposition, the NASA Coalition as the two could not agree on what constitutes the illegalities and the irregularities as described by the Supreme Court when delivering the judgement. The order for the repeat Presidential Election saw the Country transition to an immediate period of campaign from the two competing coalitions, Jubilee and NASA while each political coalition displayed open hostilities towards each other. However, the turning point was the introduction of the “irreducible minimums” demands by the NASA Coalition to the IEBC without which NASA stated that it would not participate in the planned repeat Presidential Election.

The proposed “irreducible minimums” advanced by the NASA Coalition included demands for pre-printed Form 34Bs indicating the names of polling stations and candidates with the returning officers expected to physically fill in the Forms and make a formal announcement at the Constituency level; contracting another company for the printing of ballot papers and forms as opposed to the Dubai-based Al Ghurair Company which NASA claimed had printed non-standardized elections Results Declaration Forms which were used in the impugned Presidential Election; introduction of election monitors selected from a multi-sectoral group to have a role in the signing off for elections materials and results declaration forms at polling stations and the Constituency tallying center; appointing a new slot of returning officers to be appointed for all the 291 constituencies from a pool provided by political parties of nominees; sending scanned images for the transmission of results through the KIEMS kit; allowing of
candidates and observers to be present at all times of the tallying process; engaging an independent observer to manage the entire ICT framework of the IEBC amongst other ICT related demands; provision of a full list of all polling stations and their registered voters and the barring of particular officers of the IEBC who were believed to have had a hand in the alleged bungling of the 8th August 2017 General Elections from conducting the repeat Presidential Election.

The formal boycott by the NASA team saw the beginning of week-long protests within the context of Article 37 of the Constitution of Kenya with the aim of forcing the IEBC to implement the irreducible minimums to pave way for the free, fair and credible election. The protests were spread in the major towns of Kenya that included Nairobi, Kisumu and Mombasa with high intensity being further witnessed in the NASA stronghold towns of Migori, Homa Bay, Siaya, Kakemega, Bungoma and Busia. Demonstrations led to destruction and various human rights violations that were attributed to the actions by state security organs that led to allegations of deaths and injuries in an attempt to control the crowds. The demonstrations further saw destruction of both private and public property that included looting of supermarkets, burning of road-side kiosks, burning of tarmac roads, burning of homes and properties of those suspected to have affiliations with the ruling party, Jubilee among other heinous acts. The demonstrations and other acts did not yield the expected results of stopping the IEBC from conducting the polls but provided a more polarized environment which culminated into the various acts witnessed on 24th, 25th, 26th and 27th October 2017 which was characterized by both lawlessness by the members of the public as well as high-handedness by the security agencies in dealing with the perceived lawlessness.

The National Police Service while endeavoring to deliver on its mandate of maintaining of law and order - including during the elections- adopted the required measures in securing the repeat Presidential Election. These included the provision of security to all the IEBC staff; provision of security in the transportation of the voting materials; provision of adequate security at the various polling stations; provision of security during the transportation of the materials upon closure of the voting stations and security in tallying and announcement of the final results at different levels that includes at the polling station, at the constituency, at the county and the national level. The level of preparedness of the National Police Service in securing the elections was commendable based on the timeliness, efficiency and effectiveness in delivering on their duty. However, this commendation was only to the extent where the no calls for the boycott existed as all the places that had the boycott call was characterized by several cases of
lawlessness and excessive use of force by the security officers, especially in the Nyanza and Western Kenya regions. There was an increased deployment of security personnel to perceived NASA stronghold regions which consequently saw the National Police Service enhance the number of security personnel both before, during and after the 26th October 2017 repeat Presidential Election. There was also an increase in the number of water cannons among other items that the police deployed to secure the elections and ensure that law and order was maintained.

3.2 The Electoral Environment
As highlighted in chapter 4, section 4.2.1, of this report, the KNCHR deployed its monitoring teams to different centers and documented incidences where the sections of the Elections Offences Act and the Electoral Code of Conduct were not adhered to.

3.2.1 Campaigns within and around the Polling Centers
Campaigns within and around the polling centers were witnessed and tabulated by the KNCHR as illustrated below:

1. In Kiambu County, Ruiru Constituency, Mwiki Ward, Mwiki Assistant Chief Camp Polling Center, KNCHR observed a group of rowdy youths at the center on a motorbike singing “Baba! Baba! Baba .... baba yetu uliye mbinguni”. KNCHR deduced this to be a hidden campaign tactic.

2. In Kisii County, South Mugirango Constituency, Bogetenga Ward, Nduru Primary School, the KNCHR encountered a group believed to be associated with Nyumba Kumi forum and village elders who camped at the entrance of the polling center directing the voters to vote for Uhuru.

3. In Meru County, Igembe Central Constituency, Athiru Ruujine Ward, Matirine Primary School Polling Center, a female voter showed up at the polling station wearing a Jubilee party campaign jacket and was allowed to vote despite being branded. The PO should have not allowed the voter to access the station while in the political party attire, as this is prohibited under the electoral offences act.
A voter in a Jubilee Party campaign jacket at Matirine Primary School Polling Centre in Athiru Rujine ward, Igembe Central Constituency, Meru County. (Photo courtesy: KNCHR)

3.2.2 Interference with the Polling Process

The Commission witnessed and documented incidences where voting process was interfered with by rowdy youths through barricading of roads leading to the polling centers. Some of these incidents hampered the election process to take place, late commencement of voting in some polling stations, as well as early closing due to insecurity in the area. Some of the cases observed and documented by KNCHR include:

1. In Vihiga County, Vihiga Constituency, Lugaga-Wamuluma ward, Matagalu Primary School Polling Centre, the rowdy residents barricaded Vihiga-Luanda Road at Mahanga area using stones and firewood in an attempt to disrupt the voting process. The security managed to disburse the rowdy groups and voting proceeded well.

2. In Kakamega County, Butere Constituency, Marama Central Ward, Buchenya Primary School Polling Centre, voting started late because the rowdy residents had barricaded Kakamega-Sabatia road. The police were able to disburse the group and thus managed the situation. Equally, KNCHR encountered a crowd of residents who had camped outside the polling station but the police disburse them to allow the voting to proceed.

3. In Busia County, Matayos Constituency, Burumba Ward, Burumba Primary School Polling Centre, voting started late because area residents had blocked the road leading to the center at Kisumu-Busia road by use of stones, electricity poles and lit bonfire. However, according to those who managed to vote, they used alternative routes to access the polling station amid tight security.

4. In Busia County, Butula Constituency, Kingandole Ward, Kingandole Polling Center the IEBC officials managed to open the center on time, however they had to suspend
the exercise at around 11 am because the *boda boda* riders kept moving around the center, threatening those who had come out to vote, fear of the likely attack and sustained running battle between the riders and police.

5. In Nairobi County, Dagoretti North Constituency, Kabiro Ward, Kabiro Primary School, KNCHR witnessed people idling around the polling station and had barricaded the road leading to the center. The group harassed people while they compelled them to show marks to confirm if they voted.

KNCHR observation confirmed that there were some polling centers where voting did not take place, as occasioned by sustained demonstrations and barricading of roads leading to the polling stations by the residents. Below is an example of the affected areas:

1. In Homabay County, Homabay Central Constituency, Homabay Town Ward, Lake Primary School polling Centre, the rowdy youth camped near the polling stations chanting ("...no reforms, no election...") and sung songs affiliated to NASA. The incident was meant to scare voters away and ensure they do not access the polling station. The group camped at the center and to ensure no election material materials were delivered.

2. In Busia County, Budalangi Constituency, Bunyala South Ward, Osieko Primary School, a group of rowdy youth destroyed all voting materials delivered to the center. The youth overpowered the officers who were deployed at the center to provide security during the polling day. They also surrounded the center and threatened whoever wanted to vote.

3. In Kisumu County, Kisumu Central Constituency, Railways Ward, Kudho Primary School Polling Centre a group of rowdy youth barricaded and manned the roads leading to Kudho Primary School Polling Center and Kanyamedha area. The incident inhibited movement in the affected areas. Also a handful of youth camped a few meters from Kudho primary to ensure no election material materials were delivered.

4. In Homa Bay County, Karachuonyo Constituency, Kendu Bay Town Ward. Ogango Primary School, the rowdy residents barricaded the road at Kendu Bay junction affecting movement of persons to the polling centre. They also harassed motorists and extorted some money from motorists.

5. In Migori County, Rongo Constituency, South Kamagambo Ward Rakwaro Primary School polling center, a group of rowdy residents camped at the center and restricted
voters from accessing the polling center. They also ensured the polling center remained closed.

6. In Homabay County, Rangwe Constituency, Kochia ward, Alara Korayo Polling Centre, a group of rowdy youth surrounded the polling centre while chanting NASA songs. They also barricaded the road leading to the center using huge stones and logs.

7. In Kisumu County, Seme Constituency, East Seme Ward, Kit Mikayi Polling Center, a group of protesters barricaded the roads leading to the polling center. They also kept watch around the polling station to ensure no election material materials were delivered at the center. Efforts by security officers to disperse the crowd only sparked violence that resulted to running battles between the police and protesters.

On 26th October 2017, rowdy youths barricaded the road leading to Ogango Primary School Polling Center. (Photo courtesy: KNCHR)

6. In Kisumu County, Kisumu Central Constituency, Kondele Ward, Obinju Polling Center, a group of rowdy youths kept watch outside the polling station to ensure voting could not take place. They also used huge logs and lit bonfire to barricade the roads leading to the polling center. They also searched all the vehicles that used the roads to ensure that they passed through without electoral materials.

7. In Homabay County, Homabay Town Constituency, Homabay Central Ward, Agoro Sare Polling Center, the rowdy resident barricaded the roads leading to the polling center that hindered voting process in the area. The KNCHR witnessed heavy security deployment and running battles between the police and rowdy residents.
8. In Kisumu County, Nyakach Constituency, South West Nyakach Ward, Nyakach Mixed Primary School polling center, the road leading to the polling center was barricaded by the rowdy residents using branches ensure no election material materials were delivered at the center. They also lit bonfires next to the gate leading to the polling center and idled around the area to ensure voting could not take place.

![Main gate of Nyakach mixed primary polling center blocked with tree branches to bar entry for purposes of voting. (Photo courtesy: KNCHR)](image)

9. In Migori County, Rongo Constituency, Central Kamagambo Ward, Rongo Central Primary, a group of rowdy youths barricaded the road leading to the polling center and searched vehicles to ensure no election material materials were delivered at the center.

10. In Migori County, Rongo Constituency, South Kamagambo Ward Rakwaro Primary School polling centre, a group of rowdy youths ensured no voting took place as they ensured no election material materials were delivered at the center.

11. In Migori County, Rongo Constituency, East Kamagambo Ward, St. Jonathan Primary. The rowdy residents milled around the polling center and barricaded the road using stones. They searched vehicles before passing to ensure no election material materials were delivered at the center. Some vehicles were allowed to pass after giving varied amount of cash. The polling center remained closed, there were no IEBC Officials present and no presence of voters as well.
12. In Busia County, Budalangi Constituency, Bunyala South Ward, Osieko Primary School, rowdy residents rioted surrounding the polling center once the elections materials were delivered. The security officers tried to disburse them but were overpowered. The group destroyed the election materials and held hostage some IEBC officials, then later released them unhurt.

6.3.3.3 Undue Voter Influence: Ferrying of Voters

This section should be read in line with section 4.2.4 of this report. Similar to 8th August General Election, KNCHR documented cases where voters were ferried to polling stations. This was either through group of voters being accompanied by politicians or facilitating transport by paying fare. Such incidents include:

1. In Nandi County, Nandi Hills Constituency, Ol’lessos Ward, Lolduga Primary Polling Center, voters were ferried to the polling station by vehicles hired by Hon. Mengich Rono, Member of Nandi County Assembly.

2. In Laikipia County, Laikipia East Constituency, Nanyuki Ward, Central Park (Kanu Grounds), the County Commissioner Mr. Onesmus, Nanyuki Ward MCA Mrs. Veronica Ikunyua, Nominated MCA Ms. Patricia and an Administration Police Officer identified as Ngunyi, organized mass transportation of voters from Nanyuki town to various polling stations within Segera Ward. It is alleged that these voters had been coerced by aspiring candidates before party primaries to change their voting centers.

3.3 Polling, Counting and Transmission of Results

3.3.1 Commencement of Voting

Voting process began at 6 a.m in most of the polling stations monitored by the Commission. Although there were delays in a few centers as a result of delays in delivering the voting materials due to the bad weather conditions, the Commission noted that the time lost was duly compensated after the 5 p.m stipulated closing time.

The voting process began with contrasting fortunes for the electoral body. The areas perceived to be pro-government commenced the process in peaceful and smooth manner while those on
opposition strongholds proved to be hostile to the electoral body in that virtually no voting took place in those areas.

A road barricade with a placard indicating no elections on the 26th October 2017 at the Juakali Area, Kisumu County. (Photo courtesy: KNCHR)

The day was characterized by running battles between non-willing voters and police officers. The latter were assigned to maintain law and order as well as protect the IEBC officials. The NASA opposition coalition had indicated that they would boycott the repeat Presidential Election and they kept their word by ensuring no election related activity took place in their respective regions. The areas affected included Kisumu, Homabay, Migori, Siaya, Kakamega, Bungoma, Vihiga, Machakos, Makueni, Kitui and parts of Nairobi and Mombasa Counties. The unaffected areas experienced low voter turnout.

In most areas where voting took place, the process started smoothly with sporadic cases of delayed voting. Most of the delays were attributed to heavy rains which made it difficult for voting materials to be delivered on time and voters could not venture out due to the bad weather. As for the opposition strongholds, most voters kept away from voting mostly because they heeded the call of their leaders to boycott the polls while some stayed away for fear of being caught up in the skirmishes, or for fear of reprisals for voting, by gangs that were blocking entrances to most polling centres. The IEBC officials in some instances didn’t turn also up to conduct the elections for fear of reprisals.
The following polling stations began the voting process late.

1. In Kanduyi constituency, Marakaru/Tuuti ward, Kibabii primary school polling station the Presiding Officer confirmed that polling stations opened at 8:25 am. This was due to the delay in the delivery of the materials caused by bad roads. The lorry delivering the materials had been stuck on the road due to the heavy rains that were experienced in the area. The end time for the voting was thus pushed to 7:25 pm.

2. In Kiambu Constituency, Township Ward, Kiambu Municipal Office the polling station opened at 6.15am because the Presiding Officers had an issue with the password of the KIEMS.

3. In Jomvu Constituency, Mikindani Ward, St. Mary's Bangladesh primary School polling station, rioters barricaded the road to the polling centre making it impossible for IEBC officials to set up the voting materials. IEBC officials however managed to set
up the voting materials at Mikindani Primary School. It was however difficult for voting to take place and the process was abandoned altogether.

4. In Nairobi Remand and Allocation Prison, the polling station opened at 6.26 a.m. The presiding officer explained they had some challenges with transport to the station and upon arrival they had to sort out the papers before opening the station.

5. In North Mugirango, Ekerenyo Ward, Chisaria Primary School, the Presiding Officer confirmed that polls opened at 8:30 am. due to the delay in the delivery of the voting materials. The truck delivering the materials had been stuck on the road due to the poor state of roads in the area worsened by heavy rains. The end time for voting was thus pushed until 7:30 pm.

Majority of issues experienced bordered on accessibility of polling stations by expectant women, nursing mothers, parents with young babies, older persons and persons with disabilities. The following is a sample of polling stations;

1. In Lurambi Constituency, Sheywe ward, Kakamega Primary School polling station number 2 was located at a much raised which could not be accessed by the elderly and disabled. The path leading to the station was equally bumpy with two huge gullies;

2. In Kajiado North Constituency, Olkeri ward, Esilanke Water Project polling station the terrain was steep and muddy due to the heavy rainfall in the area. This made it difficult for the elderly and PWDs especially the wheel chaired persons to access the station.

3. In, Nakuru Town East Constituency, Menengai Ward, Nakuru Boys High School polling station persons with disability and pregnant women found it difficult to reach the polling stations due to steep stairs leading to the voting areas.

4. In Tinderet Constituency, Tindiret Ward, Koisegem Primary School, the terrain of the location of the polling centre was very steep. At one point the area chief and village elders made arrangements for some disabled persons to be assisted by the youth to enable them get to the polling centre.

5. In Kisii County, Nyaribari Chache constituency, Kiogoro Ward, Kiogoro Tea Buying Centre polling station, the entry and exit points are on a steep slope and no ramps available for wheelchairs.
6. In Westlands Constituency, Parklands/Highridge ward, North High Ridge Primary School polling station, voters had to use very steep stair cases with no provision for wheelchairs.

3.4 Polling Process
The Commission noted low voter turnout in most of the polling stations it monitored across the country. Though the weather played a part in the early morning in some parts of the Country, the same trend continued throughout the day until the voting process was closed. The Commission also noted that only one agent and observer was available or none at all.

The Presiding Officers in some of the Counties also denied our monitors access to the polling station while demanding a letter from the Constituency returning officer or IEBC together with an oath of secrecy letter. This was contrary to the instructions given by IEBC to use the new accreditation badges only.
The use of the KIEMS Kits for voter identification worked well with minimal cases reported where the kits failed or the officials were unable to utilize the devices. For voters who weren't identified biometrically but through alphanumeric, the officials used a supervisor validation form. This was a departure from the August 8th General Election where Form 32A were used. Based on our recommendations in the preliminary report, the IEBC decided to introduce a supervisor validation form to be filled by the Presiding Officer in the presence of Agents when a voter was not identified using finger prints but was identified alphanumerically.
A sample of the Form 32A used on 26th October 2017 repeat Presidential Election. (Photo courtesy: KNCHR)
The presence of party agents in the polling stations was limited to Jubilee Party since the opposition had boycotted the repeat Presidential Election thus they did not send agents to observe the election. Other Presidential candidates did not have any of their agents present in virtually all the polling centers that the Commission monitored. Election observers were however present in most of the polling stations monitored and their numbers although they were also lower that what was witnessed during the August polls.

In view of the low voter turnout, the polling process was carried out with relative ease and no major issues were experienced in respect to the use of the election tools and materials. In majority of the areas where the repeat Presidential Election was boycotted no voting took place as the locals made sure that no IEBC official was able to get to their designated polling centres. The level of violence and resistance to have any form of voting taking place led the IEBC Chairperson Mr. Wafula Chebukati to suspend and eventually cancel elections in twenty-seven (27) Constituencies. In calling off the repeat Presidential Election in the said counties, Mr. Chebukati invoked Section 55 (b) of the Elections Act which states: “The Commission may, where a date has been appointed for holding an election, postpone the election in a constituency, county or ward for such period as it may consider necessary where— (a) there is reason to believe that a serious breach of peace is likely to occur if the election is held on that date; (b) it is impossible to conduct the elections as a result of a natural disaster or other emergencies, (c) that there has been occurrence of an electoral malpractice of such a nature and gravity as to make it impossible for an election to proceed.”

3.4.1 The Kenya Integrated Elections Management Systems (KIEMS)
KIEMS system was a fundamental part of the 8th August 2017 General Election. This necessitated the IEBC to heed to the request by OT-Morpho, the supplier, to move the repeat Presidential Election from the proposed 17th October 2017 to 26th October 2017 in order to make the necessary upgrades to the KIEMS system.

The new upgrade was to ensure foolproof voter identification and accurate results transmission. One of the issues that featured prominently in the annulment of the August Presidential Election was the integrity of the results relayed by the kits. Other issues included failure to relay election results, failure to relay Form 34A together with the text results and network connectivity issues.

The new upgrade involved the following additions; feature that ensures that scanned images and text results are sent simultaneously; making Safaricom the primary network provider with
Airtel and Telkom Orange as backup and addition of new particular of the Presidential candidates. Due to time constraints OT-Morpho indicated that they would only transmit results of only the two (2) Presidential candidates involved in the election petition i.e. President Uhuru Kenyatta and Raila Odinga.

The identification process involved the IEBC clerk using the KIEMS kit to identify the voter biometrically by use of fingerprints or alphanumerically upon producing either a National Identity Card or National Passport.

During the repeat Presidential Election, the identification of voters was different from that of 8th August polls. Those identified alphanumerically on the 8th of August were required to fill a requisite Form 32A in the presence of the PO and party agents present.

The KNCHR noted this as un-procedural as the Form 32A was solely to be used in instances where a voter had not been identified biometrically and alphanumerically and a manual register was used to identify the voter in accordance with regulation 69 (1) of the Elections general regulations. The KNCHR in its monitoring work found this as misuse of the said Form 32A as it was used to record voters that were identified alphanumerically.

However, on 26th October 2017, the Commission noted the introduction a manual register in the polling stations as a third stage of identification where Presiding Officers not only relied on KIEMS system, but used both the KIEMS kits for identification and then crossed out the names of the voters in the manual register. The IEBC further introduced a Supervisor validation form to identify voters who were identified alphanumerically.

The KNCHR documented an instance in Kilifi South Constituency, Shimo La Tewa Ward, Mtwapa Agricultural Training Center, Polling Station number 1, where a voter who couldn’t be identified both biometric and alphanumerically, filled the supervisory form and was allowed to vote.
3.4.2 Close of Voting Exercise

In view of the low voter turnout experienced in most parts of the country, the closure of the polling stations went on as stipulated by the regulations set. A general observation by our monitors on the ground found out that most polling stations where voting had taken place had few or no voters by 11 a.m. However, the polling stations could not close until the set time was reached and until they were satisfied that there were no voters on the queue by then.

1. Some polling stations closed early owing to low voter turnout and security situation. For example, in Busia County, Butula Constituency, Kingandole ward, Kingandole polling station closed at 11 am due to low voter turnout and violence in Murumba market which is next to the polling station where the youths were rowdy forcing the security personnel to use teargas to disperse them.

2. Nambale Youth Polytechnic in Busia County, Nambale Constituency, Nambale township ward the polling station closed at 3:30 p.m. due to low voter turnout as most of the people decided not to come out to vote following the order of the NASA leader that they should avoid participating in sham elections by staying at their homes.

3. At Chaani Social Hall polling centre, Chaani ward, Changamwe Constituency in Mombasa county the station was closed at 6:37 pm to compensate the time that was lost
in the morning due to the late opening time however there were no people on the queue by 5 p.m.

**KIEMS kit at opening of Polling Centre at station 2 Ngata Primary School, Mosop Ward, Rongai Constituency, Nakuru County. (Photo courtesy: KNCHR)**

At the closure of polling stations, the KNCHR noted that the KIEMs kits cleared all the figures that provided information regarding the voter turnout. This meant that the IEBC withheld information regarding the voter turn-out and number of authenticated voters at the close of polling station. There was no way of verifying the information regarding the turn out from the KIEMs kits even though the KIEMS had been programmed to give periodic updates of the voter turn-out from the time a polling station opened to the time it closed. As a result of this, the IEBC Chairperson was forced to give contradicting figures on the exact number of the voter turn-out at the close of polling on 26\textsuperscript{th} October 2017.
KIEMS kit at Closing of polling at station 3 Moi Secondary School, London Ward, Nakuru Town west Constituency in Nakuru County. (Photo courtesy: KNCHR)

3.5 Counting, Collating and Tallying Process
The right to vote and be voted for is secured when the ballots are properly counted and tabulated to yield correct results and are protected from manipulation, interference, loss and damage. The Constitution sets out the responsibility of the Election Management body in Article 138 to the effect that in a Presidential Election- after counting the votes in the polling stations, the Independent Electoral and Boundaries Commission is expected to tally and verify the count and declare the results. The critical element is the duty placed upon the Commission to verify the results before declaring them. To ensure that the results declared are the ones recorded at the respective polling stations. They are however not expected to vary, alter or change the results.
At the end of voting, the Presiding Officers while in the presence of candidates or their agents entered in the Polling Station Diary (PSD) the number of persons identified during polling using the printed register of voters. This was done before the counting of the votes was done.

Arrangement of the counting venue and assigning of duties to the clerks was done before the counting was started. A table or desks were combined to create enough space to sort out the votes cast.\textsuperscript{20}The Commission noted that the process of counting was done by the sorting of the votes cast according to the Presidential candidates. The votes were displayed before all the clerks, party agents and observers before being placed on the table. This was then followed by the Presiding Officer counting the votes of a candidate in batches of fifties (50s). Once the counting was done, the same was repeated for all candidates and noted.

The Presiding Officer together with agents discussed the tenets of what would constitute a rejected ballot. However, a decision on the validity of the disputed ballot paper would be determined by all and award it to a candidate and such decision shall be final. The Presiding Officer would fill a statement in Form 41 of the number of total rejected votes within the polling station and would issue details of the said rejected votes.

\textsuperscript{20} Regulation 75(1) of Election (general) regulations
Form 41 bearing the description of the reasons why a vote was rejected.
(Photo courtesy: KNCHR)

Tallying of votes at the polling stations was conducted in such a manner that for each of the candidates, a Form 33 was filled and marked for each vote that was counted. The Form was then placed together with the votes of each candidate and sealed in a tamperproof envelope.
3.6 Tabulation, Announcement and Signing off the Final Results

Upon completion of counting and tabulation, the Presiding Officers were required under regulation 79 to immediately announce the results of the voting at the polling station before communicating the same to the Constituency Returning Officer.

The use of Form 34A as the results declaration form at the Polling station is provided for under regulation 79. The Presiding Officer is expected to request each of the party agents representing the Presidential candidates to append their signatures. Where they failed to do so, the PO was required to write the comments within the form to give reasons as to why the agents failed or refused to append their signatures. Each party agent was to be issued with a copy of the declaration of results, and another copy was to be pasted against the ballot box and at the entrance of the polling stations. The original form was to be placed in a tamperproof envelope and placed inside the ballot box.
Presiding Officers were expected to place particular election materials inside the ballot box after sealing them in tamper proof envelopes. These material included valid votes cast, rejected ballots, unused ballot papers, counterfoils of used ballot papers, copy of election results declaration form, stray ballots and rejection and objected to ballots. Upon confirming the same, ballot boxes were sealed in the presence of the party agents and observers and the seal numbers recorded. The said officers were also expected to issue returns in terms of other election materials to the Constituency Returning Officer which included, the Polling Station Diary, Forms 32, Form 32A, Supervisor Validation Forms, copy of Voter Register, and the sealed ballot boxes accordance with regulation 81 (1), (2) of the Elections (general) Regulations.
3.7 Transmission of Results
The transmission of results from the polling station is done electronically. The transmission of results from the polling stations is a critical way of safeguarding the accuracy of the outcome of an election. This was an area of contention arising out of the 8th August 2017 Presidential Election which affected the integrity, credibility and validity of the results, such that compliance of the law on the part of the IEBC in its conduct of the transmission of results was found to be of irregularities and illegalities. The Supreme Court determined that there had been failure to transmit results electronically to the national tallying centre and that there was no complimentary mechanism to enable the transmission of results to take place where there was failure of the results management systems.

Section 39(1C) of the Elections Act provides that in a Presidential Election, the simultaneous electronic transmission in the prescribed form of results is to be done from the polling stations to the Constituency Tallying Centres and the National Tallying Centre immediately after the counting process at the polling station. Further, the IEBC was to publish the images of Forms 34A and 34B on its public portal.

Further, Regulations 21, 22, and 23 of the Elections (Technology) Regulations 2017, provides for the IEBC to engage a consortium of telecommunication network service providers and publish the network coverage at least forty-five (45) days prior to the elections. In that regard, the IEBC procured services from Safaricom, Telkom Kenya and Airtel Kenya to provide the requisite network coverage so as to facilitate efficient transmission of results.

Safaricom SIM Cards were the primary source for network while the Airtel and Telkom were to be used as the secondary in all the Results Transmission Systems kits. In addition, the IEBC had allowed candidates to provide two ICT agents each to be part of the electoral management team with each being given defined rights so as to participate in the verification of the actual transmission of results. Hard copies of the print outs of Forms 34B would be issued to all candidates or their agents for further verification.  

21 IEBC Chairman’s address on State of preparedness of the fresh Presidential elections on 25th October 2017
The Presiding Officer scanned the Quick Response Code (QR code) contained at the cover page of the manual register so as to have the Results Transmission System Kit capture the particulars of the polling station before scanning the Form 34A for transmission.

Section 44A of the Elections Act obligates the IEBC to put in place a complementary mechanism for the transmission of election results that is simple, accurate, verifiable, secure, accountable and transparent to ensure that the Commission complies with the provisions of Article 38 of the Constitution. This meant that the IEBC was to make arrangements for areas that may have been affected by network coverage so as to enable their Presiding Officers transmit the results to the Constituency Tallying Centres and the National Tallying Centre.
In case the result transmission was to fail at the polling station, the Presiding Officer was then required to move to the nearest point from the polling station which had good network and then transmit the results. If there still was no network, the officer would then move to the tallying centre and have the transmission done there. Once the Form 34A had been uploaded into the RTS, it was irreversible and only took areas with poor network coverage to proceed to the tallying centres and the transmission would take place in a matter of seconds.\textsuperscript{22}

The IEBC was expected to electronically transmit, in the prescribed form, the tabulated results from a polling station to the Constituency Tallying Center and to the National Tallying Center over a mobile data network to the IEBC servers for consolidation and visualization for all the elective positions in pursuant to Section 39 IC (a) of the Elections Act.

\begin{center}
\textbf{Successful transmission of form 34A at Station 3 at Moi Secondary School, London Ward, Nakuru Town west Constituency Nakuru County. \textit{(Photo courtesy: KNCHR)}}
\end{center}

After the inclusion of all the Presidential candidates on 13\textsuperscript{th} October 2017 to be in the ballot papers, the IEBC pointed in a press release that they were unable to reconfigure the results transmission systems to include all the Presidential candidates who had participated in the 8\textsuperscript{th} August 2017. The Results Transmission Kits were configured to reflect only two Presidential candidates who were in the initial petition challenging the validity of the Presidential Election.

\textsuperscript{22} Gazette notice no 9978 dated 12\textsuperscript{th} October 2017
Time constraints were cited as the reason as to why it would not be feasible to have configure the other candidates. Further, IEBC Officials were directed to train their Presiding Officers appropriately so as to have them key in information against the two candidate by typing “Zero” against the said candidates.
INTERNAL MEMO

TO: Director, Managers, CEMS, and CECs

FROM: Commission Secretary/CEO

REF: IEBC/CEO/10/2017 Date: 14th October, 2017

RE: REVISED RESULTS TRANSMISSION WORKFLOW

A. Context

On 11th October 2017, the High Court ordered the Commission to include the name of Ekuru Aukot as a candidate in the Fresh Presidential Election to be held on 26th October 2017. The Court also observed that indeed all the candidates that participated in the August 8th presidential elections were entitled to participate as candidates. Accordingly, the Commission has now gazetted seven candidates for the Fresh Presidential Election.

B. Commission Resolutions

The Commission has made the following resolutions in as far as RTS is concerned:

1. The RTS will not be reconfigured to accommodate new presidential candidates owing to significant time constraints to successfully deploy the same.

2. The RTS will transmit elections result forms 34A and 34B from the polling stations and constituency tallying centre respectively.

3. The RTS test results (provisional results) shall not be taken into account since the system as configured features only two candidates. In other words, the RTS test results (provisional results) that would automatically be collated and displayed on the screen or website shall not be availed. However, the Commission is considering alternative form of display.

4. In order to increase transparency in the results process, the Commission is exploring mechanisms that would facilitate: (1) media access to all tallying centres across the country; and (2) setting up of a results monitoring centre accessible to candidate agents, observers and other accredited stakeholders.

C. Revised Results Workflow

For purposes of training and execution, please note the following important steps in results transmission:

1
1. Since the RTS will remain with a list of two candidates the presiding officers should be trained to ensure that the text information against the two candidates is typed as ZERO (0) in all the data fields.

2. The original Form 34A will be scanned transmitted to the National Tallying Centre as provided for in the current RTS workflow and covered in the training.

Front End (At the Polling Station):

At the end of counting of votes and subsequent filling of form 34A the Presiding Officer:

1. Invites Agents present to sign the form
2. Signs and stamps form 34A
3. Activates the RTS application on KIEMS kit using appropriate QR code and:
   - Enters zero (0) in the text fields against the two candidates and in all data fields on KIEMS kit.
   - Takes a clear image of form 34A reflecting the correct votes for all the candidates.
   - Transmits the text and image of the results from the KIEMS kit
   - Transmits the logs.

Back End:

1. The RTS system shall disregard the text data entered.
2. The Form 34A image is transmitted simultaneously to CTC and NTC.
3. Constituency RO downloads Form 34A image and manually collates Form 34B into prescribed Spreadsheet (Excel) template.
4. Verifies Form 34A image with corresponding original Form 34A.
5. Prints Form 34B and invites Agents present to sign
6. Signs and stamps form 34B.
7. Scans Form 34B and transmits it via the RTS.
8. Transmits the collated Form 34B spreadsheet via the RTS.

In addition, Form 34B Excel worksheet template shall be revised to include all the seven candidates as appropriate in the order of names captured in the Gazette notice.

Ezra Chilora

CC: COMMISSIONERS
The effect of this decision was that the results transmission systems would only transmit the scanned Form 34As and Form 34Bs and there would be no reliance of the provisional text results which accompanied the said Forms for the repeat Presidential Election. In the alternative, the IEBC was to provide other mechanisms to set up results monitoring centres accessible to agents, observers and other relevant stakeholders and provide media with access to all tallying centres.

4.0 POST ELECTION PROCESS
4.1 Introduction
This chapter focuses on the period from 26th October 2017 to 29th November 2017. It provides an overview of the Kenya National Commission on Human Rights (KNCHR) monitoring strategy during and after the repeat Presidential Election polls. It also highlights how the Commission planned and carried out its on-the-ground monitoring and investigations during the aftermath. During this period, the Commission documented cases of loss of lives, the excessive use of force mostly exhibited by the police, incidences of civil unrest, protests, assault and destruction of property.

The KNCHR deployed a total of five hundred and forty (540) monitors spread out in all the two hundred and ninety (290) Constituencies during the repeat Presidential Elections. The
monitoring focused on the election events before, during and after the 26th October repeat polls. The Commission developed specific tools to document post-election scenarios and facilitated the collection and collation of accurate and verifiable information from the field as well as documentation and reporting protocols for the same. The Commission also deployed rapid response teams in the various affected areas. The teams collected information, statements and conducted interviews with the victims and witnesses. The Commission also worked closely with a number of grassroots organizations represented on the ground and Human Rights Defenders (HRDs). As part of information collection and evidence gathering, the teams also visited hospitals, mortuaries and various police stations. Further, the ground teams held interviews with experts including doctors, witnessed various post-mortems being carried out and obtained copies of the medical and post-mortem reports. This information complemented other secondary data, including media reports, as well as reports from organizations such as the Kenya Red Cross Society (KRCS) and other reliable sources.

4.2 Violation of the Right to Life

Following the repeat Presidential Election held on 26th October 2017, the Independent Electoral and Boundaries Commission (IEBC) declared President Uhuru Kenyatta the winner. The announcement was followed by a wave of protests across regions perceived to be opposition strongholds in the Country. Many of the protesters gathered in town centers, at times moving towards police stations while armed with crude weapons such as stones and old car tires.

Heavy security deployment was witnessed in these areas during the period leading to the repeat Presidential Election. The security forces, and in particular officers from the National Police Service (NPS), used excessive force to quell the emerging protests. They used teargas, truncheons and live ammunition and in the process killed protesters and bystanders in chaotic scenes that ensued. Cases were also reported that the police executed other protesters in cold blood and leaving several others with varying degrees of injuries.

The Commission recorded a total of thirty (30) deaths. Out of this number, there were three (3) reported cases of minors who succumbed to gunshot wounds during this period. The other twenty-seven (27) victims were youths and middle-aged persons; twenty-five (25) of whom were male and two (2) females.
Eighteen (18) of the deceased persons were shot in the head and chest, indicating that security forces fired directly into crowds while two (2) victims were shot around the stomach and genitalia areas. During the running battles with the police, nine (9) victims were beaten or hacked to death while one person was electrocuted after falling on a live electricity line that had been illegally tapped.

During the period under review, civilians were not without blame in contributing towards the number of injuries witnessed following the repeat Presidential Election polls. Civilian to civilian attacks were reportedly instigated along ethnic and political lines especially in Nairobi City County. Five (5) of the reported cases of deaths were attributed to civilians. There were six (6) reported cases of deaths where the perpetrators were unknown.

The documented cases of deaths and injuries within Nairobi City County were mainly in the fringe areas of Kawangware, Kibra, Mathare, Embakasi, Starehe, Kamukunji and Ruaraka. In Kisumu County bereavements and injuries were reported in Carwash, Obunga, Mamboleo, Muhoroni and Seme areas. Other areas where casualties were reported include; Apida, Migori town, Suna East and Suna West in Migori County, Sindu and Pala in Homabay County, Athi River in Machakos County and Bungoma town in Bungoma County.

### 4.2.1 Log of Deaths

<table>
<thead>
<tr>
<th>LOCATION OF INCIDENCE</th>
<th>ALLEGED PERPETRATOR</th>
<th>COMPLAINT</th>
</tr>
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<tbody>
<tr>
<td>NAIROBI CITY COUNTY</td>
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</tr>
<tr>
<td>1. City Cabanas, Mombasa Road</td>
<td>Police</td>
<td>On 17th November 2017 at around 11 a.m., a male civilian was with a friend at the stage waiting for a public service vehicle to travel to Kangundo. There was fracas along Mombasa Road between NASA supporters and the police. The police fired shots in a bid to disperse the supporters and in the process; the victim was hit by a bullet and died on the spot. The deceased’s body was moved to City Mortuary.</td>
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<td>2. Gikomba near Country Bus Station</td>
<td>Unknown</td>
<td>On 17th November 2017, a male civilian suffered deep cuts on his face during the fracas that broke out along</td>
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<td>Case</td>
<td>Location</td>
<td>Time</td>
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<tr>
<td>1.</td>
<td>Jogoo Road following the arrival of Hon. Raila Odinga.</td>
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</tr>
<tr>
<td>2.</td>
<td>Jogoo Road</td>
<td>Police</td>
</tr>
<tr>
<td>3.</td>
<td>Jogoo Road (along Juakali and NACICO Plaza)</td>
<td>Civilian</td>
</tr>
<tr>
<td>4.</td>
<td>Kamukunji</td>
<td>Police</td>
</tr>
</tbody>
</table>
through the area. The deceased was caught up in the chaos that ensued between NASA supporters and the police. He was hit on the neck by a bullet fired by the police and he succumbed to the injury. His body was collected by the police at about 6.30 p.m. and taken to City Mortuary. The incident was reported at Kamukunji Police Station.

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<tr>
<th></th>
<th>Kamukunji</th>
<th>Unknown</th>
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<td>6.</td>
<td>Kamukunji</td>
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<td>On 17th November 2017, a male civilian left home for town but never returned. His father tried to reach him on phone to no avail. He however came across an image of his son’s body on social media and immediately made his way to City Mortuary where he learnt that his son had been shot in the chest and his body taken to the mortuary by officers from Kamukunji Police Station. A postmortem conducted on the deceased revealed that he died after he was shot from the back and the bullet penetrated to the left side of his chest.</td>
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<tr>
<th></th>
<th>Kamukunji</th>
<th>Police</th>
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<tr>
<td>7.</td>
<td>Kamukunji</td>
<td>Police</td>
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<tr>
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<td>On 17th November 2017, a 35-year-old male was on his way home from the NASA rally following the arrival of Hon. Raila Odinga when he met with a group of police officers who assaulted him. He arrived home complaining of pain in the stomach and ribs. His brother took him to Kenyatta National Hospital where he succumbed to his injuries while waiting to go for an X-ray.</td>
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<thead>
<tr>
<th></th>
<th>Kariadudu, Ruaraka</th>
<th>Police</th>
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<tr>
<td>8.</td>
<td>Kariadudu, Ruaraka</td>
<td>Police</td>
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<td></td>
<td>On 26th October 2017, a 22-year-old male was shot dead when police tried to disperse a group of people who had gathered in Chandaria area after allegedly setting ablaze a bread factory. One officer opened fire in a bid to disperse the protesters and a bullet hit the deceased. The bullet entered through the neck and exited through</td>
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<td>the forehead. His body was taken to City Mortuary and a postmortem was carried out.</td>
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<tr>
<td>9.</td>
<td>Kariobangi</td>
<td>Civilian</td>
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<tr>
<td>On 17th November 2017, a 33-year-old male was on a motorbike riding near the Kariobangi roundabout when he encountered some youths demanding people to produce their ID cards. He did not have his ID card on him and they dislodged him from the motorbike and threw him to his death from the flyover down onto the road. His body was taken to City Mortuary and thereafter his family transferred it to Chiromo Mortuary.</td>
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<td>10.</td>
<td>Kasungu Area, Mathare</td>
<td>Police</td>
</tr>
<tr>
<td>On 19th November 2017 at 4 p.m., a 17-year-old Form 3 student at Mutee Secondary School, was on his way from his sister’s home in Mathare Area 4 when he was caught up in the chaos between a group of NASA supporters and the police. He suffered a gunshot wound to the chest and was rushed to a hospital in East Leigh by a community emergency organization called Blue House. He was pronounced dead upon arrival and his body was moved to City Mortuary by police from Pangani Police Station where the incident was reported.</td>
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<td>11.</td>
<td>Katwekera, Kibra</td>
<td>Police</td>
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<tr>
<td>On 20th November 2017 at 2 p.m., a female civilian was in her house doing her chores when she was hit by a bullet on her right thigh. The bullet penetrated through the mud plastered wall of the house. There were demonstrations in the area and police fired gun shots. The deceased was at home with her grandchild at the time and the persistent cries of the child attracted people who came to their aid. The victim was bleeding profusely and she died while being rushed to hospital. Her body was taken to City Mortuary.</td>
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<td></td>
<td>Location</td>
<td>Category</td>
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</tr>
<tr>
<td>12.</td>
<td>Kibra</td>
<td>Unknown</td>
</tr>
<tr>
<td>13.</td>
<td>Lucky Summer</td>
<td>Unknown</td>
</tr>
<tr>
<td>14.</td>
<td>Mathare Area 2</td>
<td>Police</td>
</tr>
<tr>
<td>15.</td>
<td>Muthurwa Market</td>
<td>Civilian</td>
</tr>
<tr>
<td>No.</td>
<td>Location</td>
<td>Type</td>
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<tr>
<td>16.</td>
<td>Nairobi CBD</td>
<td>Police</td>
</tr>
<tr>
<td>17.</td>
<td>NACICO, Kamukunji</td>
<td>Unknown</td>
</tr>
<tr>
<td>18.</td>
<td>Pipeline, Embakasi</td>
<td>Police</td>
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</tbody>
</table>
the area to prevent NASA supporters from attending a prayer meeting organized by the Coalition at Jacaranda Grounds in Donholm area. His body was taken to City Mortuary.

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<thead>
<tr>
<th>No.</th>
<th>Location</th>
<th>Type</th>
<th>Details</th>
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</thead>
<tbody>
<tr>
<td>19.</td>
<td>Riverside, Baba Dogo</td>
<td>Civilian</td>
<td>On 19th November 2017 at 5 a.m. a male civilian was killed at Riverside Stage, Baba Dogo. An unidentified man driving a white Toyota Probox approached him and other commuters at the stage. The man spoke to them in Kikuyu language and those who could respond in the same language were spared from being killed. Unfortunately, the deceased, alongside other four persons, who could not speak the language were shot dead. Police officers from Ruaraka Police Station arrived at the scene at 7 a.m. and moved the bodies to City Mortuary.</td>
</tr>
<tr>
<td>20.</td>
<td>Riverside, Baba Dogo</td>
<td>Civilian</td>
<td>On 19th November 2017 at 8 a.m., a male civilian was at Riverside Stage on his way to church when he met a group of men believed to be a militia group. They attacked him using a machete. He sustained deep cuts on the head and bled to death. The deceased was attacked alongside other commuters at the stage. Police officers visited the scene at 12 noon and moved the body to City Mortuary.</td>
</tr>
<tr>
<td>21.</td>
<td>Riverside, Baba Dogo</td>
<td>Unknown</td>
<td>On 19th November 2017 at 8 a.m., a male civilian was on his way home from a night shift at his place of work in EPZ, Ruaraka. He died as a result of a gunshot wound. His wife was alerted of the incident by a person who called her using the deceased’s phone and by the time she arrived at the scene the body had been moved to City Mortuary by the police. She recorded her statement at Pangani Police Station.</td>
</tr>
<tr>
<td>No.</td>
<td>Location</td>
<td>Agent</td>
<td>Details</td>
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</tr>
<tr>
<td>22.</td>
<td>Riverside, Mathare Road</td>
<td>Unknown</td>
<td>On 19th November 2017, a 42-year-old male bodaboda operator died after being shot in the chest. His colleagues informed his wife of the incident. His body was taken to Kenyatta University Funeral Home.</td>
</tr>
<tr>
<td>23.</td>
<td>Bondeni, Athi River-Machakos County</td>
<td>Police</td>
<td>On 26th October 2017, a 14-year-old student at Athi River Primary School was fatally shot by police officers while outside their home. The said police officers had been contracted by the IEBC to provide security at Athi River Primary School Polling Station in Mavoko Constituency of Machakos County. His body was taken to Shalom Hospital before relatives moved it to Machakos Level 5 Hospital Mortuary where a postmortem was conducted. The body was found to have two bullet wounds (entry on the right part of the chest next to the collar bone with an exit at the lower back (right side)).</td>
</tr>
<tr>
<td>24.</td>
<td>Kitmikayi, Seme</td>
<td>Police</td>
<td>On 26th October 2017, a 25-year-old male, 4th year Business &amp; Economics student at Maseno University was shot on the shoulder and the bullet hit his throat. It is alleged he was shot by police at Kitmikayi Tallying Centre where the ballot boxes had been stored. The youths were protesting and blocked the road and at that moment the police started to shoot indiscriminately at the crowd. The deceased was a resident of Kombewa.</td>
</tr>
<tr>
<td>25.</td>
<td>Mamboleo</td>
<td>Police</td>
<td>On 26th October 2017, a 19-year-old male civilian was shot by police on his genitalia. He was taken to Jaramogi Oginga Odinga Teaching and Referral Hospital as he bled heavily.</td>
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</table>
succumbed to death at the Casualty unit while undergoing treatment.

**HOMABAY COUNTY**

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<thead>
<tr>
<th>No.</th>
<th>Location</th>
<th>Agency</th>
<th>Details</th>
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<tbody>
<tr>
<td>26</td>
<td>Pala</td>
<td>Police</td>
<td>On 27&lt;sup&gt;th&lt;/sup&gt; October 2017, a male civilian was shot and died at Pala near the former Karachuonyo MP’s residence. The deceased was allegedly shot by policemen guarding the former MP’s rural home. His body was removed to Gendia Mission Hospital where a postmortem was scheduled to be carried out.</td>
</tr>
<tr>
<td>27</td>
<td>Sindo</td>
<td>Police</td>
<td>On 26&lt;sup&gt;th&lt;/sup&gt; October 2017, a 25-year-old male from Ogande was shot at the back by police while on his way to the area shopping center. His body was taken to Homabay County Referral Hospital Mortuary.</td>
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**BUNGOMA COUNTY**

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<tr>
<th>No.</th>
<th>Location</th>
<th>Agency</th>
<th>Details</th>
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<tbody>
<tr>
<td>28</td>
<td>Mteremko Area, Bungoma Town</td>
<td>Police</td>
<td>On 27&lt;sup&gt;th&lt;/sup&gt; October 2017, a male youth was killed during demonstrations within the town. The police fired live bullets to disperse crowds and the deceased was killed in the melee. His body was found at Mteremko Area with gunshot wounds to the right side of his chest near the neck. The bullet removed from the deceased’s body was reported to have been taken by a police inspector attached to Bungoma Police Station.</td>
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**MIGORI COUNTY**

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<tr>
<th>No.</th>
<th>Location</th>
<th>Agency</th>
<th>Details</th>
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<tbody>
<tr>
<td>29</td>
<td>Apida</td>
<td>Police</td>
<td>On 27&lt;sup&gt;th&lt;/sup&gt; October 2017, a 45-year-old male civilian sustained an open injury on the left side of the head after he was hit using a blunt object. He was taken to hospital for treatment but unfortunately succumbed to his injury. During the postmortem carried out at St. Joseph’s Ombo Mission Hospital,</td>
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the deceased was found to have also suffered a single gunshot wound to the head. The bullet lodged in his head with the point of entry being his neck.

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<tbody>
<tr>
<td>30.</td>
<td>Apida</td>
<td>Police</td>
</tr>
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</table>

On 20\textsuperscript{th} November 2017, a 25-year-old male clinical officer at Mamu Clinic died after he was shot at the pelvic area by police. The police had been deployed in the area to quell any disturbances following the delivery of the Supreme Court judgment. The victim was on his way to Shivling Pharmacy to collect medical supplies when he met his death.

Body of 14-year-old boy shot by police on 26\textsuperscript{th} October 2017 in Athi River, Machakos County

*(Reference above: Table entry serial no.23)*

*(Photo courtesy: KNCHR 2017)*
Body of 25-year-old male student shot on the throat via lower shoulder on 26th October 2017 at Kitikayi Tallying Center (Reference above: Table entry serial no.24)

(Photograph courtesy: KNCHR 2017)

A 19-year-old male who was shot by police on his genitalia on 26th October 2017 at Mamboleo in Kisumu County (Reference above: Table entry serial no.25)

(Photograph courtesy: KNCHR 2017)
Body of man shot by police at Pala near the former Karachuonyo MP’s Residence, Homabay County on 27th October 2017 (Reference above: Table entry serial no.26)

(Photo courtesy: KNCHR 2017)

Body of a man shot dead by police on 27th October 2017 within Bungoma Town, Bungoma County (Reference above: Table entry serial no.28) (Photo courtesy: KNCHR 2017)
A 25-year-old clinical officer shot on the pelvic area by police on 20th November 2017 in Migori County (Reference above: Table entry serial no.30) (Photo courtesy: KNCHR 2017)

4.3 Freedom from Torture, Degrading, Cruel and Inhuman Treatment

The Kenya national Commission on Human Rights (KNCHR) documented over one hundred (100) cases of injuries following the repeat Presidential Elections of 26th October, 2017. The information was recorded through interviews conducted with the affected victims and witnesses, during public forums, via the Commission’s toll-free line and through patient logs and information shared by hospitals and referral partners working with KNCHR.

Attacks on civilians by both security agencies and those taking advantage of the disorder, was not limited to those protesting on the streets or at the rallies. Scores of injuries were attributed to security agencies and civilians gaining forceful entry into private places of residence and business premises before proceeding to attack the occupants therein, a gross violation of their right to privacy. The Commission documented at least twenty-two (22) cases where the attacks were carried out within private spaces, establishing a worrying trend where civilians are no longer assured of their safety and security within their homes or places of business.

4.3.1 Log of Injuries

<table>
<thead>
<tr>
<th>LOCATION OF INCIDENCE</th>
<th>ALLEGED PERPETRATOR</th>
<th>COMPLAINT</th>
</tr>
</thead>
<tbody>
<tr>
<td>MIGORI COUNTY</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Location</td>
<td>Incident</td>
</tr>
<tr>
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</tr>
<tr>
<td>1.</td>
<td>Banana Estate Police</td>
<td>On 27&lt;sup&gt;th&lt;/sup&gt; October 2017, a female civilian was making bricks at her home when armed officers arrived and began shooting using live bullets. They wanted to shoot her son but she managed to shield him and the officers decided to assault her with their batons until she fainted. They then proceeded to beat up her son. They hurled teargas canisters into her house almost setting it ablaze. She sustained injuries on her right thigh and hip and went to hospital for treatment.</td>
</tr>
<tr>
<td>2.</td>
<td>Easy Coach offices in Migori Town Police</td>
<td>On 26&lt;sup&gt;th&lt;/sup&gt; October 2017, the police entered the Easy Coach offices and forcefully removed the workers from the offices and begun unprovoked assault by clobbering them with batons. A 30-year-old man sustained multiple injuries on the head, left hand, on the back and on the chest. He lost consciousness and was taken to Oruba Nursing Home by good samaritans. He could not identify the person who beat him up but the perpetrator wore full police uniform.</td>
</tr>
<tr>
<td>3.</td>
<td>Equity Bank, Migori Town Police</td>
<td>On 25&lt;sup&gt;th&lt;/sup&gt; October 2017, GSU Officers lobbed teargas canisters at members of the public. At the bank’s corridor they accosted a 42-year-old male civilian and began assaulting him with truncheons until he lost consciousness. Some members of the public watched as the victim was left for dead in a ridge. Members of the public took him to Oruba Nursing Hospital. He suffered multiple injuries on the chest, head, back and lower abdomen. He bled profusely and had to be stitched on his head.</td>
</tr>
<tr>
<td>4.</td>
<td>Kadika Police</td>
<td>On 27&lt;sup&gt;th&lt;/sup&gt; October 2017, police assaulted a male youth at Kadika. He was beaten on his head and his hands by the police who used truncheons. He sustained a deep wound on his head and his hands were equally swollen.</td>
</tr>
<tr>
<td>5.</td>
<td>Suna West Market Police</td>
<td>On 27&lt;sup&gt;th&lt;/sup&gt; October 2017, a 41-year-old male civilian was selling his wares at the market when he was accosted and assaulted by the police. He lost consciousness and was taken to Oruba Nursing Hospital. He sustained injuries on his hands, chest and back. He suffered a broken hand and finger.</td>
</tr>
<tr>
<td></td>
<td>Location</td>
<td>Reporting Agency</td>
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<tr>
<td>6.</td>
<td>Migori Main Bus Park</td>
<td>Police</td>
</tr>
<tr>
<td>7.</td>
<td>Migori Town</td>
<td>Police</td>
</tr>
<tr>
<td>8.</td>
<td>Migori Town</td>
<td>Police</td>
</tr>
<tr>
<td>9.</td>
<td>Migori Town</td>
<td>Police</td>
</tr>
<tr>
<td>10.</td>
<td>Nyasare</td>
<td>Police</td>
</tr>
<tr>
<td>11.</td>
<td>Oding Mon Estate</td>
<td>Police</td>
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</tbody>
</table>
assaulted by the officers until he lost consciousness. He was taken to St. Joseph Ombo Mission Hospital by Red Cross team.

<table>
<thead>
<tr>
<th>No.</th>
<th>Location</th>
<th>Agency</th>
<th>Event Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>12.</td>
<td>Onyinja</td>
<td>Police</td>
<td>On 27th October 2017, a 54-year-old male civilian was on his way to attend a funeral. On his way back, he boarded a motorbike together with a friend. Upon arrival at Onyinja, a group of police officers accosted them near a maize plantation and assaulted them with batons and fists. He lost consciousness and later found himself at Oruba Nursing Hospital. He was diagnosed with multiple injuries on his back, knee and hand. In the process he lost his national identification card, Ksh. 6000 and a Samsung C25Mobile phone.</td>
</tr>
<tr>
<td>13.</td>
<td>Onyungo next to PEBO petrol station</td>
<td>Police</td>
<td>On 27th October 2017 a 30-year-old male civilian was accosted by police while on his way home (Nyasare) from work (Oruba Nursing Hospital) to his home. He was shot on his left thigh and the bullet lodged in his right thigh. He was taken to Oruba where he received first aid before being transferred to St. Joseph Ombo Mission General Hospital where the bullet was removed.</td>
</tr>
<tr>
<td>14.</td>
<td>Oruba Deep, Suna West Constituency,</td>
<td>Police</td>
<td>On the evening of 27th October 2017, a 24-year-old bodaboda operator was seated at a kiosk near his home at Oruba Deep, when police fired and a bullet that hit him on his stomach.</td>
</tr>
<tr>
<td>15.</td>
<td>Rapogi</td>
<td>Police</td>
<td>On 27th October 2017, a 25-year-old male civilian health worker, named Duncan was taking a patient to Machage hospital on his motorcycle. He met with police officers next to Collage Inn who demanded money from him before directing him to take a shortcut. Just as he made a turn, three (3) police officers accosted him and threw a stone at him a fall off his motorbike. The police then proceeded to assault using truncheons by hitting him on his knees and groin region while threatening him with death. Onlookers called Red Cross team who took him and his patient to Ombo Mission Hospital.</td>
</tr>
</tbody>
</table>
### Rongo (Opposite Jamaa Building)

**Police**

On 27th October, a 34-year-old male civilian while working at his home was accosted by armed police officers and while on the run; he was shot on his right breast and lost consciousness. Members of the public took him to Oruba Nursing Hospital where he received treatment.

### Suna East

**Police**

Police officers knocked down a 33-year-old female civilian’s house door demanding that she surrenders her husband and any other men who were part of the protesters and she might have been hiding. They assaulted her when she said there was no person in the house all along ransacking her house. She was taken to Ombo Hospital for treatment by Red Cross team.

### Suna East

**Police**

On 26th October 2017, the police knocked down a 35-year-old female civilian’s house door demanding she surrenders her husband and the other youths who were protesting. They assaulted her and in the process smashed the television saying it was what she and other members of her household were using to listen to Raila and that was making them *hot headed*.

### Suba East

**Police**

A 35-year-old male civilian went to town on personal business and after alighting from a motorbike he went to an Mpesa shop which was then closed. On his way back home, he was accosted by the police and they assaulted until he became unconscious. He was taken to Oruba Nursing Hospital. He suffered multiple injuries on the chest, head, back and lower abdomen.

### Suna West

**Police**

On 27th October 2017 a 25-year-old male civilian was stopped by police while riding his motorbike. They assaulted him until he lost consciousness. He sustained injuries on both legs and arms, back, head and chest.

### Busia County

#### Marachi Village

**Police**

On 27th October 2017, a 22-year-old male civilian went outside to close the gate to their home due to the then ongoing unrest in the area when he was hit by a bullet on his leg. He was
85

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<tbody>
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<td>taken to Egesa Hospital where he received treatment.</td>
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</tr>
<tr>
<td>22.</td>
<td>Busia</td>
<td>Police</td>
</tr>
<tr>
<td>On 26th October 2017, a 22-year-old male civilian was on his way to visit his mother when he was caught up in the protests and was shot on the right hip. He was taken to New Bungoma Maternity Hospital.</td>
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**NAIROBI CITY COUNTY**

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<tbody>
<tr>
<td>23.</td>
<td>Kaloleni</td>
<td>Civilian</td>
</tr>
<tr>
<td>On 27th October 2017 a male victim while on his way from work met a group of youths who asked him if he had voted after which they assaulted him injuring him on the head and mouth. He was admitted at KNH where he is still receiving treatment.</td>
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<tr>
<td>24.</td>
<td>Kawangware</td>
<td>Civilian</td>
</tr>
<tr>
<td>On 27th October 2017 a male victim while on his way to work was pulled from his motorbike and cut on the head by a group of rowdy youths who had gathered along Naivasha Road. He met with a Kenya Red Cross ambulance who administered first aid before taking him to KNH where he was treated and discharged.</td>
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</tr>
<tr>
<td>25.</td>
<td>Kawangware</td>
<td>Civilian</td>
</tr>
<tr>
<td>On 27th October 2017, a male victim was assaulted and cut on the head and hands by a group of rowdy youths who also took his phone and money. He was assisted by a team from Kenya Red Cross who administered first aid before taking him to KNH where he was treated and discharged.</td>
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<tr>
<td>26.</td>
<td>Kawangware</td>
<td>Civilian</td>
</tr>
<tr>
<td>On 26th October 2017 a male victim while on his way to work in the evening was attacked by a crowd of youths that was harassing people in Kawangware area and sustained head injuries. He was taken to KNH where he was treated and discharged.</td>
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</tr>
<tr>
<td>27.</td>
<td>Kawangware</td>
<td>Civilian</td>
</tr>
<tr>
<td>On 27th October 2017 at about 8.00pm, a male victim while on his way from work at Kathondiki area along Limuru road was attacked by a group of youths who broke his leg using clubs. At the time of recording the</td>
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</tbody>
</table>
statement he was admitted at KNH where he was still receiving treatment.

28. Kawangware 46 Civilian On 27th October 2017 at about 9.00 p.m, a male victim while on his way from work was attacked by a group of youths who assaulted. At the time of recording the statement he was admitted at KNH where he was still receiving treatment.

29. Kawangware Stage 2 Civilian On 27th October 2017, a male victim while on his way to the shop was attacked by a group of youths who assaulted him and dislocated his shoulder. He was treated at KNH and discharged.

30. Kawangware 56 Civilian On 26th October 2017, a male victim while on his way from the polling station where he had gone to vote was accosted by a group of youths who were checking out for those who had voted. He was attacked and injured on his ribs and jaw. The police came to his aid and took him to Mediheal was and he later transferred to KNH treated and discharged.

31. Kibra Civilian On 26 October 2017, a female civilian while on her way to the Ayany Polling Station met with a crowd of angry youths at Ayany 42 Junction, who assaulted her.

32. Kibra Police On 26th October 2017, a 30-year-old male civilian was on his way to work when he was shot on his right thigh by police who had been deployed in the area. He was taken to Kenyatta National Hospital and later transferred to Masaba Hospital.

33. Kibra Police On 26th October 2017, a 30-year-old male civilian was assaulted by police who had been deployed to guard Raila Education Center. He sustained a broken hand and bruises on his legs. He was taken to Kenyatta National Hospital where he was treated and discharged.

34. Kibra Police On 26th October 2017 at about 7.00pm, a 17-year-old minor was shot on his right hand by police who had been deployed to guard Raila
<table>
<thead>
<tr>
<th></th>
<th>Location</th>
<th>Type</th>
<th>Incident Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>35.</td>
<td>Kibra</td>
<td>Police</td>
<td>On 26th October 2017 at about 5.00pm, a male civilian was shot on his left thigh by a police officer in a jungle green uniform as he was coming from his house despite there being no protests around Lindi area. He was admitted at Kenyatta National Hospital.</td>
</tr>
<tr>
<td>36.</td>
<td>Between Mathare North &amp; Mathare 4A Primary Sch.</td>
<td>Civilian</td>
<td>On 26th October 2017, An AP Officer (Sgt. Kwabai) was hit by a stone hurled at police officers by protesters atop buildings. He is alleged to have sustained grave injuries.</td>
</tr>
</tbody>
</table>

**KISUMU COUNTY**

<table>
<thead>
<tr>
<th></th>
<th>Location</th>
<th>Type</th>
<th>Incident Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>37.</td>
<td>Chemelil Round about</td>
<td>Administration police.</td>
<td>On the 27th October 2017 at around 1 pm, police officers forcefully broke into the house of a male civilian adult, assaulted him and took his ID, ATM and wallet. He sustained injuries on both hands and feet. He did not visit a hospital but he self-medicated for pain relief.</td>
</tr>
<tr>
<td>38.</td>
<td>Chemelil Round about</td>
<td>General Service Unit</td>
<td>On 27th October 2017 at around noon, a male civilian was assaulted by GSU officers. He suffered swollen hands and was treated by a private doctor at home.</td>
</tr>
<tr>
<td>39.</td>
<td>Chemelil Round about</td>
<td>General Service Unit</td>
<td>On 27th October 2017, a male adult was assaulted by police officers armed with truncheons. He sustained injuries on his shoulders and arms before he managed to run away and hid in a sugar cane plantation.</td>
</tr>
<tr>
<td>40.</td>
<td>Chemelil Round about</td>
<td>Administration Police</td>
<td>On 27th October 2017, police lobbed tear gas canisters at a female civilian who was in the company of her two children. One of the children suffered injuries to the eyes and was treated at Chemelil Dispensary.</td>
</tr>
<tr>
<td>41.</td>
<td>Chemelil Round about</td>
<td>Administration Police</td>
<td>On 27th October 2017, a female civilian adult in the company of her neighbors were hiding from the police in her house. The police forcefully broke down the door and they dragged one woman out of a room. Armed with batons and guns, they beat her up and poured water on her.</td>
</tr>
<tr>
<td>No.</td>
<td>Location</td>
<td>Type</td>
<td>Description</td>
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</tr>
<tr>
<td>42</td>
<td>Mibasi</td>
<td>General Service Unit</td>
<td>On 27&lt;sup&gt;th&lt;/sup&gt; October 2017, a female civilian adult was chased by police officers, adorned in green attire, who were deployed in the area to disperse youths who were protesting the repeat Presidential Election. She was assaulted by the officers and suffered injuries on her right leg.</td>
</tr>
<tr>
<td>43</td>
<td>Chemelil Round about</td>
<td>General Service Unit</td>
<td>On 27&lt;sup&gt;th&lt;/sup&gt; October 2017, a female civilian adult was assaulted in her house by a man dressed in jungle green attire similar to those adorned by the GSU. She sustained injuries on both of her hands and shoulders but did not seek treatment.</td>
</tr>
<tr>
<td>44</td>
<td>Chemelil Round about</td>
<td>Administration Police</td>
<td>On 27&lt;sup&gt;th&lt;/sup&gt; October 2017, a male civilian was in his shop when police officers broke in and assaulted him using batons. He sustained injuries on his buttocks and back. They also stole Ksh. 7,000 and consumed his stock of sodas. He sought medical assistance at Bhanji Hospital.</td>
</tr>
<tr>
<td>45</td>
<td>Chemelil</td>
<td>Administration Police</td>
<td>On 27&lt;sup&gt;th&lt;/sup&gt; October, 2017, a female civilian reported that officers forcefully gained entry into her house, assaulted her and stole Ksh.1000 and emptied basins full of water in the house. Her two-month-old baby was affected by the cold and has since contracted Pneumonia. She was taken for a medical check-up at Chemelil Dispensary.</td>
</tr>
<tr>
<td>46</td>
<td>Chemelil Round about</td>
<td>Administration Police</td>
<td>On 27&lt;sup&gt;th&lt;/sup&gt; October, 2017, a female civilian reported that police assaulted her and she had to part with Ksh.900 to be allowed to walk away. The officers then embarked on door-to-door exercise looking for men. They threatened to rape her.</td>
</tr>
<tr>
<td>47</td>
<td>Chemelil Round about</td>
<td>Administration Police</td>
<td>On 27&lt;sup&gt;th&lt;/sup&gt; October 2017 a female civilian was in her hotel when police officers came and assaulted her while slapping her on the face. They also ate all the food and stole Ksh. 6,800 from her.</td>
</tr>
<tr>
<td>48</td>
<td>Chemelil Round about</td>
<td>Administration Police</td>
<td>On 27&lt;sup&gt;th&lt;/sup&gt; October 2017, a female civilian reported that she was assaulted by police. She was expectant and hence panicked as the harassment would have interfered with her unborn baby.</td>
</tr>
<tr>
<td>49</td>
<td>Chemelil Round about</td>
<td>Administration Police</td>
<td>On 27&lt;sup&gt;th&lt;/sup&gt; October 2017, a male civilian, while on his way to work, was accosted by officers who had alighted from a police truck. They ordered</td>
</tr>
</tbody>
</table>
him to stop and started assaulting him up. They then dragged him to a place where other men had been detained and they were all assaulted again and ordered to remove a truck that had barricaded the road. He sustained serious injuries on his buttocks and back. He was treated at Chemelil Dispensary.

<table>
<thead>
<tr>
<th>No.</th>
<th>Location</th>
<th>Agency</th>
<th>Date</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>50.</td>
<td>Chemelil Round about</td>
<td>Administration Police</td>
<td>27th October 2017</td>
<td>A male civilian while on his way from the farm, was accosted by police officers who assaulted him, threw his bicycle away and dragged him beside a trailer whereupon they continued the assault. They made him carry faeces which had been smeared on the rocks with bare hands. He sustained serious injuries on his back and right chest but could not afford to seek any treatment.</td>
</tr>
<tr>
<td>51.</td>
<td>Chemelil Round about</td>
<td>Administration Police</td>
<td>27th October 2017</td>
<td>A female civilian was assaulted by officers causing injuries on her legs and both hands before being forced to remove stones that had barricaded the roads. She did not seek treatment.</td>
</tr>
<tr>
<td>52.</td>
<td>Kopere Center</td>
<td>Administration Police</td>
<td>26th October 2017</td>
<td>A male civilian was dragged out from his house by police officers and taken to the road where he was assaulted as the officers alleged that he had barricaded the road. He sustained injuries on both hands, thighs and back. He did not seek treatment.</td>
</tr>
<tr>
<td>53.</td>
<td>Kopere Center</td>
<td>Administration Police</td>
<td>27th October 2017</td>
<td>A female civilian was at home with her friends when officers forcefully gained entry and ordered everyone to lie down. They threatened to kill them. The visitors in her house were assaulted. The officers were looking for men that had barricaded the road. She sustained injuries on her waist and thighs but self-medicated for pain relief.</td>
</tr>
<tr>
<td>54.</td>
<td>Kopere Center</td>
<td>Administration Police</td>
<td>27th October 2017</td>
<td>A male civilian was at home with his friends when police forcefully asked him to give them money and he parted with Ksh. 1,300. They then assaulted him by hitting his ear with the rear end of a rifle resulting in bleeding. They then dragged him to the roadside and told him to clear stones that had barricaded the roads. He passed out at that point and regained consciousness.</td>
</tr>
<tr>
<td>No.</td>
<td>Location</td>
<td>Police Rank</td>
<td>Event Description</td>
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<tr>
<td>55</td>
<td>Kachok Police</td>
<td></td>
<td>On 27th October 2017 GSU officers forcefully gained entry into a male civilian’s house and assaulted him causing injuries to his head, chest and knees.</td>
<td></td>
</tr>
<tr>
<td>56</td>
<td>Kilo, Nyalenda</td>
<td>Police</td>
<td>On 26th October 2017, a male Form 4 student at Kisumu South SDA Secondary School was shot at while within the school compound by police quelling demonstrations. He suffered a bullet graze on the head and witnesses allege that the police officer who aimed and fired is attached to Nyalenda Police Station. The boy was taken to Milimani Hospital where he was stitched before returning to school.</td>
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</tr>
<tr>
<td>57</td>
<td>Kisumu Central</td>
<td>Police</td>
<td>On 26th October 2017 a 25-year-old male civilian and resident of Muhoroni, was accosted by four policemen at a sports ground and was assaulted. He regained consciousness in hospital.</td>
<td></td>
</tr>
<tr>
<td>58</td>
<td>Kisumu Central</td>
<td>Police</td>
<td>On 26th October 2017 a 26-year-old male civilian was leaving his house and as he opened the door he was accosted by police who were shouting “ndiye huyo anafungua” (He is opening the door). The police officers threatened to lob teargas canisters inside the house and the neighbors raised alarm. Fearing for the life of his one-week old baby, he decided to open the door. They assaulted him and left with him saying that they were taking him to the police cell at Nyalenda Police station. When he resisted giving the police his phone they further assaulted him and robbed him of Ksh.18, 000. It seemed the police wanted the Mpesa till number which he didn’t have. He was rescued by a Red Cross Ambulance which took him to the hospital for treatment. He suffered fractured fingers on his right hand</td>
<td></td>
</tr>
<tr>
<td>59</td>
<td>Kondele Police</td>
<td></td>
<td>On 26th October 2017, a 23-year-old male civilian was shot by police on his left cheek and the bullet exited through the ear. A successful surgery was carried out on him.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Location</td>
<td>Police</td>
<td>Details</td>
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<tr>
<td>60.</td>
<td>Nyalenda</td>
<td>Police</td>
<td>On 26&lt;sup&gt;th&lt;/sup&gt; October 2017, an 18-year-old Form four male student at St. Joseph Secondary School was shot when heading home from school. The bullet brushed the right side of his neck and he sustained minor injuries.</td>
<td></td>
</tr>
<tr>
<td>61.</td>
<td>Nyalenda</td>
<td>Police</td>
<td>On 26&lt;sup&gt;th&lt;/sup&gt; October 2017, a 20-year-old Form three male student at St. Peter’s Nanga was shot on the left hip. The bullet is still lodged in his hip as doctors advised against having the same removed as it is may result in the victim losing functionality of his left leg.</td>
<td></td>
</tr>
<tr>
<td>62.</td>
<td>Nyalenda</td>
<td>Police</td>
<td>On 27&lt;sup&gt;th&lt;/sup&gt; October 2017, a Form three student at St. Peter Secondary School was shot in the stomach by the police and was taken to JOOTRH for treatment.</td>
<td></td>
</tr>
<tr>
<td>63.</td>
<td>Nyawita</td>
<td>Police</td>
<td>On 26&lt;sup&gt;th&lt;/sup&gt; October 2017 at about 3p.m., a 27-year-old male carpenter was near Comrade Bar walking towards Kondele, when he was shot on the right side of his rib by police who were in a police Land Cruiser vehicle.</td>
<td></td>
</tr>
<tr>
<td>64.</td>
<td>Obunga</td>
<td>Police</td>
<td>On 26&lt;sup&gt;th&lt;/sup&gt; October 2017 a 22-year-old male civilian was attacked by policemen who shot him on the right knee and right elbow.</td>
<td></td>
</tr>
<tr>
<td>65.</td>
<td>Obunga</td>
<td>Police</td>
<td>On 26&lt;sup&gt;th&lt;/sup&gt; October 2017, a 27-year-old male civilian was shot on the right side of his head and sustained a gunshot wound on his right eye.</td>
<td></td>
</tr>
<tr>
<td>66.</td>
<td>Manyatta</td>
<td>Police</td>
<td>On 27&lt;sup&gt;th&lt;/sup&gt; October 2017, a 16-year-old male civilian was riding a motorcycle from town when he heard a gunshot. The fuel tank of the motorcycle had been hit and he later found himself in hospital having fractured his right leg and knee.</td>
<td></td>
</tr>
</tbody>
</table>

**BUNGOMA COUNTY**

<table>
<thead>
<tr>
<th></th>
<th>Location</th>
<th>Police</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>67.</td>
<td>Keringet, Bungoma Town</td>
<td>Police</td>
<td>On the morning of 27&lt;sup&gt;th&lt;/sup&gt; October 2017, there were demonstrations within the town, and the police were shooting to disperse crowds. A 23-year-old male sustained a gunshot wound and was taken to Bungoma West Hospital. He was advised that</td>
</tr>
</tbody>
</table>
he needed to be admitted but since he did not have money he was advised to go to another hospital. He was later admitted at Elgon View Hospital where he underwent surgery on 28th October 2017 and the bullet removed from his right thigh.

| 68. | St. Damiano Area, Bungoma Town | Police | On 27th October 2017, there were demonstrations within the town and the police were shooting to disperse crowds. In the process police officers forcefully gained entry into a 35-year-old male’s house and assaulted up. He was then shot in the arm above the elbow. He was rushed to St. Damiano Hospital but was referred to Elgon View Hospital. The bullet was removed on 28th October, 2017 and the victim continued to recover while still admitted in the same hospital. |

**HOMABAY COUNTY**

| 69. | Crossway Bridge, Mbita | Police | On 26th October 2017, a 34-year-old male civilian was on his way home when he was accosted by several policemen. The police assaulted him and he sustained a broken leg as he jumped from a bridge. The victim was picked from his home by Red Cross team and was taken to Homabay Referral Hospital where he was admitted. |

| 70. | Homabay | Police | On 27th October 2017, a male civilian was on his way home and he decided to use a route he deemed safe. He accosted by a police officer who corked his gun and the victim tried to run away out of fear. He fell down in the process and the police officer shot at him four times with the fourth bullet hitting him in the buttocks. He managed to crawl and hide in a nearby bush and waited until the officer had left before crawling out to look for help. He was taken to Homabay County Referral Hospital for treatment. |

<p>| 71. | Nyanyera | Police | On 27th October 2017, the police shot a bodaboda rider on the chest, he was taken to Homabay Level 4 Hospital |</p>
<table>
<thead>
<tr>
<th>No.</th>
<th>Location</th>
<th>Agency</th>
<th>Incident Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>72.</td>
<td>Pala, Rachuonyo</td>
<td>Police</td>
<td>On 26th October 2017, a male civilian was shot by the police on the thigh, he was on his way to assist another young man who had been shot dead) by police officers. The victim was shot by police officers who were at a house. He was able to board his motorbike to seek assistance. He was taken to Homabay County Referral Hospital for treatment. The bullet was still lodged in his thigh because the doctor’s advised it wasn’t safe to remove it as it was lodged near a vital vein.</td>
</tr>
<tr>
<td>73.</td>
<td>Pala, Rachuonyo</td>
<td>Police</td>
<td>On 26th October 2017, a male civilian was shot on the thigh by the police while on his way to the market at Pala. He was taken to Homabay County Referral Hospital.</td>
</tr>
<tr>
<td>74.</td>
<td>Sindo, Suba</td>
<td>Police</td>
<td>On 26th October 2017, a 17-year-old class eight pupil was shot on the chest by police officers on his way to his father's place of work. The father, with the help of the Red Cross officials, took him to Homabay County Referral Hospital.</td>
</tr>
<tr>
<td>75.</td>
<td>Sindo, Suba</td>
<td>Police</td>
<td>On 26th October 2017, a male civilian was hit by a bullet while on his way to buy food. He had been accosted policemen who were shooting indiscriminately at people but upon seeing him, one policeman shot him and the bullet hit him in the thigh.</td>
</tr>
</tbody>
</table>

A 23-year-old male shot in the thigh by the police on 27th October 2017 at Keringet, Bungoma Town, and recuperating at Elgon View Hospital. (Reference above: Table entry serial No. 67) (Photo courtesy: KNCHR 2017)
A 10-year-old boy shot by police in the stomach on 27th October 2017 at Deep Oruba, Migori County and recuperating at Ombo Mission Hospital.
(Reference above: Table entry serial No. 14) (Photo courtesy: KNCHR 2017)

A male adult was assaulted using rungus on his head and his hands by the police at Kadika, Migorion 27th October 2017 and is recuperating at Ombo Mission Hospital.
(Reference above: Table entry serial No. 4).
(Photo courtesy: KNCHR 2017)
A 17-year-old class eight student shot in the chest by the police on 26th October 2017 at Sindo, Suba Constituency and recuperating at Homabay County Referral Hospital. (Reference above: Table entry serial No. 74) (Photo courtesy: KNCHR 2017)

A male adult was shot in the thigh by the police on 26th October 2017 at Pala, Rachuonyo Constituency and recuperating at Homabay County Referral Hospital. (Reference above: Table entry serial No. 74) (Photo courtesy: KNCHR 2017)
A 25-year-old male shot on the right elbow and knee by police on 26th October 2017 while on his way home from Kibuye Market, Kisumu County
(Photo courtesy: KNCHR 2017)

A 35-year-old male who was shot in the chest by police on 27th October 2017 while at home in Migori Town in Migori County (Reference above: Table entry serial No. 11)
(Photo courtesy: KNCHR 2017)
A male adult shot by police on the buttocks at Nyasare in Migori County on 27th October 2017 (No. 10). (Reference above: Table entry serial No.10) (Photo courtesy: KNCHR 2017)

A 24-year-old male shot in the stomach by police in Migori Town on 27th October 2017 (Photo courtesy: KNCHR 2017) (Reference above: table entry serial No 14)
A 31-year-old male beaten by police armed with batons at Uriri Trading Center in Migori County on 27th October 2017 (Reference above: Table entry serial no 8)

(Photo courtesy: KNCHR 2017)

A man shot by police on his arm at Obunga in Kisumu Central Constituency, Kisumu County on 26th October 2017. (Reference above: Table entry serial no 66)

(Photo courtesy: KNCHR 2017)
A man who was shot on the shoulder on 26th October 2017 in Nyalenda, Kisumu County (Reference above: Table entry serial No 61)

(Photo courtesy: KNCHR 2017)

27-year-old carpenter was shot on the right side of his ribcage on 26th October 2017 while walking towards Kondele, Kisumu County. (Reference above: Table entry serial No.63)

(Photo courtesy: KNCHR 2017)
A 23-year-old male who was shot on the cheek by police at Kondele, Kisumu County on 26th October 2017 (Reference above: Table entry serial No.59)

(Photo courtesy: KNCHR 2017)

4.4 Violation of the Right to Property.

The pre and post October 26th repeat Presidential Election period saw a surge in protests, especially in NASA strongholds. Supporters of the alliance demonstrated along major highways, cities and towns. As expected, security officers were deployed to restore order in those places. Transport was stifled. The roads were barricaded and bon-fires lit on the streets, thus it became evidently challenging for business owners to open their premises for fear of damage, destruction and looting by the protesters.

Areas that saw an upscale in the destruction of property and looting were Nairobi City County, Kakamega County, Vihiga County and Kisumu County. The latter was the most predominant. In Kisumu County, the most affected areas were Nyalenda, Chemelil, Kopere and Kisumu rural. The Commission recorded destruction of property, looting and forceful entry in supermarkets, general shops, Mpesa shops, private homes, private and public vehicles, motor bikes inter alia. Coincidentally the victims who lost property also suffered harassment and actual bodily injuries. Perpetrators of looting and destruction of property were both security officers and civilians as witnessed and documented by the Commission’s monitors on the ground.
### 4.4.1 Log on Destruction of Property

<table>
<thead>
<tr>
<th>No.</th>
<th>Specific Area of incident</th>
<th>Alleged Perpetrator</th>
<th>Gender of Victim</th>
<th>Details of complaint</th>
</tr>
</thead>
<tbody>
<tr>
<td>KISUMU COUNTY</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.</td>
<td>Nyalenda, Simba Area</td>
<td>Police</td>
<td>Male</td>
<td>On 26th October 2017, a contingent of police officers was chasing a group of rowdy youths. They took advantage of the chase and broke into a pub claiming the youths had taken refuge in the pub. They then allegedly made away with expensive liquor and Ksh 100,000 from the pub.</td>
</tr>
<tr>
<td>2.</td>
<td>Nyalenda Kilo Area</td>
<td>Police</td>
<td>Male</td>
<td>On 26th October 2017, Police officers stormed an Mpesa shop, harassed the Mpesa attendant and made away with Ksh 18,000.</td>
</tr>
<tr>
<td>3.</td>
<td>Nyalenda</td>
<td>Police</td>
<td>Male</td>
<td>On 26th October 2017, police officers harassed a charcoal seller and stole Ksh. 24,000 from him. He was at his home which is also his place of work.</td>
</tr>
<tr>
<td>4.</td>
<td>Chemelil</td>
<td>Police</td>
<td>Male</td>
<td>On 27th October 2017 at around 1 pm, the victim was pursued by policemen but managed to escape unhurt. He later learnt that the officers forcefully broke into his house, damaged the door and beat up his son. They took his ID, ATM and wallet.</td>
</tr>
<tr>
<td>5.</td>
<td>Chemelil</td>
<td>Police</td>
<td>Male</td>
<td>On 27th October 2017, the victim was chased by officers but he hid in the sugarcane plantation. He later learnt that the officers had broken into his house and destroyed the front door as well as his television.</td>
</tr>
<tr>
<td>6.</td>
<td>Chemelil Round about</td>
<td>Police</td>
<td>Male</td>
<td>On 27th October 2017, the victim was found by police officers in a posho mill where he works and the assaulted him severely. They inflicted harm to his ribs and then dragged him outside and took Kshs. 5,000 which he had accumulated as the day’s work return.</td>
</tr>
<tr>
<td>7.</td>
<td>Chemelil Round about</td>
<td>Police</td>
<td>Male</td>
<td>On 27th October 2017, police officers forcefully entered into the victim’s house, broke his house door, dragged him out, solicited Ksh 500 from him and wrecked his motorbike.</td>
</tr>
<tr>
<td>8.</td>
<td>Chemelil Round about</td>
<td>Police</td>
<td>Female</td>
<td>On 27th October 2017, police officers broke into the victim’s house and lobbed a teargas canister. It landed on her clothes, which ultimately caught fire.</td>
</tr>
<tr>
<td></td>
<td>Location</td>
<td>Segment</td>
<td>Gender</td>
<td>Incident Details</td>
</tr>
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</tr>
<tr>
<td>9.</td>
<td>Mibasi</td>
<td>General Service Unit</td>
<td>Female</td>
<td>On 27th October 2017 during a riot, police officers caught up with the victim and stole Ksh. 10,000 and a phone from her.</td>
</tr>
<tr>
<td>10.</td>
<td>Chemelil Round about</td>
<td>General Service Unit</td>
<td>Female</td>
<td>On 27th October 2017, men dressed in jungle green attire similar to the one the GSU adorn broke into the victim’s house, assaulted her and stole Kshs. 5,000.</td>
</tr>
<tr>
<td>11.</td>
<td>Chemelil Round about</td>
<td>Administration Police</td>
<td>Male</td>
<td>On 27th October 2017, police officers raided the victim’s shop and stole Kshs. 7,000. In addition, they consumed sodas from the shop and then forced him to remove barricades from the road. The officers also harassed his wife.</td>
</tr>
<tr>
<td>12.</td>
<td>Chemelil</td>
<td>Administration police</td>
<td>Female</td>
<td>On 27th October 2017, police officers broke in the victim’s house, slapped her, took Ksh. 1,000 and emptied basins full of water in the house. Her two month old child was affected by the cold and has since contracted pneumonia.</td>
</tr>
<tr>
<td>13.</td>
<td>Chemelil Round about</td>
<td>Administration police</td>
<td>Male</td>
<td>On 27th October 2017, police officers raided the victim’s M-pesa shop and took 13 phones valued at 50,000. He sought safety in the sugarcane plantation.</td>
</tr>
<tr>
<td>14.</td>
<td>Chemelil Round about</td>
<td>Administration police</td>
<td>Female</td>
<td>On 26th October 2017, police officers broke into the victim’s home and took away her earnings amounting to Ksh 1,500.</td>
</tr>
<tr>
<td>15.</td>
<td>Chemelil Round about</td>
<td>Administration police</td>
<td>Female</td>
<td>On 27th October 2017, police officers took all items of sale and made away with Kshs. 2,000 from the victim. She took refuge in a sugarcane plantation.</td>
</tr>
<tr>
<td>16.</td>
<td>Chemelil Round about</td>
<td>Administration police</td>
<td>Female</td>
<td>On 27th October 2017, a victim was assaulted by police, who made away with her Kshs. 2,500. All her tomato produce was destroyed and her son equally assaulted. She sought safety in the sugarcane plantation.</td>
</tr>
<tr>
<td>17.</td>
<td>Chemelil Round about</td>
<td>Administration police</td>
<td>Female</td>
<td>On 27th October 2017, police destroyed business items and made away with Ksh 2,500 from the victim.</td>
</tr>
<tr>
<td>18.</td>
<td>Chemelil Round about</td>
<td>Administration police</td>
<td>Female</td>
<td>On 27th October 2017, the victim while scampering for safety fell down and lost her purse which had Kshs. 50. She went and hid in a house nearby but the police forcefully broke in. She then requested them to take her home since she is elderly. However, on reaching home, they demanded money and made away with Kshs. 5,000.</td>
</tr>
<tr>
<td>19.</td>
<td>Chemelil Round about</td>
<td>Administration police</td>
<td>Male</td>
<td>On 27th October 2017, during a raid that the police claimed was to flush out men who barricaded the road, victim lost salon items and bar items valued at Kshs. 200,000. In the midst of the raid they broke into businesses premise</td>
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</tbody>
</table>
and damaged items such as brow dry machines, blow dryers inter alia.

<table>
<thead>
<tr>
<th></th>
<th>Location</th>
<th>Authority</th>
<th>Sex</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>20.</td>
<td>Chemelil Round about</td>
<td>Administration police</td>
<td>Female</td>
<td>On 27th October 2017, the victim lost Kshs. 500. Her tomatoes and onions were destroyed as the police chased her.</td>
</tr>
<tr>
<td>21.</td>
<td>Chemelil Round about</td>
<td>Administration police</td>
<td>Female</td>
<td>On 27th October 2017, the police officers who claimed to be searching for men who had barricaded the road threw tear gas canisters at the victim and other grocers forcing them to abandon their businesses and flee. In the process her tomatoes were destroyed and she lost Kshs. 850.</td>
</tr>
<tr>
<td>22.</td>
<td>Kisumu Rural Constituency, East Seme Ward, Kit Mikayi Village.</td>
<td>Administration police</td>
<td>Male</td>
<td>The victim, a 33-year-old motorbike rider, was attacked by police at his usual boda boda shed where he was with other riders awaiting customers. He managed to escape but left behind his motor bike which he later found destroyed. The estimated damage cost was Ksh. 2,000.</td>
</tr>
<tr>
<td>23.</td>
<td>Kisumu Rural Constituency, East Seme Ward, Kit Mikayi Village.</td>
<td>Administration police</td>
<td>Male</td>
<td>On 27th October 2017, the police attempted to break into a 23-year-old Maseno University student house, but failed. They then resorted to break his windows and then lobbed tear gas into the house to force him open the door. Hesitantly he finally opened the door but by then the police had left. He then discovered that his motor bike which had been parked outside had been damaged. The total damage caused is estimated at Ksh. 4,000.</td>
</tr>
<tr>
<td>24.</td>
<td>Kisumu Rural Constituency, East Seme Ward, Kit Mikayi Village.</td>
<td>Administration police</td>
<td>Male</td>
<td>On 27th October 2017, at around 10am, police raided the village in search of men who they claimed had barricaded roads. The victim, a 32-year-old rider was seated outside his house when two officers accosted and assaulted him. He managed to escape only to return two hours later to find his motor bike destroyed and the tiles damaged.</td>
</tr>
<tr>
<td>25.</td>
<td>Kopere Centre</td>
<td>Administration police</td>
<td>Female</td>
<td>On 27th October 2017, the victim was assaulted by police officers who had forcefully entered into her house and claimed that she had declined to give her husband’s whereabouts. The police were looking for men who they claimed had barricaded roads.</td>
</tr>
<tr>
<td>26.</td>
<td>Kopere Centre</td>
<td>Administration police</td>
<td>Male</td>
<td>On 27th October 2017, police forcefully entered into the victim’s home at around 10.00a.m. A group of people had taken refuge in his house. He was assaulted and left for dead. He was taken to Catholic Mission Hospital.</td>
</tr>
</tbody>
</table>
27. Chemelil Round about | Administration police | Female | On 27th October 2017, officers forcefully entered into the victim’s home and demanded that she gives her husband’s whereabouts. Although they did not beat or demand money from her, they threatened her and left her very scared.

**VIHIGA COUNTY**

28. Majengo Town. | Civilians | Male | In the morning of 28th November 2017, two vehicles transporting electoral materials were ambushed by an angry mob. One car was over-turned by the angry mob while the other was hit and damaged using stones. The cars had been hired out by IEBC from private owners.

**NAIROBI CITY COUNTY**

29. Kawangware (Ngina Road) | Civilians | Male | On 27th October 2017 at about 5p.m., a mechanic witnessed a group of people vandalize a matatu that had been left by a customer to be repaired. The group started by breaking the windshield of the matatu before finally setting it on fire. The total damage caused can be estimated to Ksh. 800,000

30. Kawangware (Junction 56) | Civilians | | On 27th October 2017, retaliatory attacks between rival political groups in the area saw shops at the junction of 56 and 46 routes, including butcheries, hotels and salons go up in flames. Perpetrators who were largely a group of youths first looted the businesses before setting them ablaze.

31. Kawangware (Congo Area) | Civilians | | On 27th October 2017, shops within Congo area facing Gitanga road went up in flames after a group of youths set them ablaze. This was also a retaliatory attack by youth believed to be NASA supporters. The youth raided and looted Mwireri Supermarket on Macharia Road, they then attempted to loot PBK supermarket but it was well secured before moving to burn shops and business in the area. The owner of Congo Bar estimated the value property lost to be in the range of ten (10) million shillings.

**KAKAMEGA COUNTY**
32. **Butere/Marenyo Constituency. Shikunga Village**

**Civilians Male**

On 28th October 2017 at about mid night, a residential house was burnt down together with property of unknown worth. No one was injured. The owner of the house had prior to this received threats from youth over his choosing to participate in the repeat elections. The total damage caused was estimated at Ksh. 500,000.

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*Photo courtesy: KNCHR 2017*

**A house burnt in Shikunga village, Butere Constituency, Kakamega County.**

**A vehicle overturned at Majengo town, Vihiga County by rowdy youths.**
A Pick-up damaged with stones in Majengo town, Vihiga Town.
(Photo courtesy: KNCHR 2017)

A matatu burnt in Kawangware- Dagoretti North Constituency in Nairobi County
(Photo courtesy: KNCHR 2017)
It is important to note that destruction of property was widespread across the country and the above log is only a sample of what the Commission documented. The Commission noted that the perpetrators largely took advantage of the different demonstrations and protests witnessed after the 26th October repeat Presidential Election to destroy as well as loot property. Destruction of property was coupled with harassment, violence, injuries, forceful entry, looting as well as extortion. In cases where police were the perpetrators, most victims did not report incidences to the police out of fear of retribution.

Most victims are counting massive loses because in addition to losing property they have lost their sources of income as well as livelihoods. For instance, the victims had their business premises burnt down, cars damaged or burned down as well as motor bikes destroyed.
4.5 Inaccessibility to Essential Goods

While monitoring post the October 26th, 2017 repeat poll events in different areas, the Commission was committed in knowing how protests affected daily lives of civilians. In this regard, the Commission set to understand whether goods and services would reach usual destinations with the aim of checking on the enjoyment of Economic, Social and Cultural (ECOSOC) rights by the citizen in the post poll era.

As events would eventually turn out, the KNCHR observed disruption of road transport services which in turn affected supply of essential goods and services to market places. The KNCHR came across travelers who complained about hike in fares and shopkeepers who could not open their workplaces due to insecurity and possible looting. Whereas the full extent of the road blockage to the Nyanza region and parts of Nairobi, has not yet been completely quantified or determined, the area residents suffered from inadequate supply for their business stocks from the rest of the country. Those that depended on transport sector in form of public transport shuttles and bus liners did not freely operate. Places that needed emergency evacuation in case of natural disasters, security and urgent medical supplies faced challenges. Some of the cases recorded by the KNCHR included the following:

1. **On 30/10/2017 in Kisumu County, Kisumu Rural Constituency;** several sections of Bondo road were barricaded and this made it difficult for the motorists to navigate through. This caused a good number of public service vehicles to withdraw from offering services thus affecting the transport sector. Those who continued to offer transport hiked fares up by around KSH 50. Business people from the area attested to recording great economic losses since they were unable to transport goods more so perishable ones. Fish traders were the worst hit. In addition, youths had set up roadblocks and were demanding “passage fees” to those who desperately needed to commute.

2. **On 30/10/2017 in Nairobi County, Kibra Constituency, Sarango'ombe area;** monitors on ground observed that majority of local Shops remained closed, vegetable stalls were empty and butcheries were all closed thus residents did not have access to essential goods.
3. **On 31/10/2017 in Migori County, Awendo Constituency, Awendo town;** the Commission recorded disruption of service delivery such as food, health, transport inter alia caused by demonstrations in the town by NASA supporters. The roads were blocked with huge boulders hence making it difficult for people to transport their goods to the nearby towns and centers. The markets, shops, and supermarkets remained closed during the protests making it hard for people to access essential goods.

4. **On 26/10/2017, Migori Constituency, Kuria Constituency, Suba Kuria Ward:** Historically, there has been a long standing and complex conflict between the Luo and Kuria Communities. The conflict manifests itself in form of social, economic and politics disagreements. On October 26th 2017, the highway leading to Migori town was blocked to punish the Kuria Community, who the Luo community felt, betrayed them by voting during October 26th for Jubilee Party. There was a lot of tension between the two communities because the Luo intended to boycott the election while the Kuria turned out to vote. Rowdy youths from both communities blocked the busy Migori - Isibania and Migori - Kehancha roads by placing stones on the busy highway, burning tires and stopping vehicles thus paralyzing transport to Migori Town. The Kuria community was denied access to essential goods and services since most of the residents’ shop and run their businesses in Migori town. Traders from both communities counted loses because no economic activity was taking place. The tension among the Kuria and the Luo worsened the relations and business operations between the two communities. Movement of goods and services was a great challenge during the election period.

*Youths barricade the Homabay-Rongo road to block motorist from accessing both towns.*

*Photo courtesy: KNCHR 2017*
4.6. Heightened Civil Society Repression

KNCHR continued to work with the human rights bodies in the monitoring process. This need was occasioned by the experience of pre and post 8th August 2017 General Election. As noted in part 5.7 of the report, KNCHR had documented a situation where two leading civil society organizations, Kenya Human Rights Commission (KHRC) and AfriCog had been subjected to state sanctioned harassment.

Immediately after the 8th August 2017 General Elections, the NGO Coordination board communicated via social media that it had deregistered KHRC and issued notice that AfriCOG was operating illegally. The action of the Mr. Fazul and NGO board was perceived as the State’s response to the continued criticism by civil society at the manner in which the General Election were managed.

KNCHR having brokered a meeting between the acting CS Interior Dr. Fred Matiang’i and representatives of Civil Society was hopeful that the same would cease. The CS indeed communicated that it was his intention to foster a working relationship with Civil Society based on professionalism, good faith and transparency.

Contrary to the spirit and intent forged and as noted above, on 4th November 2017, the National NGOs Coordination Board wrote and summoned three organizations, Katiba Institute, Muslim for Human Rights (MUHURI) and Inuka Kenya to explain on financial issues regarding their projects.23

KNCHR notes that Khelef Khalifa, the Chairperson of Muslim for Human Rights had filed a petition against repeat Presidential poll outcome. Katiba Institute and Inuka Kenya, KHRC under the umbrella of the *Kura Yangu Sauti Yangu* initiative have also been active in raising awareness on issues surrounding the polls.

In their response which was in consonance and solidarity with the voice of KNCHR’s need to stop violations against institutions which offer a legally accepted divergent opinion, the CSO’s noted;

23 [https://www.standardmedia.co.ke/m/article/2001259485/fazul-s-summons-to-cso-s-cause-a-stir-on-twitter](https://www.standardmedia.co.ke/m/article/2001259485/fazul-s-summons-to-cso-s-cause-a-stir-on-twitter)
“... Khelef Khalifa, the Chair of MUHURI’s Board was one of three concerned Kenyan citizens who filed a petition to the Supreme Court on 25 October 2017 in an attempt to postpone the elections for lack of preparedness. Katiba Institute is in the process of instituting legal proceedings on the constitutionality of the recently passed Election Laws (Amendment) Act 2017. John Githongo, who is part of the leadership of Inuka Kenya, has been active in civil society on precisely the issues the government doesn’t like: integrity, corruption in government, and free, fair, and credible elections...”

In a bold and defiant move, the CSOs reiterated that they would NOT honor the summons of the NGO board issued by the controversial CEO, Mr. Fazul Mahamed Yusuf. This was buttressed by the fact that Fazul had been indicted by the KNCHR which only served to reinforce the recommendations of the Commission on Administrative Justice (CAJ) to the effect that the CEO was unfit to hold office and had a seemingly open vendetta against robust institutions championing for human rights, good governance and transparency. In addition to the foregoing, the Ethics and Anti-Corruption Commission (EACC) also declared Fazul as not qualified to discharge the duties as the CEO of the NGO Coordination Board24.

Before this matter had been settled, the CEO of the NGO Coordination Board wrote to the KHRC Executive Director on 6th November 2017 accusing him of operating illegal bank accounts for projects dubbed, *Kura Yangu Sauti Yangu* and *We the People*. Fazul further accused the projects which he apparently deemed as institutions as to have received Ksh. 36 Million from the Soros Foundation which KNCHR has reasons to believe that it is reference to the Open Society Foundation which is affiliated to the philanthropist and global transparency and good governance icon, George Soros.

KNCHR notes that the harassment was, to a large extent, directed to CSOs perceived to be partners of organizations which support good governance and democracy. On 5th October, the NGO Coordination Board boss, Mr. Fazul Mahamed ordered the closure of a key development partner. The International Development Law Organization (IDLO), an organization behind the funding various programmes, including the Kenya National Commission on Human Rights among other institutions.

The IDLO Advisory Board is chaired by Professor Makau Mutua who also chairs the Kenya Human Rights Commission, which has also been under unwarranted attacks by the NGO Coordination Board. Through the letter, the NGO Coordination Board boss, Mr. Fazul

Mahamed, ordered for the ceasing of operations and closure of IDLO Offices in Nairobi. It is worth noting that on September 13, the Ministry of Foreign Affairs suspended the privileges and immunities accorded to the IDLO as part of a bilateral agreement signed with the government of Kenya.

It is evident that IDLO worked with the Judiciary on programmes around the handling of election disputes and it can be safely deduced that the Jubilee Party thought that was partly because of this engagement that the Judiciary was emboldened to make the historic judgment nullifying the 8th August 2017 Presidential Election results. Interestingly, even as the Government of the day moves to clamp down on IDLO, it’s worth noting that most of the IDLO funded beneficiaries are government bodies which include: The Judiciary, Parliament, the Executive, the Office of the Deputy President, Office of the Attorney General, the National Gender and Equality Commission, the Kenya National Commission on Human Rights and the National Council for Administration of Justice. Others include the Ministries of Mining, National Treasury, Devolution and Planning, Public Service, Youth and Gender Affairs, Environment and Natural Resources, Kenya Law Reform Commission and Council of Governors. Therefore, stopping IDLO from funding the activities of the foregoing government bodies is akin to the absurd case of a government engaging in self-imposed financial sanctions.

KNCHR notes with great concern the shrinking democratic space for civil society organizations through the NGO Coordination Board, which has oftentimes, either overreached its mandate or acted outside the confines of the law in the name of regulating the civil society operations. KNCHR calls for the immediate commencement of the PBO Act, 2013 and regrets the fact that the same has not happened even when our courts of law have handing down very clear judgements calling on the relevant actors to give the Act a commencement date. We continue calling upon all Ministries, Departments and Agencies to ensure that the rule of law remains the only reference point in the course of discharging their respective mandates.
5.0 Recommendations

KNCHR makes the following recommendations

1. The accreditation of observers and party agents by IEBC should be distinctively and uniquely differently to ensure that roles don’t overlap.

2. The design of the accreditation badges by IEBC for any future repeat poles should be designed so as to ensure that accredited observers details are properly indicated to also ensure that they can’t be used by unauthorized persons.

3. The introduction of the supervisor validation form by the IEBC to replace the use of the form 32A was not anchored on any existing regulations and there unprocedural and should officiated

4. The introduction of a manual register as a third level of identification by IEBC for all voters who turned up was unnecessary as voters had been identified using the KIEMs and therefore unprocedural. Such operations should be in line with the regulations.

5. The results transmission at close of polling stations, the RTS system didn’t display the voter turnout and therefore could not be verified by observers and party agents. IEBC must therefore must reconfigure the gadgets to increase transparency on results transmission.

6. The NPS should reiterate that civilians including political parties should not don police or military regalia. This might give people with ill-intention to use the opportunity to hoodwink civilians and occasion damage and injuries.

7. The National Gender and Equality Commission needs to investigate the increased cases of SGBV and guide the relevant stakeholders in tackling the reported cases so far.

8. IPOA should conduct further investigation on any deaths or grievous harm occasioned allegedly by the police.

9. The ODPP should order the police to carry out thorough investigations and carry out speedy prosecutions for the

10. The NPS should investigate the killings, injuries, acts of torture including SGBV and damage of property and bring the implicated officers and civilians to book.