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Mirage at Dusk

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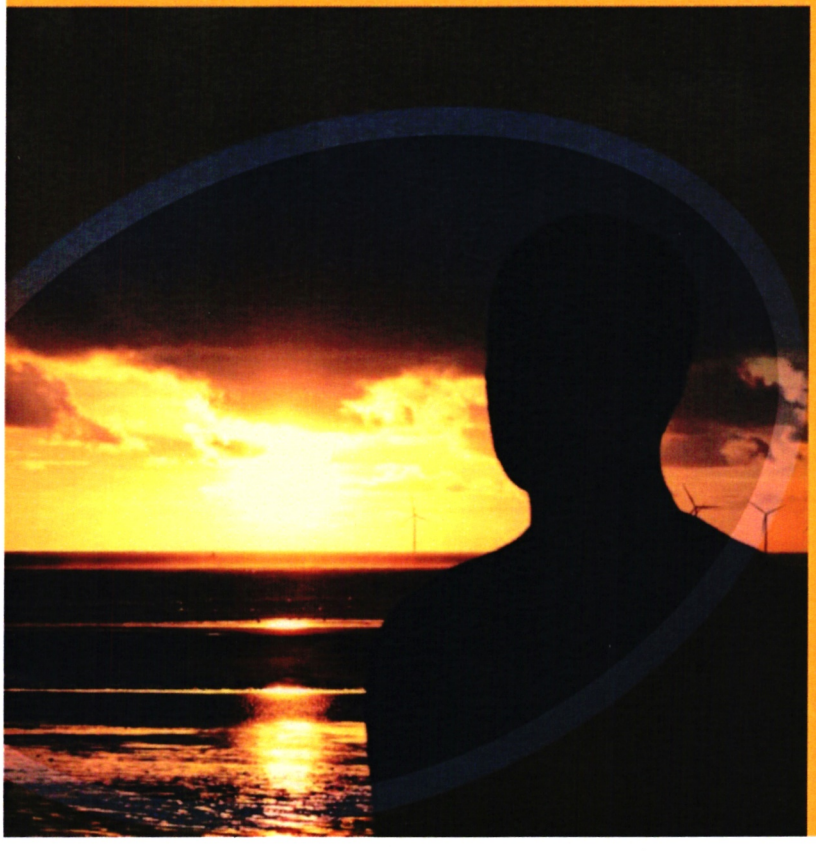
A human rights account of the 2017 General Elections



Preliminary report

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Dedication

This report is dedicated to the 37 Kenyans who lost their lives following the August 8th, 2017 General Election. In particular, the report is dedicated to the 6-months-old baby Samantha Pendo, the 7-year-old Fred Omondi and 8-year-old Stephanie Moraa whose lives were tragically cut short in an electoral protest where they were not even qualified to participate either as voters or candidates. The life of every Kenyan is sacrosanct. The sanctity of life is protected under Article 26 of our Constitution. No Kenyan should ever lose their life in an election-related conflict.

Preface

"All sovereign power belongs to the people of Kenya and shall be exercised only in accordance with this Constitution." ~Article 1, Constitution of Kenya, 2010.

The Kenya National Commission on Human Rights (KNCHR) opines that General Election is not limited to casting the ballot on a gazetted election day but encompasses the totality of preparatory actions that only concludes after the declaration of a winner. The process may therefore stretch into months and perhaps years and thus ought to ideally be characterised by participatory consultations involving multiple stakeholders to ensure the credibility of the outcome.

The Kenyan Constitution provides a firm bedrock for the establishment of an Election Management System that would facilitate the exercise of political rights under Article 38 of the Constitution. The system comprises of the laws, policies, key and auxiliary institutions that are charged with the responsibility of conducting election. The Constitution envisages a process that allows citizens to make informed decisions and it also regulates the conduct of political parties and candidates to ensure that their actions enhance the ability of the citizens to exercise their democratic right to participate in an election.

The desired compounded effect of the above is the growth of a democracy that adheres to the rule of law and a citizenry empowered to safeguard the same. The Kenya National Commission on Human Rights (KNCHR), being constitutionally mandated to monitor the adherence of human rights standards in Kenya, continues to advocate for electoral processes that safeguard the Citizens' right to vote.

To safeguard the political rights of Kenyans as provided for under Article 38 of the Constitution of Kenya (COK), 2010, KNCHR undertakes monitoring of the electoral process to ensure that human rights principles are promoted and protected during election. Key focus areas include scrutinising legislative review to ensure that the rights of voters and candidates are guaranteed throughout the process. Apart from monitoring the amendment and introduction of new laws, the Commission also engages varied key stakeholders such as; the Independent Electoral Boundaries Commission (IEBC), Ministry of Interior and Coordination of National Government, National Police Service (NPS), Office of the Registrar of Political Parties (ORPP), religious leaders and institutions, civil society and development partners with the aim

of facilitating effective coordination, sharing of information and pursuing accountability where there is evidence and risk of human rights violations.

As an independent institution, the Commission strategically participated in the preparations for the 2017 General Election through a number of interventions. These included issuing of advisories on the IEBC stalemate in 2016. The advisories, focussed on guaranteeing respect for human rights in the electioneering process and specifically addressed; the voter registration, the credibility and transparency of the voter register, participation of special interest groups and protecting the integrity of the electoral process. Noting the congruence of integrity, leadership and promotion of human rights, KNCHR together with other partners moved to the Supreme Court in Advisory Opinion No. 1 of 2017 to seek a legal interpretation on implementation of Chapter 6 on Leadership and Integrity and primarily the clearance of candidates seeking to run for elective office. The petition aimed at giving direction on the applicable thresholds relating to unethical behaviour that may disqualify candidates seeking elective posts.

In the Kenyan electoral context, party primaries play a critical phase in the elections. This is because of the ethnic and locational dimensions in the management of party affairs. It was thus crucial for KNCHR to monitor political party primaries and the campaign process as documented in a report titled *"The Fallacious Vote: A Human Rights Account of the 2017 Political Party Primaries."*

In this current report KNCHR has documented the human rights account of the polling process and the post elections scenarios that emerged.

The report captures the issues collected in select parts of the country where the Commission was able to reach. The Commission, having learnt from its past experience in monitoring elections from a human rights perspective, was able to undertake strategic interventions that contributed in large measure to safeguarding the final voting process. The Commission observes that the country has made positive strides while noting the increased levels of awareness by the voters

As the democratic space continues to progress, the accountability of leaders becomes the focal point to the citizenry, so will the standards of election processes improve and be strengthened. Kenya made great strides in promulgating the Constitution in 2010. The challenge now remains

realisation of its aspirations which refer in the human rights language is referred to, as a progressive process.

Article 10 of the Constitution is slowly coming full circle and public participation is becoming the bulwark of better electoral practice in Kenya. An increased understanding of why each registered voter needs to exercise their right to vote is the key to a seamless transition process every time the country goes through the five-year election cycle. It is the optimism and expectation of the Commission that this report will inform better practice and accountable systems that will continuously espouse the spirit of a country that lives for and strives for the respect of the rule of law.

The Bill of Rights, that forms the largest chapter in the Constitution of Kenya, is binding to all persons and state organs and also guarantees every person to enjoy the rights and freedoms to the greatest extent that is consistent with the nature of these rights and freedoms.

Acknowledgement

The Kenya National Commission on Human Rights wishes to acknowledge and appreciate every voter from every corner of our country, who turned up and queued at the polling station for long hours to ultimately exercise their inalienable right to vote and fulfil their sovereign will to determine their leaders. Our monitoring efforts were geared towards protecting the sanctity of this right.

The KNCHR also appreciates and takes cognisance of the leadership role and guidance of the Chairperson, Commissioners and the Commission Secretary who provided staff with the policy direction and steered the monitoring process in order to promote *the right to vote* and *be voted for*. Their provision of space for professionalism to thrive amongst the staff informed critical decisions in the midst of challenging situations.

The Commission commends the efforts of its staff and monitors spread across the country, who bravely endured and overcame high risk situations in order to witness first-hand happenings and occurrences and eventually document incidences of human rights violations that are featured in this report. Special acknowledgement to the members of the *KNCHR Elections Hub*, and who in the scheme of things were at the centre and heart of all the information gathering, processing, verifying, analysing and synthesising the thousands of fields reports they received in real-time. The long hours on end they put in made it possible for the Commission to make timely interventions.

The Commission acknowledges the collaboration and support received from key partners drawn from both the state and non-state actors including the CSOs who augmented and complemented the Commission's effort in monitoring the 2017 election monitoring cycle.

The Commission wishes to express its gratitude to its donors and development partners, who supported the efforts and made it possible for the Commission to undertake the monitoring process. Their constant encouragement and words of wisdom helped strengthen our resolve to promote and protect human rights in Kenya.

Finally, we acknowledge members of the public who entrusted the Commission with critical information that shaped this report. We now boldly speak on your behalf to seek justice and accountability that such violations should not recur in any future electoral process.

Acronyms and Abbreviations

AFRICOG- Africa Center for Open Governance

ANC- Amani National Coalition

CAJ – Commission on Administrative Justice

CAK- Communication Authority of Kenya

CEWARN- Conflict Early Warning and Early Response Mechanisms

COK- Constitution of Kenya

CRPD - Committee on the Rights of Persons with Disabilities

DANIDA - The Danish International Development Agency

DEB - District Education Board

ELOG – Election Observation Group

EACC_ Ethics and Anti-Corruption Commission of Kenya

FAP- Frontier Alliance Party

GE – General Election

GSU – General Service Unit

HRBA – Human Rights Based Approach

ID - Identification

IEBC - Independent Electoral and Boundaries Commission

ICERD - International Convention on the Elimination of All Forms of Racial Discrimination

IPOA – Independent Policing Oversight Authority

IREC - Independent Review Commission

JAP- Jubilee Alliance Party

JOOTRH - Jaramogi Oginga Odinga Teaching and Referral Hospital

KANU- Kenya African National Union

KCB- Kenya Commercial Bank

KIEMS – Kenya Integrated Elections Management System

KNCHR – Kenya National Commission on Human Rights

KPR- Kenya Police Reservists

MCA – Member of County Assembly

MTRH- Moi Teaching and Referral Hospital

NASA- National Super Alliance

NCIC – National Cohesion and Integration Commission

NCRC – National Crime and Research Centre

NCSA- National Coroners Service Act

NGEC- National Gender and Equality Commission

NGOs – Non-Governmental Organizations

NPS – National Police Service

NPSC- National Police Service Commission

RO- Returning Officer

RTS- Results Transmission System

OCPD- Officer Commanding Police Division

ODM- Orange Democratic Party

ODPP – Office of the Director of Public prosecution

OHCHR - Office of the United Nations High Commissioner for Human Rights

ORPP- Office of the Registrar of Political Parties

OSIEA - Open Society Initiative for Eastern Africa

PBO- Public Benefits Organization

PWDs - Persons with Disabilities

PO - Presiding Officer

POTA- Prevention of Torture Act

PPDT- Political Parties Dispute Tribunal

SIG – Special Interest Groups

TSC- Teachers Service Commission

UNDP – United Nations Development Programme

Executive Summary

Mirage at Dusk is an election-focused documentation by the Kenya National Commission on Human Rights (KNCHR) from a human rights lens, guided by the vision of monitoring the *right to vote* and *be voted for*. It is a culmination of more than one year of relentless effort to ensure the electoral environment adheres to both local and international human rights standards.

The August 8th, 2017 General Election was characterized by a passion-driven political process and great expectation, with the formation of new political outfits, shifting and tilting of political positions, mergers and fallouts. The stakes were heightened by the clamour for the expansive seats created by the devolved system of governance which this time around attracted one of the highest number of aspiring candidates in the history of Kenyan election process, from 12,776 in 2013 to 16,259 in 2017. This is an increase of 21.42%. It is notable that this General Election (GE) had the highest number of independent candidates totalling 3,752. Most of them were unsuccessful at the political party primaries.[1]

With this nature of competition, it was therefore expected that as the stakes would rise, so would the levels of tension and anxiety and thus KNCHR work was well cut-out. It was thus instrumental, with the stage set for highly charged campaigns, for the Commission to adequately prepare an all-round strategy to ensure it captures the Country's overview of the full electoral cycle. With the Commission having engaged in the electoral laws process in 2016, the real work began in April 2017 with the development of the KNCHR 2017 Election Management System (EMS) that formed the basis for data collection and analysis. This was supported by the recruitment and deployment of 139 monitors in 33 counties who were taken through intensive training on the key reporting parameters to guarantee credible and verifiable data.

The first fruits of these efforts are documented in the political party primaries report titled '*The Fallacious Vote*' that was launched on 15th May 2017. The Commission's findings condemned the whole nomination process and found out that the political parties had flouted majority of the laws and thus compromising the quality of leaders that were presented on the final ballot

[1] https://www.iebc.or.ke visited on 19/08/2017

to the voters. The primaries as conducted negated existing laws aimed at ensuring that leaders elected meet the ethical standards set out in Chapter 6 of the COK. A raft of recommendations and advisories were shared with relevant bodies for further action as the Commission embarked on a heavier task of monitoring the campaigns that began soon after the nominations.

During the campaign period, which was gazetted and set to begin on 1st June and end on 5th August 2017, the Commission focused on the following parameters: misuse of public resources, incitement, bribery, actions and inactions by security organs, unequal access to public resources and facilities, appropriateness and accessibility of polling venues, violence and security. While setting the monitoring parameters, KNCHR was conscious that its work complements that of other institutions and thus worked closely with state and non-state actors including: National Police Service (NPS), National Gender and Equality Commission (NGEC), Commission on Administrative Justice (CAJ), Independent Policing Oversight Authority (IPOA), National Cohesion and Integration Commission (NCIC), Independent Electoral Boundaries Commission (IEBC), Civil Society Organizations (CSOs) and religious institutions, just to mention but a few.

The Campaign Period

From the findings of political party campaigns, the Commission commends the police for their conduct in managing crowds and conducting situations that in several places and instances threatened to get out of hand. The National Police Service exercised restraint and thus security provision around the campaign period indicated a National Police Service that is growing in understanding its role in safeguarding not just themselves but also citizens. Its participation in community dialogues as documented by the Commission went a long way in building confidence between itself and the citizenry. That minimal cases of violence were recorded amidst heightened political temperatures is an indication of security agencies that worked seamlessly with various partners including grass root networks to ensure the electoral environment is safe for all to enjoy the fruits of democracy. There were two reported deaths at the hands of the security officers during the campaign period. These cases have been referred to IPOA to investigate and ensure justice is done.

With the exception of Cabinet Secretaries and members of the County Executive Committees, Section 23 (1) of the Leadership and Integrity Act prohibits state and public officers from engaging in any political activities that may compromise or may seem to compromise the

political neutrality of the officer. The Commission however, is of the view that this provision is open to abuse. It is one of those avenues that we noted rampant misuse of state resources, where Cabinet Secretaries used their offices to campaign for the government such as; through food donations, launching of roads and water projects and much more. On the same note, Governors too used taxpayer monies to continue with their campaigns, which included use of government vehicles and blocking their competitors' access to public venues to hold campaign rallies.

As is characteristic of political elections, bribery of voters was noted during the campaign period, with this year's campaigns having been gone a notch higher using branded items, including basic items such as bread and water. Peculiar cases were recorded in Machakos and Makueni where strangers would walk to a public place, call passers-by and hand-out to them an unsolicited amount of money for no particular reasons. Citizens also received calls from persons who promised to issue them with money if they wake up to vote. The rest of the bribery cases were outright dishing out of money, especially with the new strategy of *door - to - door* campaigns that were witnessed in 2017.

The Cabinet Secretary, Ministry of Education, Science and Technology issued a directive on 30th January 2017 to county directors, sub-county directors and school heads to desist from disrupting the learning of students by allowing them to participate in political events such as; singing to politicians and moving out of schools to cheer politicians by the roadsides among others. The order was aimed at protecting children from possible interruption of learning, violence and also safeguard their innocent minds from the politicians uncalled for utterances not fit for the young minds. The Commission noted the breach of this rule even by the Head of State who on one or two occasions campaigned at school grounds and with school children by his side, and thus the impunity by other politicians followed where they campaigned even during school hours.

It is unfortunate that amidst the consistent monitoring by various state and non - state institutions, some politicians dared to play the ethnic card that is a great threat to peaceful election. The attempt though, to incite communities against each other seemed not to have taken deep roots and no cases of ethnic profiling were reported to the Commission. However, in the run up to Election Day, there were reported cases of persons moving to safer areas for

fear of reprisals but those who remained in their area of residence reported no attacks leading to the voting day.

The Polling Day

On 8th August 2017, millions of Kenyans turned up to exercise their right to vote in 40,883 gazetted polling centres countrywide. Anxiety was rife over the performance of the Kenya Integrated Elections Management Systems (KIEMS) that would see Kenyans put to use electronic processes for the second time, since 2013.

As was expected, Kenyans took to the queues as early as 2.00 a.m. hoping to be on time for the 6.00 a.m. opening of the polling centres. From the Commission's findings, over 95% of the 1,218 polling centres monitored by its personnel opened at 6 a.m. and the first voters were able to cast their votes by about 6.15 a.m. There were few recorded cases of polling centres that opened as late as 8 a.m, largely because of passwords hiccups and configurations by Presiding Officers (POs). However, the POs were able to compensate voters with the same amount of time lost during the opening and no cases were recorded by the Commission of voters who were denied access to vote due to expiry of the set operational hours of the polling centres.

Prior to the elections, the Commission had raised concerns with the IEBC on the level and quality of training that was to be offered to polling officers. The Commission's reservation was that hurried sessions during such a critical process would be detrimental to all other gains that may have been made to secure a fruitful election. During the polling day monitoring, the Commission noted challenges in the usage of the KIEMS by polling officers, especially on the implementation of the three - step method of voter identification. The first having been the thumbprint, secondly through alpha numeric and thirdly the scanning of the identification card. For the latter two, the voter had to sign the form 32A in order to be allowed to cast their ballot. Our findings show that in some stations, the officers did not understand how and when to utilize the same and in others, the form was overused while in other polling stations, the process was not applied to voters who went ahead to cast their ballot despite having failed to be identified through all three means.

In respect to campaigns during polling day, the Commission observed that politicians restrained themselves except for a few cases that are documented within specific pages of this report. However, there were considerable cases of display of posters at the entrances of polling centres

and as documented in this report, the same will be forwarded to the relevant offices for action within the confines of the Elections Offences Act 2016.

Post-Polling Scenarios

By the 9th August 2017, Kenyans were peacefully waiting and looking up to the IEBC to deliver the final results especially for the Presidential election. However, tension began to rise when the leading opposition coalition- NASA addressed the nation with allegations of hacking and other malpractices they had unearthed. In their submission they wanted the NASA opposition candidate to be declared President. With these sentiments, pockets of the country specifically in Nairobi City and Kisumu counties experienced unrest with voters demonstrating in reaction to the pronouncement by the opposition. During that night, two people (2) were reported to have lost their lives in the said regions.

As a result, heavy security presence was witnessed in Nairobi city, Kisumu, Siaya, Homa Bay and Migori, most of which areas had previously been mapped as hotspots. On 11th August 2017 at 10.00 p.m, the IEBC made the announcement of the Presidential results and what followed were gunshots and teargas mostly in; Mathare, Kibera, Dandora, Lucky Summer and Kawangware in Nairobi City County and Manyatta, Kondele, Nyamasaria in Kisumu Counties as police tried to disperse demonstrators under the cover of darkness.

The Commission documented thirty-seven (37) lives lost in the three-day unrest. The dead included a six 6-month-old baby who was clobbered by armed security agents whilst under the care of its mother in Kisumu County. Other deaths were attributed to police using live bullets and a few from police bludgeoning using clubs.

Dozens more were recuperating in hospitals and at home with varied degrees of injuries as documented in this report and many more perhaps languish in silence for fear of identification. The Kenya National Commission on Human Rights came out strongly in a press briefing on 11th August 2017 to condemn the killings and urged citizens to remain calm.

The Commission shall be working closely with the relevant stakeholders, to ensure individual culpability for any officer found to have abused their power and exerted force on citizens. It must be noted that the Constitution under Article 37 safeguards against the use of force and arms by police and where the same shall be used, it is after all other available channels have been exhausted.

Attacks on Civil Society and Development Partners

In any growing and maturing democracy, it is the voice of a strong civil society movement that has offered safeguards on actions that may backtrack or hinder the enjoyment of fundamental freedoms of the citizens. The entrenchment of the Bill of Rights in the Constitution of Kenya (2010) has gone a long way in strengthening the civil rights movement in Kenya thus creating an environment of accountability and transparency.

During this electoral period, civil society members and organizations played a pivotal role in monitoring the continuous enjoyment of human rights and updated the nation on their findings as the days went by. They have filed and supported various cases that touched on election, sought interpretations through the same corridors on issues to ensure the realization of the right to vote and be voted for.

Noble as their actions may seem to have been, a few institutions were singled out and targeted for their hard stance and cases they took to court, most of which challenged the announced election results. The threatened deregistration of AfriCog and KHRC and actions that followed, by a defunct NGO's Coordination Board was an act that was aimed at intimidating the Civil Society and more so the action was evidently against the rule of law. The Commission moved to challenge these actions in a press briefing held on the 18th of August 2017 and further joined civil society in a joint press conference on 19th of August 2017 to highlight the curtailing of the civil society democratic space.

CHAPTER 1: INTRODUCTION

1.1 Contextual Background

The Country held its second General Election under the Constitution of Kenya 2010 against a backdrop of key legal and institutional reforms in the electoral sector. The electoral reforms were necessitated by a number of issues especially on the manner in which the then Isaack Hassan-led Independent Electoral and Boundaries Commission (IEBC) conducted the General Election in 2013. Some of the general issues fronted included; perceived lack of credibility, lack of trust and confidence, perceived partiality, complaints of incompetence, claims of impropriety in the procurement process of key electoral equipment and mishandling of the elections during the disputed 2013 General Election and the need to entrench in the law and guarantee the use of technology in the election process.[2]

In a bid to address these issues, the Opposition leaders under the then CORD coalition called out for dialogue with the national government under the Jubilee administration. When this failed, the Opposition and a section of civil society groups coalescing under the auspices of 'Okoa Kenya' movement held nationwide rallies in which it collected signatures and drafted a Bill dubbed the Okoa Kenya Referendum Draft Bill of 2015.[3] Notably, one of the fundamental issues that informed the drafting of the Bill related to the clamour for reforming IEBC and strengthening the election management in the country.

Other key proposals contained in the Bill included proposed amendments to the Constitution through the popular initiative to increase the revenue allocation to the County governments from 15% to be capped at a minimum of 45% of the national revenue, land reforms and proposals on enhancing inclusivity in public service. However, upon presentation of the signatures to IEBC for purposes of verification and certification to confirm whether or not it satisfied the constitutional threshold on amendment by popular initiative[4], the IEBC established that the draft Bill did not meet the threshold since of the 1.4million signatures collected, only

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[2] Supreme Court (Consolidated) Petition No. 5 of 2013.

[3] The Okoa Kenya Referendum Draft Bill of 2015 which was drafted by a Committee of experts under the Okoa Kenya movement and presented to IEBC in 2015.

[4] Pursuant to Article 257 of Constitution of Kenya 2010 stipulates the requirements for amending the Constitution through popular initiative. These include; requirement of at least 1 million signatures of registered voters, drafting of a Bill, verification and certification by IEBC among others.

891,598 signatures were valid. Hence, IEBC declared that the proposed constitutional amendment through the Okoa Kenya initiative had collapsed by operation of law.[5]

This generated further controversy and triggered an agitation by a section of the Kenyan society calling for the immediate disbandment of the then IEBC team from office and reconstitution of a new electoral body so as to guarantee that the General Election 2017 would be free, fair and credible. The country witnessed public demonstrations and protests led by key opposition leaders and sections of the civil society which in some instances turned violent and were characterized by use of excessive force by the security agencies in dispersing the protesters. In the process, a total of five lives were lost, hundreds of protesters sustained varied degree of injuries and property worth millions was destroyed.

This culminated in the establishment of a bipartisan Joint Parliamentary Select Committee[6] which comprised of members from both the Senate and the National Assembly. The Committee was tasked with looking into the several thematic issues of concern and recommending appropriate legal, policy and institutional reforms with an aim of strengthening the Independent Electoral and Boundaries Commission and quite importantly, ensuring and guaranteeing that the General Election 2017 shall be free, fair and shall be administered in an impartial, efficient, simple, accurate, verifiable, secure, accountable and transparent manner.

The fundamental issues raised before the Joint Committee included the disbandment of the then IEBC on grounds of lack of integrity, credibility and independence, auditing of the principal voters register, mechanisms of voter registration, use of technology in the entire election process, the voting process, transmission and declaration of results, voter education, nomination of candidates, campaigns management, allocation of special seats inter alia.[7] The Joint Committee was tasked with proposing the requisite legislative amendments to the electoral laws to give effect to the foregoing issues and further recommend an enabling policy framework to enable prisoners and diaspora voters to participate in the General Elections.

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[5] IEBC Press statement issued on 22nd March 2016 by the then Chair Isaack Hassan.

[6] The Joint Parliamentary select committee established in July 2016 vide a unanimous parliamentary motion and was co-chaired by Hon. Kiraitu Murungi and Hon. James Orengo comprising of 14-members drawn from both the Senate and National Assembly.

[7] Report of the Joint Parliamentary Select Committee on matters relating Independent Electoral & Boundaries Commission, Volume I released on August 16th 2016.

The Joint Parliamentary Committee held several hearings and invited a cross-section of key stakeholders including the KNCHR, other Constitutional Commissions, the civil society, professional bodies, religious bodies, political parties, county governments, the business community and members of public to give views and opinions on the issues raised and propose the necessary electoral reforms. KNCHR submitted both oral and written memoranda in which it reiterated its recommendations based on the key findings made in the 2013 General Election.[8] For instance, based on the questions on the integrity of the voters register which incidentally formed part of grounds of the presidential petition in 2013, the Commission recommended the need for IEBC to adopt a computerized register of voters that should be finalized in reasonable time and early enough, inspected by members of the public and upon verification, be tamper-proof against any changes prior to the immediate upcoming elections.

To address the challenge of technology failure that was largely attributed to the inadequate capacity of the polling personnel, the Commission called upon IEBC to conduct timely and adequate training of all IEBC officials to ensure proper management of election. It was further noted that lack of voter literacy greatly contributed to the high numbers of rejected/spoilt votes and hence, KNCHR in its recommendations called for concerted efforts by stakeholders in rolling out comprehensive and timely voter education programmes. On the numerous amendments to the electoral laws, the Commission noted with concern that laws were amended at the last minute which interfered with election preparations by the electoral management body.

Subsequently, upon receiving memoranda from the numerous stakeholders and building consensus, the bipartisan process adopted by the Joint Parliamentary Committee crystallized into the enactment of critical pieces of legislations such as the Elections Laws (Amendment) Act 2016, the Election Offences Act 2016 and key subsidiary legislation such as the Elections Technology (Regulations) 2017 that entrenched an array of electoral reforms in law.

Among key legislative reforms adopted include amending the Elections Act 2016[9] to require IEBC to undertake an audit of the voters register, expanding/increasing the period of verification and scrutiny of the voters register from 60 days to 90 days before elections, means

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[8] KNCHR reports titled; '*2013 Elections: Safeguarding Rights; An Account of hotspots, Elections 2013*' and the political party primaries titled '*A Break from the Past; A Monitoring report of the 2013 Political Party Nominations.*'

[9] Refer to Sections 6, 6A, 13, 38A 44, 44A, 104 among others of the Elections Act as amended in 2017.

of verification via biometric voter data, online inspection of the register through establishing a public portal, inclusion of legal provisions for the mandatory the use of technology in the electoral process from voter registration, voter identification and to results transmission, capping of number of voters per polling station at a maximum of 700 voters.

Notably, the amendments further obligated IEBC to conduct the registration of prisoners and diaspora voters and put in place mechanisms to enable them participate in the Presidential election. In addition, the law further required IEBC to put in place special mechanisms such as special voting booths and special IEBC officers in each polling station for purposes of ensuring and facilitating special groups such as PWDs realize their constitutional right to vote. Another notable change saw the enactment of the Elections Offences Act 2016 as a stand-alone law to explicitly prescribe the election offences and the attendant penalties so as to provide for a comprehensive legal framework of dealing with election malpractices that serve to taint the credibility of elections.

It is instructive to note that some of the legal reforms adopted were informed to a greater extent by the main recommendations contained in the Independent Review Commission (IREC) otherwise referred to as the Kriegler Commission report of 2008.[10] Among the major recommendations proposed by the Kriegler Commission was the call for the electoral body to develop and adopt an integrated and secure electoral management system that will allow computerized data entry and tallying at constituencies, secure simultaneous transmission from the polling station level to the national tallying centre and the integration of this results-handling system in a progressive election result announcement system. The Commission further recommended that the electoral body should develop procedures for safe storage of election material until any post-election analysis was complete and store certain relevant election material in electronic format. This indicated a measure of progress towards reforming the electoral sector and addressing some of the underlying issues that led to the post-election violence witnessed in 2007/08.

However, in January 2017 and in a twist of events, an amendment[11] to the negotiated Elections

[10] Report of the Independent Review Commission on the General Elections of 2007 which was established in February 2008 to inquire into the issues that arose out of the disputed 2007 General Elections.
[11] Section 44A of the Elections Laws (Amendment) Act No.1 of 2017.

Laws was passed in Parliament amidst protests from the Opposition. By dint of the amendment, Parliament obligated IEBC to put in place a complementary mechanism for identification of voters and transmission of election results that is simple, accurate, verifiable, secure, accountable and transparent to ensure that IEBC complies with the provisions of Article 83 of the Constitution. This was strongly objected to by the Opposition which deemed such an amendment as a way of introducing the use of the manual voting system through the back door. This turn of events further polarized the nation into ethnic and political divides that heightened tension in the country. Parliament further suspended the operationalization of the Elections Campaigns Financing Act of 2013 and pushed its enforcement to commence after the 2017 General Election.[12]

On the institutional reforms front, the Joint Parliamentary Committee recommended the establishment of a Selection Panel comprising of a multi-sectoral membership to oversee the process of reconstituting IEBC and appointment of new commissioners. The IEBC Act was thus amended to provide for the removal from office of the then IEBC commissioners through a negotiated settlement and further provide for a seamless transition in the institution. This process subsequently culminated in the appointment of Chairperson Mr. Wafula Chebukati and six (6) new Commissioners in January 2017 and effectively, set the country in motion towards the General Election in August 2017.

Upon assumption of office, the new IEBC team had its work cut out for them given the strict constitutional and statutory timelines. Among key pending tasks included overseeing the mass voter registration exercise (MVR), Continuous voter registration (CVR), overseeing the political party nominations process through issuance of timelines, identifying a service provider and the procurement of the Kenya Integrated Electoral Management System (KIEMS) that notably sought to integrate the Biometric Voter Registration (BVR), Electronic Voter Identification Devices (EVID), Electronic Results Transmission and Candidate Registration Systems that had been initially used during the 2013 General Elections.

With reference to the management of the electoral cycle, the IEBC issued and gazetted timelines to guide the process in the lead up to the General Election. Key processes included conclusion of the mass voter registration exercise (MVR I & II), auditing and cleaning up of

[12] Section 1A of the amended Elections Campaigns Financing Act.

the voter register, voter verification of the register, political parties' nominations, official campaigns period and subsequently, the polling process on August 8th 2017. Notably upon conclusion of the voter registration exercise, a total of 19,611,423 had been registered as voters eligible to vote in the General Election 2017.[13] This number included 4,393 Diaspora voters in 5 countries namely; Rwanda, Burundi, Tanzania, Uganda and South Africa and 5,528 voters registered in 118 Prisons across the country. Comparatively, this number represented a 36% increase from the elections held in 2013. In terms of gender representation, 53% of those registered were male compared to 47% female. The IEBC gazetted a total of 40,883 polling stations that were capped at not more than 700 voters each in accordance with the provisions of the amended Elections Act.

In conformity with the legal requirements, IEBC contracted the KPMG to undertake an audit of the voter's register. The audit sought to assess, verify the accuracy of the register and recommend measures and mechanisms of updating and enhancing the accuracy of the register. The major findings of the audit report[14] pointed to a number of inaccuracies and irregularities in the register of voters. For instance, the audit revealed that of the 19,646,673 records in the Register of Voters, a total of 19,401,354 records matched to ID numbers while a total of 53,077 matched to passport numbers. However, at least 5,427 records did not have biometric fingerprint images in the Register of Voters. The report further revealed a number of irregularities in the Register of Voters that required further validation to confirm whether they are bonafide voters. These 171,476 voters whose details of IDs could not be found in the data provided by the National Registration Bureau, 17,523 voters whose details could not be found in the data on passports provided by the Directorate of Immigration. Of these, 98 were confirmed to be Diplomatic Passports whose data had not been provided as at the time of the audit, 264,242 records in the Register of Voters with duplicate IDs or passports and 2,610 Voters who had registered with both an ID and Passport.

The audit report made a raft of recommendations including calling upon IEBC to prioritize the implementation of a medium-term transformation programme to ensure that it puts in place systems to enhance its capacity and character so as to be able to assert its independence,

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[13] IEBC Press statement titled '*The Certification of the Register of Voters*' issued on June 27th 2017; Pursuant to the Gazette Notice No. 4413 voters register on the IEBC website; www.iebc.co.ke

[14] KPMG Audit report titled '*IEBC: The Independent Audit of the Register of Voters*' released on 31st May 2017.

demonstrate excellence and high performance to avoid the kind of errors detected by the audit and further distinguish itself as an institution worthy of trust by the Kenyans. The report further identified issues outside the control of IEBC that required to be addressed through legal measures as well as institutional coordination and collaboration to improve accuracy of the Register. Key amongst these is the improvement in coverage and quality of data in death registration, liaison between IEBC and National Registration Bureau and Directorate of Immigration, as well as formal processes to give effect to the criteria for disqualification from registration as a voter in accordance with Article 83 of the Constitution.

The report further made recommendations on enhancing controls over the database and infrastructure to ensure security of the register. The IEBC in one of its press releases undertook and committed to addressing the issues pointed out in the findings and following up on the recommendations made.[15]

The country witnessed political party primaries between April and May 2017 which upon conclusion, culminated in the official campaign period which ran between May 28th to August 5th 2017. A number of key stakeholders including Constitutional Commissions, other State and Non-state actors rolled out programmes targeted at monitoring the observance and compliance of the electoral laws and regulations by candidates in their individual capacity and political parties on the general front.

The KNCHR rolled out an elections monitoring project that sought to inter alia monitor all stages of the electoral cycle and undertake remedial actions and interventions that were geared towards safeguarding political rights in the 2017 General Election and beyond. Through the project, the Commission monitored political party primaries, documented the process and subsequently released a report titled '*The Fallacious Vote: A Human Rights Account of the 2017 Political Party Primaries*' with detailed findings and recommendations.[16] KNCHR further undertook monitoring of the campaigns, the polling process and subsequently, the post-poll scenarios. The in-depth findings of the 2017 electoral cycle and detailed recommendations are contained in this report.

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[15] IEBC Press statement titled '*Report on the audit of the register of voters*' dated June 9th 2017.

[16] KNCHR Report titled '*The Fallacious Vote: A Human Rights Account of the 2017 Political Party Primaries*' launched and released in May 2017.

The 2017 election was also organized and held against a backdrop of security challenges attributable to both external and internal threats. The relentless attacks by the Al Shaabab militia under the guise of retaliating against the ongoing war on terrorism in Somalia posed the biggest threat to the voter registration exercise, preparation and conducting of peaceful elections especially in the North-Eastern region and parts of the coastal region.[17] The country experienced several attacks targeted against security agencies, government officials and civilians in Lamu, Tana River, Garissa and Mandera counties. Several lives were lost, property of unknown value destroyed and a section of community members displaced from their homes. The attacks further targeted key installations which greatly hampered the electoral body and other actors involved in the election preparedness.

The country further experienced internal threats instigated by incidences of cattle rustling, banditry attacks and in some instances, resource-based conflicts which greatly impeded the voter registration exercise, campaigns and full participation of the electorate in the electoral process. Some of the affected areas include Baringo, West Pokot, Isiolo, Meru, Turkana, Samburu, Tana River and Laikipia counties. This occasioned mass displacement of the local communities from their homes which ultimately disenfranchised them from fully participating in the elections besides resulting to other widespread human rights violations. [18] The government planned to deploy a contingent of about 180,000 security personnel up from 95,000 police officers in 2013 drawn from different units under the National Police Service, Kenya Wildlife Service and the Kenya Prisons for provision of security services before, during and after the August 8th election.

The focus on the 2017 General Election was also characterised by a paradigm shift of interest and focus on the seats at the county level with an unprecedented increase of the number of independent aspirants. IEBC records indicate 3,752 independent candidates, 11,330 political party candidates were cleared to contest for the various seats in the General Election as independent candidates.[19] This marked a 100% increase up from 350 candidates who vied as independents in the 2013 election. This shift was partly attributable to the bungled party

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[17] IEBC Press statement titled '*Security concerns on Voter Registration in Mandera East Constituency*' issued on 2nd February 2017 in which IEBC confirmed the disappearance of 3 BVR kits during an Al Shabaab attack in Arabia town in Mandera County.

[18] KNCHR Press statement titled '*The Prevailing insecurity in the North Rift region*' issued on 2nd March 2017

[19] IEBC Press statement on the Interim report on Party Primaries & Candidates registration issued on May 2017

primaries which were characterized by numerous incidences of bribery, use of violence, intimidation and harassment; destruction of voting material, targeted attacks meted against special groups such as women & PWD aspirants, blatant disregard to electoral laws, Code of Conduct and party rules among others.[20] The rise in independent candidates further posed logistical challenges for the electoral body especially with regard to the preparation of the ballot materials and the general management of polling stations due to the high number of candidates and their respective agents.

Despite the change of guard, the IEBC continued to face criticism and lack of trust from political actors and section of civil society with questions raised especially on the integrity of the voter register, allegations of discriminatory approaches in undertaking exercises such as the mass voter registration, delay in satisfying the election timelines particularly in the procurement of ballot papers, use of technology in election and procuring an audit firm for purposes of cleaning up the voters register. In this context, there were various cases filed in court by different actors drawn from political parties and the civil society on a number of issues including the finality of the declaration of presidential results, the delay in publishing the voter register on the online portal, questions on the procurement process of the BVR kits, the constitutionality of the application/use of the manual system as a backup in the General Elections.

The outcome of these cases especially on the finality of the declaration of Presidential results at the polling station level which shifted the focus from the national level to the polling station level of which the court identified as the true locus of the free exercise of the will of the voter. In so doing, the net effect of the court's determination sought to institutionalize the electoral process by requiring IEBC to among other things put in place a credible results transmission system, take administrative measures including the hiring of competent electoral officials at all levels from national to the polling station level in a way that guarantees and safeguards the integrity of the process. Notably, the role of the IEBC's Chairperson was interpreted within the confines of Article 86 of the Constitution of Kenya 2010 to be limited to tallying and verifying the results received from the constituency level in respect to the presidential election. This marked a departure from past practice in election which required the returning officers from

[20] KNCHR Report titled '*The Fallacious Vote: A Human Rights Account Of The 2017 Political Party Primaries*' launched and released in May 2017.

both the county and constituency levels to announce provisional results at each respective level and then physically submit the results to the national tallying centre for purposes of verification and ultimate announcement of final results by the Chairperson. This practice was cumbersome and susceptible to manipulation and alteration of results which raised questions on the integrity of the election outcome as witnessed in the disputed 2013 presidential election.

1.2 KNCHR Project Objectives

The goal of this project was to monitor all stages of the electoral cycle and undertake remedial actions and interventions that are geared towards safeguarding political rights in the 2017 General Election and beyond.

The specific objectives included:

1. Enhance the monitoring and collection of raw data from the field on violations of human rights in the electioneering period;
2. Develop and share briefs and evidence-based advisories for purposes of investigations, advocacy and remedial timely actions from the relevant duty bearers;
3. Document and generate a report on the state of compliance to human rights standards in the 2017 General Election and
4. Key recommendations to inform best practices in future elections.

1.3 Methodology

Some of the internationally accepted best practices in electoral cycle involve early scenario building, conflict monitoring and mapping. Election cycles in Kenya have always been marred by violent activities either before or after elections. The greatest threat to consolidating and safeguarding the democratic space in Kenya is the culture of electoral violence which in many cases is laced with ethnic undertones.

KNCHR begun from the understanding that systematic monitoring of electoral processes provides adequate documentation of incidents for timely and appropriate interventions. In order to operationalize this, KNCHR developed an election monitoring strategy which identified three key phases; the party primaries, campaigns and the polling period with hindsight on the post-poll scenarios.

KNCHR further mapped out 36 counties either as perceived hotspots or potential hotspots during the elections. This assessment was based on data and information obtained from security agencies, various partners including the NCIC, IEBC, involved in the election monitoring and observation and the Commission's own assessment stemming from past and current engagements in the field.

The KNCHR team managed to develop and roll out an Election Monitoring System (EMS) with an overarching objective enhancing the credibility of the data collection process through capturing an accurate account of the events as they unfold through an auditable, transparent and secure manner.

Notably, the election management system integrated various data collection and analysis tools that were tailor-made for the specific stages/phases of the electoral cycle. Data was captured in form of images, audios, videos and documents received from the field monitors and was uploaded onto an elections monitoring portal for verification, in-depth analysis and timely follow up on electoral malpractices and human rights incidences recorded.

The Commission deployed a team of 259 monitors comprising of 139 full-time field monitors and 120 personnel of the Commission in the identified hotspots. The team was taken through an intensive training on several components of the system and appraised on the requisite tools. In addition, KNCHR also synergized with the various stakeholders and partners involved in elections monitoring to complement its monitoring in counties where it did not have a presence.

To augment the system, other strategies invoked included rolling out a Toll-free line 0800 720 627, SMS platform 22359, Social media; Twitter and Facebook, the Commission corporate website (www.knchr.org), and a dedicated election email: elections2017@knchr.org

CHAPTER 2: NORMATIVE FRAMEWORK ON HUMAN RIGHTS AND ELECTIONS

Elections in any democratic country provide an opportunity for the citizenry to exercise their most fundamental sovereign power and to exercise their civil and political rights to elect leaders that will have an effect on the realization of their rights and freedoms including Economic, Cultural and Social Rights. Every citizen has the right, without any discrimination and without unreasonable restrictions, to take part in the conduct of public affairs, to vote and to be elected to government. The realization and implementation of these political rights is enhanced and made possible if free, fair, transparent and credible election is conducted.

The right to participate in free and fair elections is intrinsically linked to a number of basic rights, the enjoyment of which is crucial to a meaningful electoral process. Participation in the electoral process cannot be effective unless a wide range of rights are respected: freedom of expression and opinion, freedom of peaceful assembly, freedom of association, freedom of movement, freedom from discrimination, freedom from fear and intimidation, right to life, the right to personal integrity and the right to liberty and security of person.[21]

It is hence imperative that these critical human rights are respected and upheld throughout the entire election process that commences from the electoral legal reforms, preparation by the Independent electoral management body, the voter registration, voter education, political party primaries, polling, tallying and transmission of results, declarations of winners and settling the election disputes. This is therefore the premise that the KNCHR designed its strategies and interventions to ensure that the right to vote and be voted for is upheld in all the electoral cycles.

2.1. NATIONAL FRAMEWORK

The Constitution of Kenya 2010 is the supreme law of our land that sets out key fundamental tenets and principles that govern the nation. Article 1 of the Constitution is dedicated to the people of Kenya by vesting all sovereign power to the citizens. The Article further states that the people may exercise this sovereign power directly or through democratically elected leaders. Article 10 is the cornerstone of the Kenyan nation by providing the guiding principles

[21] OHCHR, Manual on Human Rights monitoring: Chapter 23: Monitoring Human Rights in the Context of Elections, Pg. 9-10

and values that bind the nation, key among them being human rights, non-discrimination and protection of the marginalized.

The longest chapter in the Constitution is chapter IV on the Bill of Rights. It provides among other key rights and fundamental freedom; the right to life, equality and freedom from discrimination, human dignity freedom and security of every person, outlawing arbitrary arrests, torture and inhumane and degrading treatment, freedom of association, freedom to a peaceful assembly and demonstration, political rights, rights of persons detained held in custody or imprisoned.[22] The Constitution further entrusts the protection and promotion of these rights to the Kenya National Human Rights and Equality Commission which was operationalized by three (3) Acts, the Kenya National Commission on Human Rights, the National Gender and Equality Commission and the Commission on Administrative Justice.

The right to form, recruit members and campaign for a political party and also be registered as a voter, participate in voting and be a candidate for a public office or an office within a party is provided for under Article 38 of the Constitution.

In terms of General Election, Article 81 of the Constitution obliges the electoral system to comply with some minimum key requirements including upholding the two thirds gender principle, fair representation of persons with disabilities and universal suffrage of the people. The parameters of a free and fair election are also clearly stipulated in this article to include the following mandatory obligations;

i. All elections must be by secret ballot;
ii. Elections must be free from violence, intimidation, improper influence or corruption;
iii. Elections must be conducted by an independent body;
iv. Elections must be transparent and
v. All elections must be administered in an impartial, neutral, efficient and accurate an accountable manner.

Article 88 of the Constitution establishes the Independent Electoral and Boundaries Commission that sets out its composition and functions to include the continuous registrations of citizen as voters, regulating the process by which political parties nominate candidates for

[22] Art 26.27.28.....51

elections, voter education, and facilitation of observation and monitoring of elections among other key functions.

Article 90 specifically provides for the representation of special interest groups through special nomination seats and entrusts the IEBC with the responsibility for the conduct and supervision of these elections. The Constitution therefore sets out an independent and functional electoral body for the main purpose of managing elections in Kenya.

2.2. LEGISLATIVE FRAMEWORK

The aspirations of the Constitution in relation to General Election have been operationalized in various key legislations namely;

1. The Elections Act, 2011 (revised 2017);
2. The Election Offences Act, 2016;
3. The Independent Electoral and Boundaries Commission Act, 2011;
4. The Political Parties Act 2011 and
5. The Supreme Court Act 2011.

Following the clamour for electoral reforms various amendments were passed on the above key pieces of legislation that had an effect on several key components.

2.2.1 The Elections Act, 2011

This is the main law that gives provisions on how General Election in Kenya is to be conducted. It sets out procedures for the key electoral cycles including the registration of voters, inspection of the register of voters, audit of the voter's register, qualifications and nominations for the various positions, party lists and allocation of special interest seats. The Act further gives procedures on how election disputes shall be handled and the timelines thereof.

To operationalize these key functions, the Independent Electoral Boundaries Commission has enacted various regulations.

The Electoral Code of Conduct is established under the 2nd schedule of the Elections Act and it provides for key regulations that bind all registered political parties and candidates to adhere to the values and principles of the Constitution. Among the key provisions that all political parties and candidates should abide by include; respect to human rights, to promote voter education campaigns, condemn, avoid and take steps to prevent violence and intimidation, promote gender equality and facilitate representation of special interest groups among others.

2.2.2 The Political Parties Act 2011

This Act is the main regulator for political parties setting out procedures for formation of political parties, the minimum requirements for registration and mergers among other operational procedures. The Act also sets up the Office of the Registrar of Political Parties (ORPP) which has the key function of regulating registering, monitoring, investigating and supervising political parties. The Act further establishes the Political Parties Disputes Tribunal (PPDT) that has the main mandate of hearing and determining disputes between political parties and more specifically disputes arising out of political parties' primaries.

2.2.3 The Independent Electoral and Boundaries Commission (IEBC) Act, 2011

The IEBC Act operationalizes Article 88 of the Constitution by setting up the Electoral Management body. The Act provides for the composition of the Commission, the qualifications, selection process and removal procedures. The Act further enumerates the functions of the Commission as stipulated by the Constitution and gives it the mandate to supervise all elections and referenda at the County and National levels.

2.2.4 The Elections Offences Act, 2016

This Act was a key product of the 2016 Joint Parliamentary Committee on electoral reforms that recommended the need to have a stand-alone legislation on electoral offences. The Act provides clear electoral offences and penalties that including the following:

- Manipulation of the register of voters;
- Multiple registration as a voter;
- Offences relating to the voting;
- Offences by members and staff of the IEBC,
- Failure to maintain secrecy at elections;
- Personation;
- Bribery;
- Undue influence and use of force and violence;
- Misuse of national security organs;
- Misuse of public resources;
- Participation in elections by public officers and
- Employers not allowing employees' reasonable period for voting.

The penalties for these offences range from fines of five hundred thousand to ten million or imprisonment of up-to ten years or both. This Act further vests in the Office of Director of Public Prosecutions (ODPP) the powers to order investigations and prosecutions of the offences listed under the Act and the proceedings are to be commenced within 12 months of the election.

The Chief Justice is mandated to appoint as many special magistrates as it may be necessary to hear and determine matters relating to offences under this Act. The Act further bars any person who is convicted of an offence from running for any election for a period of five years following the date of conviction.

2.3 KEY HIGHLIGHTS OF THE 2016 AMENDMENTS ON THE ELECTORAL LAWS

Following the clamour for electoral reforms, the select Joint Parliamentary Committee on electoral reforms proposed a raft of amendments to the electoral laws that was passed in October 2016. These key amendments have far reaching impact on very key components of the electoral cycle and the impacts thereof analysed in the matrix below;

Act	Thematic Area	Old provision in the Act	Analysis of amended Law and Impact
1. Elections Act	Inspection of the register of voters, verification of biometric data and audit of the voter register[23]	The law provided for the IEBC to open up the register for inspection.	• The 2016 amendment had a provision requiring IEBC to set up public portal for inspection of the register. However, this section was deleted by further amendments in January 2017. In the 2017 General Election, the IEBC set up the portal very late in the day in July 2017 and after much advocacy from key stakeholders including the KNCHR.

[23] Section 6, 6A and 8A of the Elections Act, 2011

			• The time for the inspection of the biometric register was increased from 60 days to 90 days before a General Election thereby increasing the timelines for scrutiny and verification of the register. • The new amendments give the IEBC the option of engaging a reputable firm to undertake an audit of the register of voters six (6) months prior to an election. There were delays in engaging a firm to audit the voter register and the findings from the exercise were not fully implemented. For instance, the records of deceased voters were not removed from the register prior to the election.
	Nomination of Candidates by political parties[24]:	• The old provision provided for the time period in which political parties are to nominate its candidates as 45 days before the General Election	• The amendments extended this time from 45 days to 90 days to an election. • This an apt provision that prevents party- hopping late into the day. • Political Parties must submit the names of persons contesting in the political primaries at least two (2) days prior.

[24] Section 13 of the Elections Act, 2011

			• Each party shall bear their own costs of the nomination process and may invite the IEBC to supervise the process. • Political parties have sixty (60) days before an election to submit the successful candidates These set timelines have the effect of reducing manipulation by political parties as has been witnessed in the past elections. However, the findings from the KNCHR after the Political Parties nominations indicate an unprecedented high rise of independent candidates because of the tight timelines set up by the law
	Submission of party lists:[25]	The old provision provided that a Political Party shall submit its party list to the IEBC on the same day as the day designated for submission to the IEBC by Political Parties of nominations of candidates for an election.	The new amendment changed the requirement of Political Parties to submit the party lists on the same day as that of the nomination of candidates for elective seats forty five (45) days prior to an election. This is not an ideal change as it gives Political Parties time to include the losers of political primaries in seats that have been reserved for special interest groups.

[25] Section 35 of the Elections Act, 2011

	Number of voters per polling station	• The old Act did not have this provision	• The 2016 amendments introduced the concept of capping the maximum number of voters per polling station to 700. This is an ideal amendment and one that the KNCHR strongly recommended both in its 2013 election monitoring report and the memorandum presented to parliament as it has the effect of reducing the number of voters in a polling station thereby effectively managing the voting process. However, the KNCHR findings in this report indicate that the goal of this provision was not met as the crowding was still documented in many polling centres.
	Determination and declaration of results[26]	• The law gave broad provisions on this thematic area stating that the IEBC shall determine, declare and public the results of an election	• The new amendment laws enhanced the tallying and declaration process of the IEBC by providing for the procedure from the polling station to the constituency, county up to the national level. This section has further been enhanced by providing for the role of the county and constituency

[26] Section 39 of the Elections Act, 2011

		immediately after close of polling	returning officers in the declaration of results from each polling station.
	IEBC partnership with other actors on Voter Education[27]	• The old law stated that IEBC shall put in place mechanisms for undertaking continuous voter education	• The amendments introduce the concept of IEBC partnering with both state and non -state actors in offering voter education to the public and this is a positive step towards making the exercise as diverse and comprehensive as possible. • However, in the KNCHR 2017 findings, this provision was not fully utilised and voter education remained a big challenge as it was conducted in the last week to elections.
	Use of technology[28]	• The old law provided a broad statement that stated that the IEBC may use technology as it considered appropriate.	• The 2016 amendment now provides an enhanced provision on the use of technology that establishes Integrated Electronic Electoral System that enables biometric voter registration, electronic voter identification and electronic transmission of results. • IEBC has been mandated to develop a policy and regulations

[27] Section 40 of the Elections Act, 2011

[28] Section 44 of the Elections Act, 200

			in consultation with stakeholders on the progressive use of technology in the electoral process. • Further, IEBC is obliged by law to ensure that the technology to be used in the election period is simple, accurate, verifiable, secure, accountable and transparent. • In addition, the amendment provides for the procurement of the technology devices to be used in the election in an open and transparent manner at least eight (8) months before such election. • The testing of these devices is to be undertaken at least 60 days to the elections date. This section is extremely critical and was informed by the history of the country and recommendations of the Kriegler report on utilizing technology in the management of elections as an effective way of enhancing transparency credibility in elections.
	Presentation of petitions[29]	• The old provision provided for the	• The amendment changed the timeline of presenting petitions

[29] Section 76 of the Elections Act, 2011

		timelines of filing election petitions twenty-eight (28) days from the date of publication of results	from publication to 28 days after declaration of the results
	Facilitation of persons with special needs including persons with disabilities (PWDS)[30]	• There was no express provision under the old law covering this thematic area.	• This Act was amended to ensure persons with disabilities are facilitated in their right to vote by mandating the IEBC to put in place appropriate infrastructure including special voting booths and officers at every polling station conversant with PWDs. The implication of this provision is such that IEBC must put in place the necessary infrastructure to allow persons with disabilities to vote. This is one of the recommendations that KNCHR strongly proposed. However in the 2017 KNCHR findings as highlighted in this report, shows that this provision was not actualized as persons with disabilities still continued facing challenges in exercising their right to vote.
2.	**Formation and registration of**	• The old law provided very broad	• A Political Party now has a mandatory obligation to promote inclusiveness,

[30] Section 104 of the Elections Act, 2011

	political parties[31]	requirements for the registration of political parties.	democracy and participation of the people in the formulation of its policies and nomination of candidates for elections. • One of the mandatory requirements for full registration of a Political Party is the inclusion of special interest groups in the membership and disaggregated data and proof of the same is required. •
3.	**Deregistration**	• The old law provided the general conditions that would warrant deregistration of a political party.	• The 2016 amendments enhanced this section by adding that Political Parties can be deregistered on the grounds of lacking representation of special interest groups and contravention of Article 81(b) of the Constitution that "*not more than two thirds of the members of elective public bodies shall be if the same gender*". Most of the Political Parties are yet to comply with these provisions
	The distribution of the political Parties' fund[32]	• The old provided for the distribution of political party fund where 95% of the fund shall	• The law as amended changes the percentages (%) of distribution and states that: 85% of the fund shall be proportionately to the total number of votes secured by

[31] Section 3 and 7 of the Political Parties Act, 2011

[32] Section 25 of the Political Parties Act, 2011

		be proportion to the total number of votes secured by each political party and 5% shall be administrative expenses	each political party, 15% shall be proportionately to Political Parties based on the number of elected candidates from special interest groups and 5% for administrative costs. • The section further provides that a Political Party shall not benefit from this fund if it does not have in its governing body representation of special interest groups. • The implication of this law is that a Political Party shall not be eligible to receive this fund if it does not comply with the two thirds gender representation and inclusion of special interest groups in its national and county officials
4. IEBC Act	**Vacancy of office of the Commission Secretary/ CEO**[33]	• There was no provision addressing circumstances that would lead to the vacancy of the Commission secretary.	• There is more clarity on the circumstances that the Office of the Secretary becomes vacant- that is; if the holder dies, resigns from office by notice in writing addressed to the Commission or is removed from office if he/she has inability to perform

[33] Section 10 of the Independent Electoral and Boundaries Commission, 2011

			functions, gross misconduct, bankruptcy or incompetency.
	Relationship between the Commissioners and the Secretariat[34]	• There was no clear provision in the old law that addressed this thematic area.	• The 2016 amendments now provide distinction on the various roles by providing that the Commissioners shall play an oversight role and be responsible for the formulation of policy and strategy of the IEBC while the Secretariat shall play an implementing role of these policies and strategies.
	Establishment of Selection panel[35]	• The old law had provisions on the selection panel that still made reference to the Prime Minister hence not realizable.	• The 2016 amendments corrected this anomaly and provided a new mode of the selection of panels by stating how the panel shall be formed and further providing that the selection panel shall be constituted at least six (6) months prior to the expiry of the terms of the Commissioners,

2.4. INTERNATIONAL HUMAN RIGHTS STANDARDS

Kenya is a signatory to a raft of international treaties and convention that safeguards political rights and the sovereign power of people to cast their votes in a transparent and credible elections. The 2010 Constitution provides under Article 2(5) that the general rules of international law shall form part of Kenya. Sub Article 6 goes ahead to provide that any Treaty

[34] Section 11A of the Independent Electoral and Boundaries Commission, 2011

[35] First Schedule of the Independent Electoral and Boundaries Commission, 2011

or Convention ratified by Kenya shall form part of the law of Kenya. This thereby obligates Kenya as a country to strictly comply with the Treaties and Conventions that Kenya has ratified.

In relation to Elections, several key human rights instruments apply. The 1948 Universal Declaration of Human Rights (UDHR) is the backbone of human rights worldwide by providing the foundations for fundamental human rights and freedoms. More specifically the UDHR enshrines the power of the people to government participation, freedom of assembly, speech, security and liberty among other fundamental rights and freedoms.[36]

The 1966 International Convention on Civil and Political Rights (ICCPR) safeguards political rights and calls on all State parties to ensure the recognition of all the rights of the Covenant in a non-discriminatory manner. The Convention further provides that every citizen shall have the right to vote by equal suffrage "*without unreasonable restrictions to the right to vote*". This ideally means that although the right to vote is not an absolute right and may be subjected to limitations, such limitations must be reasonable and should not result to any sort of discrimination. The Convention further underpins that civil and political rights are fundamental Human Rights applicable to every individual, including persons with disabilities and those under full custodianship. The right to vote is the backbone of democracy and thus Article 25(b) allows restricting the right only to the extent that such restrictions are not "unreasonable."

In respect to issues of discrimination, the 1965 Convention on the Elimination of All Forms of Racial Discrimination (ICERD) enshrines the universal suffrage in all political rights including the *right to vote* and *be voted for*. Similarly, the 1981 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) protects and promote gender equality and non-discrimination in all spheres including in political representation and participation. The CEDAW specifically calls for equal participation of women in electoral processes. Persons with disabilities are specifically protected by the 2006 Convention on the Rights of Persons with Disabilities (CRPD) that obligates all State parties to ensure that person with disabilities have the right to fully participate in political activities and fully facilitating them to freely cast their votes and be voted for.

[36] Articles 3,5,9, 19,20,21 21, 19, of the 1948 UDHR

At the regional level, several key instruments protect political rights and the right to participate freely in elections including the 1981 African Charter on Human and People's Rights (ACHPR or the Banjul Charter) and the 2007 African Charter on Democracy, Elections and Governance. Women are given a key focus by the Protocol to the 2003 African Charter on Human and Peoples' Rights on the Rights of Women in Africa, (The Maputo Protocol) that outlaws discrimination of any type on the basis of gender and equal participation of women at the same level with men.

2.5. JURISPRUDENCE ON ELECTIONS FROM THE COURTS

Since the promulgation of the Constitution of Kenya 2010, the Judiciary has continued to play an important role in promoting human rights principles in the electoral processes within the electoral cycle. Following the lessons learnt from the 2013 general Election, the Courts have determined several cases that have a high impact on the enactment of political rights. A section of them are on the following key thematic areas;

2.5.1. Diaspora Vote

On the issue of diaspora vote, the Courts have pronounced themselves on the political rights of non-residents as a trend towards extending to and facilitating the exercise of the franchise by external citizens.

It has historically been the dominant practice to omit setting up mechanism that facilitate the enjoyment of political rights to non-resident citizens during the period of absence in Kenya. However, this has been dissipating. There is a clear trend toward allowing and facilitating greater electoral participation by external citizens as demonstrated in the case of ***New Vision Kenya (NVK Mageuzi) & 3 others v Independent Electoral & Boundaries Commission & 5 others*** [37] where the appellants sought declarations from the High Court that Kenyan citizens in the diaspora possessed a fundamental and inalienable right to be registered as voters and to vote and/or seek elective office pursuant to article 38(3) (a) and (b) of the Constitution of Kenya, 2010; and that the failure by the IEBC to provide the diaspora with the opportunity to register and vote was a violation to their fundamental right to vote and a contravention of article 82(1) of the Constitution which provided for the progressive registration of citizens residing outside Kenya and the progressive realization of their right to vote.

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[37] **[2014] eKLR, Civil Appeal 350 of 2012 [R N Nambuye, D K Musinga, K M'inoti, JJA]**

The Court of Appeal held that albeit missing out on the 4th March, 2013 General Election, the appellants were entitled to seek the court's intervention to ensure that in future, more Kenyans in the diaspora had the opportunity to vote. Hence, their decision to pursue this appeal to its logical conclusion was sound and proper in order for them to seek directions to issue to the IEBC in particular, and the State in general, to take remedial measures to avoid a repeat of the 4th March, 2013 scenario insofar as Kenyans in the diaspora were concerned. The Court further pronounced that:

"*Article 82(1) (e) of the Constitution leaves no doubt that the right to vote of Kenyans in the Diaspora is to be achieved progressively. Article 82, which requires Parliament to enact legislation on elections requires parliament to enact legislation that among other things provides for "the progressive registration of citizens residing outside and the progressive realization of their right to vote".*

2.5.2. Declaration of Results

The issue of what constituted declaration was settled by the Supreme Court in the case of ***Hassan Ali Joho & another v Suleiman Said Sharbal & 2 others***[38]. The main issue before the Court was whether the twenty eight (28) days limitation period for filing an election petition begun running after the declaration of election results by the Independent Electoral and Boundaries Commission as provided by Article 87(2) of the Constitution or after the publication of the election results in the Kenya Gazette as provided by section 76(1)(a) of the Elections Act, and whether section 76(1)(a) of the Elections Act was inconsistent with Article 87(2) of the Constitution and to that extent a nullity.

According to the Court, declaration or election results took place at every stage of tallying. For example, the first declaration took place at the polling station; the second declaration at the Constituency tallying centre and the third declaration at the County returning centre. Thus the declaration of election results was the aggregate of the requirements set out in the various forms involving a plurality of officers. The finality of the set of stages of declaration was depicted in the issuance of the certificate in Form 38 to the winner of the election that marked the end of the electoral process by affirming and declaring the election results which could not be altered or disturbed by any authority.

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[38] *[2014] eKLR*

The Court further re-affirmed the effects of the declaration of the unconstitutionality in the Case of ***Mary Wambui Munene v Peter Gichuki King'ara & others*** *where* It was held that, the Supreme Court had been silent in the Hassan Ali Joho's case discussed above on the effect of declaration of invalidity of a statute and therefore unequivocal about the invalidity of any action emanating from section 76(1)(a) of the Elections Act, in appropriate cases, it might exercise its jurisdiction to give its constitutional interpretations retrospective or prospective effect. It was further held that in line with the Constitution, the Court was not precluded from considering the application of the principles of retroactivity or pro activity on a case by case basis. As such, in the instant matter, the issue of invalidity of section 76(1) (a) of the Elections Act was bound to the issue of time. Time, as a principle, was comprehensively addressed through the attribute of accuracy, and emphasized by article 87(1) of the Constitution, as well as other provisions of the law. Time, in principle and applicability was a vital element in the electoral process set by the Constitution.

Similarly, in the case of **Suleiman Said Shahbal v Independent Electoral and Boundaries Commission & 3 others [2014] eKLR**, the Supreme Court affirmed its position by holding that, the declaration of invalidity of section 76(1) (a) of the Elections Act, applied retrospectively in the instant case, as in the case of *Mary Wambui Munene v Peter Gichuki King'ara & 2 Others* Sup Ct Applic. No. 12 of 2014 because the Elections Act was an essential derivative of the Constitution enacted after the promulgation of the Constitution and was meant to set out the guidelines for the proper and effective conduct of elections and necessarily incorporated the element of time and timelines.

2.5.3. Prisoners Right to Vote

On 20th May 2010, *Kituo cha Sheria* filed a petition[39] in the High Court demanding that prisoners be registered to vote in the 2010 referenda for a new Constitution. This petition marked the first step in establishing that person's deprivation of liberty did not derogate also their right and responsibilities to engage in other democratic processes that impacted them in one way or the other. In this petition, the prisoners were allowed to participate by the courts in referenda vote.

[39] Constitutional Petition 1 of 2010; Priscilla Nyokabi Kanyua V Attorney General & Another [2010] Eklr

The Courts interpreted the right to vote to include prisoners in the case of *Kituo Cha Sheria V IEBC* in 2013 the court held that prisoners are, subject to Article 83 (1) of the Constitution entitled to be registered as voters and have the right to vote under Article 38(3) (a) and (b) of the Constitution- *"IEBC should hence put in place measures to ensure that prisoners are registered as voters and that they are able to vote on the material day".*

2.5.4. Jurisdiction of the Court of Appeal in election matters

The Court of Appeal addressed itself to the issue of its jurisdiction in handling cases that are of law only regarding election petitions. Section 85A ordains that appeals to the Court of Appeal in election cases shall be on points of law only. The main issue before the Supreme Court has therefore been whether the Court of Appeal exceeded its jurisdiction by delving into matters of fact, contrary to the provisions of section 85A of the Elections Act, 2011.

In Fredrick Otieno Outa v Jared Odoyo Okello & 4 Others Supreme Court Petition No. 10 of 2014 the court held that by limiting the scope of appeals in the Court of Appeal to matters of law only, section 85A restricted the number, length and cost of petitions and, by so doing, met the constitutional command in Article 87, for timely resolution of electoral disputes. Section 85A of the Elections Act was, therefore, neither a legislative accident nor a routine legal prescription. It was a product of a constitutional scheme requiring electoral disputes to be settled in a timely fashion. The section was directed at litigants who could be dissatisfied with the judgment of the High Court in an election petition. To those litigants, it said "*limit your appeals to the Court of Appeal to matters of law only.*"

2.5.6. Timelines for Filing of Appeals

The Supreme Court in the case of **Evans Odhiambo Kidero & 4 others v Ferdinand Ndungu Waititu & 4 others [2014] eKLR,** had set out the timelines in filing and determining Electoral Appeals. The genesis of the case was that the petitioner had filed an appeal to the Court of Appeal against a High Court's decision of dismissing the 1st respondent (Waititu) request for scrutiny and recount for votes in an election petition.

The Court held that the question of timeliness in filing and determining election petitions as set by the Constitution and the Elections Act, section 85A(a) were neither negotiable nor could they be extended by any court for whatever reason. Section 85A of the Elections Act was neither a legislative accident nor a routine legal prescription. It was a product of a constitutional scheme that required electoral disputes to be settled in a timely fashion.

2.5.7. Irregularities arising from Human Errors

In dealing with issues regarding irregularities that occurred in the tallying process of elections, the Court of appeal addressed the question of what constituted human error. In ***Dickson Mwenda Githinji v Gatirau Peter Munya & 2 others Civil Appeal No.38 of 2013*** the Court of Appeal held that the burden to prove the existence of human error was excusable if it was a single, isolated and random occurrence. When the mistakes or errors were multiple and persistent such mistakes ceased to be human errors and pointed towards an inefficient, negligent, careless or even deliberate occurrence of the errors that affected the credibility of the declared results. In the instant case, the mistakes on record did not reveal a pattern in favour of any one candidate but showed that there were multiple errors and mistakes that went towards the overall integrity and credibility of the figures entered for each candidate. Due to the multiplicity of the mistakes, there were indications that human error was not a plausible explanation for all the irregularities identified. It could not be said that human error was the cause of the mistakes with certainty because there was no evidence.

2.5.8. Counting, Tallying and Announcement of Final Results

On the 23rd June 2017, in the matter of ***IEBC V Maina Kiai & 5 Others***, ***(civil appeal 105 of 2017)*** the Court of Appeal annulled Section 39(2) and (3) of the Act and regulations 83(2) and 87(2)(c) which provided that the results declared by the returning officer are provisional, and to the extent that regulation 83(2) provides that the results of the returning officer were subject to confirmation by the IEBC, these provisions are inconsistent with the Constitution and therefore null and void.

The implication of this judgment in the 2017 General Election on the role of the Chairperson of the IEBC in regard to the announcement of Presidential results, in that before he makes that declaration, his role is to accurately tally all the results exactly as received from the 290 returning officers country-wide, without adding, subtracting, multiplying or dividing any number contained in the two forms from the constituency tallying centre.

If any verification or confirmation is anticipated, it has to relate only to confirmation and verification that the candidate to be declared elected president has met the threshold set under Article 138(4), by receiving more than half of all the votes cast in that election; and at least twenty- five per cent of the votes cast in each of more than half of the counties. Any changes to what was counted, confirmed and verified at the constituency level before transmission

would be outside of his powers is tantamount to a serious assault on the will of the people of Kenya and an impermissible breach of the Constitution.

2.5.9. Public Participation in Procurement

The procurement procedures of the IEBC were brought to light in ***IEBC V NASA (civil appeal no. 224 OF 2017)*** when the NASA coalition raised issues in the awarding of tender to *Al Ghurair Printing & Publishing LLC* for the printing and supply of electoral materials for the August General Elections.

The court set aside the orders that had been issued by the High Court and stated that the learned judges erred and did not take into account the very real threatened breach of the right of millions of Kenyan voters enshrined in *Articles 38 (2)* and *136 (2) (a)* of the Constitution being the right to free, fair and regular elections based on universal suffrage.

The Court noted as a general principle, public participation is a mandatory requirement for a public entity and that there are exceptions to public participation in the procurement process and one such exception relates to direct procurement

2.5.10. Use of Technology

In regarding the use of technology exclusively in the 8th August elections, the matter of ***NASA V IEBC (petition no. 328 of 2017)*** settled this question, in which the NASA coalition wanted to do away with the complementarity mechanism backing up the use of technology and had sought that the Identification of voters and transmission of results for the election held on 8th August 2017 be exclusively electronic. The Court held that every citizen has a right under Articles 38(3), 81, 83(3) to be registered as a voter, to vote and to have every vote counted. However, the electronic system had failed during the 2013 General Election, thus technology can be susceptible to hackers, software bugs, badly trained frost workers or power outages which could intentionally or accidentally erase or alter voting data captured by the machines leading to failure.

The court had to consider the impact or consequences if the exclusive electronic system failed. It would throw the entire election into jeopardy and imperil our democracy. The Court therefore found that it would not be feasible to declare that the elections to be held on 8th August 2017 be *exclusively electronic.*

CHAPTER 3: POLITICAL PARTIES PRIMARIES AND CAMPAIGNS

Political Campaigns

3.1 Electoral Violence

General Elections in Kenya have traditionally been characterised by various forms of election-related or politically-instigated violence. However, Kenya's electoral environment took a distinctively violent character after the introduction of multi-party politics in 1992. Since then, Kenya has continued to witness varying degree of violence within its General Election context. The Country experienced the worst form of election-related violence in December 2007 and January 2008 following the disputed Presidential results of the 2007 General Election. The 2007-2008 Post-Election Violence (PEV) led to the formation of a Grand Coalition Government[40], which was anchored on a raft of political and institutional reforms. One of the key achievements of the Grand Coalition Government was the promulgation of a new constitution in August 2010.

The Constitution provided a golden opportunity for Kenya to re-write its electoral laws in a manner that would rein on the culture of election violence that had hitherto entrenched itself as part of the Country's political culture. For instance, the Constitution provides for the enactment of the Elections Act 2012, which contain an elaborate Electoral Code of Conduct and which, among other measures, seek to expressly ban all forms of violence in Kenya's electoral process. The Constitution as set out in Article 38, also secures a key electoral right and principle, which is, the *right to vote* and *be voted for* in any of the six elective positions available for purposes of exercising the sovereignty of the Kenyan people through representative democracy. In terms of addressing the issue of the volatile political environment, which inevitably gives room for electoral violence to thrive, the Constitution has entrenched a robust Bill of Rights which provides a safe environment to conduct elections. For instance, the Right to Freedom of Security of a person is guaranteed under Article 29 of the Constitution for purposes of providing an enabling environment where the citizenry can have the opportunity to exercise the right to vote free from fear, threats or intimidation.

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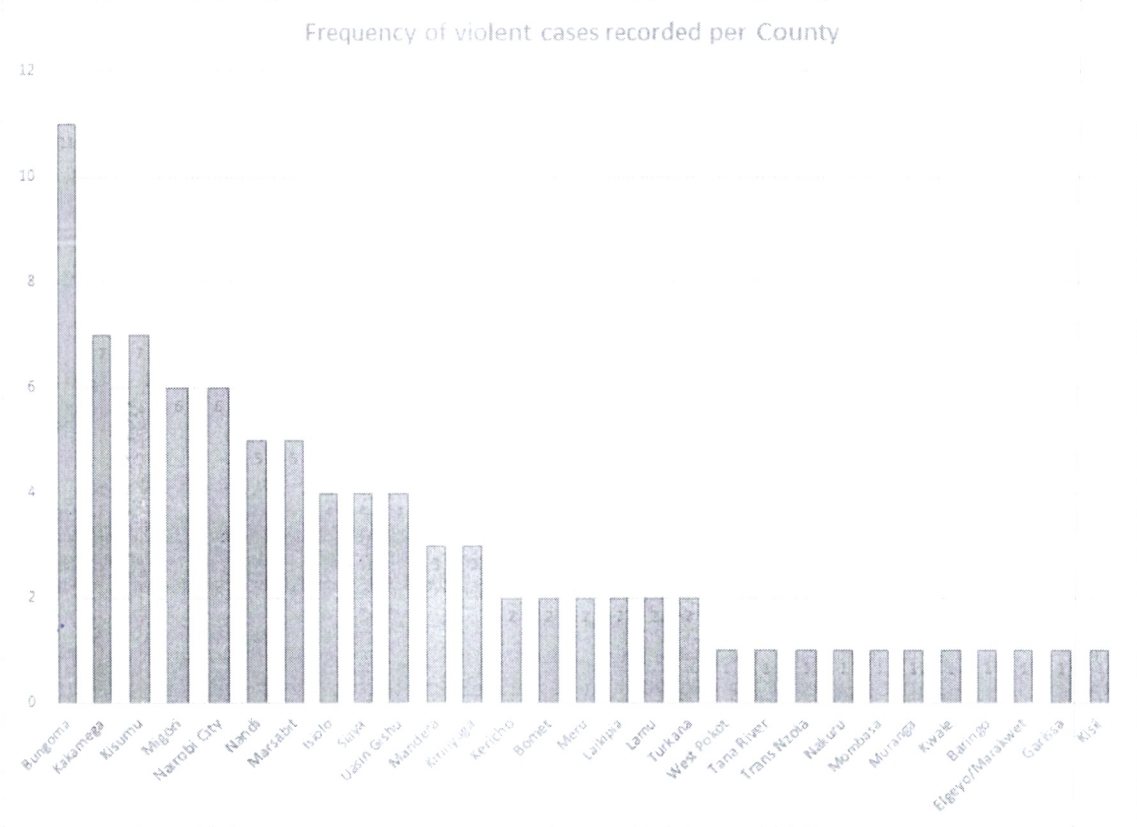
[40] The Grand Coalition Government was the product of a power-sharing deal between Hon. Mwai Kibaki and Hon. Raila Odinga. The deal was negotiated by H.E. Kofi Annan working in conjunction with the Panel of Eminent African Persons and it was instrumental in pulling Kenya back from the brink of massive and widespread political violence witnessed in December 2007 and January 2008.

Apart from the various Constitutional and Statutory provisions geared towards ensuring that elections are conducted in a violent-free environment, the IEBC has also put in place an Electoral Code of Conduct that is supposed to regulate the conduct and behaviour of politicians during the electioneering period. For instance, Section 6 of the Electoral Code of Conduct requires all political aspirants to ensure that they minimize acts of electoral violence. As a commitment to the provisions of the foregoing, and in the course of campaigning, politicians are required to; publicly and repeatedly condemn any form of violence; refrain from taking any actions that involves violence or intimidation; ensure that no arms or weapons are carried or displayed in any political meetings; refrain from carrying out campaigns in places of worship or during burial ceremonies, cooperate and liaise in good faith with other parties to avoid organizing meetings at the same venue; not to engage in anything that impedes the right of any party from freely campaigning and to avoid using the symbols of another political party in their campaigns.

It is therefore a matter of concern that despite the elaborate legal framework set out above, Kenyan politics continue to be characterized by incidents of electoral violence. From the findings of our election monitors in the field, it is safe to conclude that though we have elaborate laws on taming electoral violence in written word the country still has challenges in their implementation, which means that electoral violence still continues to straddle our political landscape unabated, albeit to varying degrees of intensity, as will be shown from our findings in this report.

Out of the 1,112 political-campaign related events that KNCHR monitored and documented, 86 (equivalent to 7.7%) were cases of electoral violence. Acts of electoral violence were mostly widespread in the Nairobi City, Bungoma, Kakamega, Kisumu, Migori, and Siaya Counties, which have traditionally experienced electoral violence. The most affected areas included Mathare, Embakasi, Ruaraka, Kimilili, Webuye, Sirisia, Mumias, Lurambi, Kisumu Central, Kisumu Rural, Migori, Kuria, Awendo, Rarieda, and Alego. The KNCHR also observed and documented an emerging and worrying trend where electoral violence was increasingly reported from areas that have traditionally not experienced electoral related violence. These included but were not limited to, Marsabit, Isiolo, Turkana, Murang'a, Mandera, Kirinyaga, Kericho, Bomet and Meru.



Frequency of violent cases recorded by KNCHR during 2017 General Election Political Parties campaigns period per county. (Source: KNCHR Election Monitoring System-EMS)

The electoral violence mostly took place during events or functions (*even though some of these events or functions were not expected to be campaign platforms*) that were either political platforms or social events that created a politically-charged atmosphere. The aforementioned events or functions included but were not limited to; campaign rallies, prayer meetings, funerals and fund-raising meetings.

Electoral violence affects the right of the Kenyan citizens to participate freely in the electoral process either as voters or candidates. However, part of the reason why acts of electoral violence continue to flourish in Kenya can be attributed to the fact that the perpetrators of the violence are rarely held to account whenever the said acts are committed. The KNCHR is firmly committed to its erstwhile call to all Kenyans to desist from perpetuating acts of electoral violence over and above calling upon all the relevant law enforcement agencies to take full

legal action against all those who breach the electoral laws and which laws expressly ban all forms of electoral violence. It is therefore the Commission's expectation that action will be taken against all those who participated in the perpetuation of the electoral violence that it observed and documented as illustrated by the following sampled cases of this report.

3.1.1 Layers of Electoral Violence

i. Violence Associated with National Level Politics

On 26th July, 2017, President Uhuru Kenyatta and his running mate Hon. William Ruto, the Jubilee Coalition Candidates took their campaign rally to Moi Girls Secondary, Saku Constituency, within Marsabit County. The rally brought out a show of supremacy between the two gubernatorial aspirants Mr. Mohamud Mohamed Ali alias Abshiro of Jubilee Party and Ambassador Hon. Ukur Yattani of Frontier Alliance party (FAP). The Jubilee Party supporters wore red T-shirts and caps as their dress code for the day while FAP had white T-shirts and caps. Both sets of supporters began shouting each other down before Hon. Uhuru Kenyatta arrived for the rally. About 30 security personnel were assigned to maintain law and order. At around 11:30am, the tension escalated further, with both Jubilee and FAP supporters throwing stones at each other. The police officers had to separate the two factions of supporters. Eventually, the Jubilee supporters held their meeting at Moi Girls Secondary compound while the FAP supporters shifted towards the Shell fuel station. At around 12:30p.m, the President's envoy arrived and addressed the FAP supporters at Shell fuel station. Some rowdy Jubilee supporters moved towards venue where FAP supporters had re-located to. A violent clash ensued between the two groups and the police had to lobe teargas canisters and rubber bullets to disperse the crowd. This confrontation led to 20 injuries including three (3) police officers who were all referred to Meru County Referral Hospital as well as three (3) people who suffered from gunshot wounds.

KNCHR ascertained that arising out of this confrontation, three (3) Kenya Police Reservists (KPR) were arrested, arraigned in court and charged with causing actual bodily harm. It was further alleged that the KPRs who were charged were affiliated to the Frontier Alliance Party and thus failed in their duty of providing equal protection to all individuals as required by the National Police Service Act. Further, seven (7) more people were

arrested during the skirmishes and charged with various offences ranging from creating disturbances to malicious damage to property.



Supporters injured during Jubilee and FAP confrontation in Marsabit County ahead of a political campaign function on 26th July 2017. (Photo courtesy: KNCHR 2017)

ii. Violence Associated with County Level Politics

As noted above, the promulgation of the Constitution of Kenya in 2010 heralded a new era in governance in different aspects with devolution being one of the newly established features of governance. The units of devolution as espoused in the 47 County Governments have become new frontiers of vicious power struggle with the attendant of high electoral violence levels. The rivalry and competition at the County level is spread across various elective positions ranging from County Governors, County Senators, Members of Parliament, Women Representatives and Members of the County Assembly (MCAs).

A contestation of hotly contested politics was documented in Uasin Gishu County which had two strong Gubernatorial Candidates namely; Hon. Jackson Mandago (the then incumbent and

now re-elected Governor of Uasin Gishu County) and Independent Candidate Mr. Zedekiah Kiprop Bundotich alias BUZEKI who was seeking to unseat the incumbent on the same—Jubilee –Party ticket). The Jubilee Party nominations saw the then incumbent Governor, Hon. Mandago, win the party nomination ticket, an outcome which saw his main opponent, Mr. BUZEKI, decamp from the Jubilee Party to contest as an Independent Candidate. The win by Mr. Mandago at the party primaries led to political discord between some members of the Kikuyu and the Kalenjin communities residing in Uasin Gishu. The Governor openly alleged that some members of the Kikuyu Community did not vote for him. He particularly singled out those living in Langas, Kimumu, Market and Huruma Wards. The contest between Hon. Mandago and Mr. Bundotich generated a lot of hostility, which was witnessed in several campaign activities across the County as illustrated below.

> *On 21st July 2017, between 7:30 p.m and 8:00 p.m, supporters of the two candidates; Hon. Mandago and Mr. Bundotich; clashed at Korosiot Grounds near Silver Springs Hotel in Eldoret town. Rowdy group of youths pelted stones at each other and the motorists driving nearby. The eye witnesses to this incident, Messrs Peter Kiprono and Zakayo Muhonyo who were injured during the incident, were taken to the Moi Teaching and Referral Hospital (MTRH). The violence left in seven (7) people with injuries. KNCHR monitoring findings showed that there was a systemic wave of violence and these findings were further complemented by interviews with other duty-bearers who included the OCPD Central Police Station, three (3) taxi drivers and the Eldoret Town Hawkers Association Chairman. In all the reported cases of violence, no arrest and prosecution of the perpetrators was made.*



A male victim of the violence between supporters of Hon. Jackson Mandago and Independent Candidate Zedekiah Bundotich- "Buzeki" on 21st July 2017. (Photo courtesy: KNCHR 2017)

iii. Youth: Leaders, Voters or Guns for Hire?

The youth are an important national resource for any country. Kenya is one of the African countries endowed with a budding, well-educated and talented youthful population. Kenyan youth are among the most enterprising and innovative in the African Continent[41]. Apart from excelling in the world of business and innovation, Kenyan youth have also offered themselves for various leadership positions at both the National and County Government levels. It was therefore encouraging to see a number of youthful Kenyans elected into office following the August 8th 2017 General Election.

The Constitution of Kenya, in Article 21 (3) and Article 55 also expressly recognises the role of the youth in nation-building and calls for the effective participation of the youth in the

[41]Mfonobong Nsehe (2016), ***'30 Most Promising Young Entrepreneurs in Africa 2016'***. Available online at: https://www.forbes.com/sites/mfonobongnsehe/2016/04/25/30-most-promising-young-entrepreneurs-in-africa-2016/6/#4f6a711120c3

management of the Country's socio-economic and political affairs. However, despite the great promise that we as a country hold in our youth, a number of challenges still remain unresolved for this important demographic group. For instance, high levels of unemployment remain one of the key challenges facing Kenyan youth[42]. The high levels of youth unemployment make them susceptible to political manipulation and our electoral history is replete with cases of youth who have been misused as *guns-for-hire* or deployed as goons by some political operatives to cause political violence and mayhem. Hence, in terms of deploying the youth to unleash electoral violence, the 2017 General Elections was not an exception as can be deduced from the following cases.

1. *On Tuesday 13th June, 2017 at around 1300hrs, Mr. Isaac Kide, a 41-year-old Businessman in Kapenguria town was walking from the Kenya Commercial Bank, Kapenguria Branch within Makutano town. On reaching Paves Agrovet (about 50 metres from the KCB Bank) he was accosted by a group of about 30 youth dressed in KANU branded T-shirts and holding placards and truncheons. The group was being chased by youths dressed in Jubilee branded T-shirts from Chelang'a Gardens where Jubilee was to hold a political rally.*

   The KANU youth then started hurling stones at the Jubilee Party youth and in the process Mr. Isaac Kide tried to stop one of them asking him to shun violence. A youth identified as "Ozil" aged about 22 years and famously known for being a staunch KANU's supporter of Prof. John Lonyangapuo's appeared and told Mr. Isaac Kide "Izo(Isaac) "yaani wewe pia uko hio kikundi"; (translation: Isaac you mean you also belong to this group) and suddenly he hit him with a piece of wood on the forehead. He started bleeding and was helped by well-wishers to the nearby Toror dispensary for first aid. He later called his brother who rushed him to Kapenguria District Hospital for further treatment. At the hospital, he met Mr. John Pchumba Moin who was also

[42] BUSINESS DAILY, Wednesday, March 9, 2016: ***Kenya has the largest number of jobless youth in East Africa.*** **Available online at:** http://www.businessdailyafrica.com/Kenya-tops-East-Africa-s-list-of-youth joblessness/539546-3108514-6cd5xgz/index.html. **See also, *Institute of Economic Affairs,*** 30 March 2016, **Number of the Week: 17.1%: Youth Unemployment in Kenya. Available online at:** http://www.ieakenya.or.ke/number_of_the_week/number-of-the-week-17-1-youth-unemployment-in-kenya

assaulted during the clash between the Jubilee and KANU supporters and had a deep cut at the back of his head.

He reported the incident at Kapenguria police station and recorded a statement. The matter was allocated to Constable Juma Lwende (for investigations) who issued him a P3 form that was filled at Kapenguria District Hospital and returned to the police on the same day. The O.C.S Kapenguria Police Station, Mr. Luke Odiwuor, confirmed that statements had been recorded and the police are pursuing the matter.

2. *Yet in another incident recorded by KNCHR; Elisha Odhiambo who was an ODM Candidate for the parliamentary seat in Gem Constituency and in the company of his supporters, was on a campaign rally at Akala center. The Candidate addressed Akala residents peacefully and started making his way out of the centre to other destinations. As he left with his supporters, some of whom are residents of Akala, his supporters confronted some supporters of his competitor Jakoyo Midiwo who was an Independent Candidate. His supporters started a fight with Jakoyo's supporters who were within the vicinity. Jakoyo's supporters were caught unawares in the confrontation but once they realized who their attackers were, they started engaging them and a stone-throwing melee ensued. Following the fracas, four (4) people sustained injuries. Two of the injured were taken to Aluor Hospital for treatment and the other two received first aid at the Akala Trading Center. Even after this fracas, the residents of Akala, most of whom were Hon. Jakoyo's supporters continued to receive threats from Elisha's supporters who threatened them saying that they had no option but to support the ODM Party or else they would be in for rough and tough times.*



A resident of Akala, Siaya County and supporter of Jakoyo Midiwo who sustained injuries after being beaten by supporters of Elisha Odhiambo during Elisha's campaign at Akala center. (Photo courtesy: KNCHR 2017)

iv. Violence meted out on Political Leaders.

The electoral violence experienced during the 2017 General Election was also targeted at political leaders based on their political affiliations. The following case is illustrative.

On Sunday at 11th June 2017 at around 10.00am, Mr. Cleophas Malala, a Senatorial Aspirant was in the company of Charles Odanga, the then incumbent MCA Mumias Central Ward and Suleiman Odanga an Independent candidate at St. Romamos Matawa Catholic in Mumias. The three (3) were attacked by a group of ten (10) goons at a distance of 10 meters away from the church after the service. The goons were carrying truncheons, stones and machetes. The rowdy youths stopped them and started damaging their car with the machetes and they were generally very aggressive to the politicians. Cleophas Malala's vehicle and two others were smashed with stones and scratched with pangas on the front, back and side mirrors during the incident. The MCA Candidate Mr. Charles Odanga was slashed on the head and rushed to St. Mary's Hospital –Mumias and later transferred to Moi Teaching and Referral Hospital for treatment. Suleiman Odanga managed to escape unharmed.

Both Mr. Cleophas Malala, Suleiman Odanga and Charles Odanga recorded their statements with Mr. Peter Katam who is the OCPD at Mumias police station. Four suspects identified by the petitioner were arrested and arraigned in court on 14th June 2017. The case is ongoing.



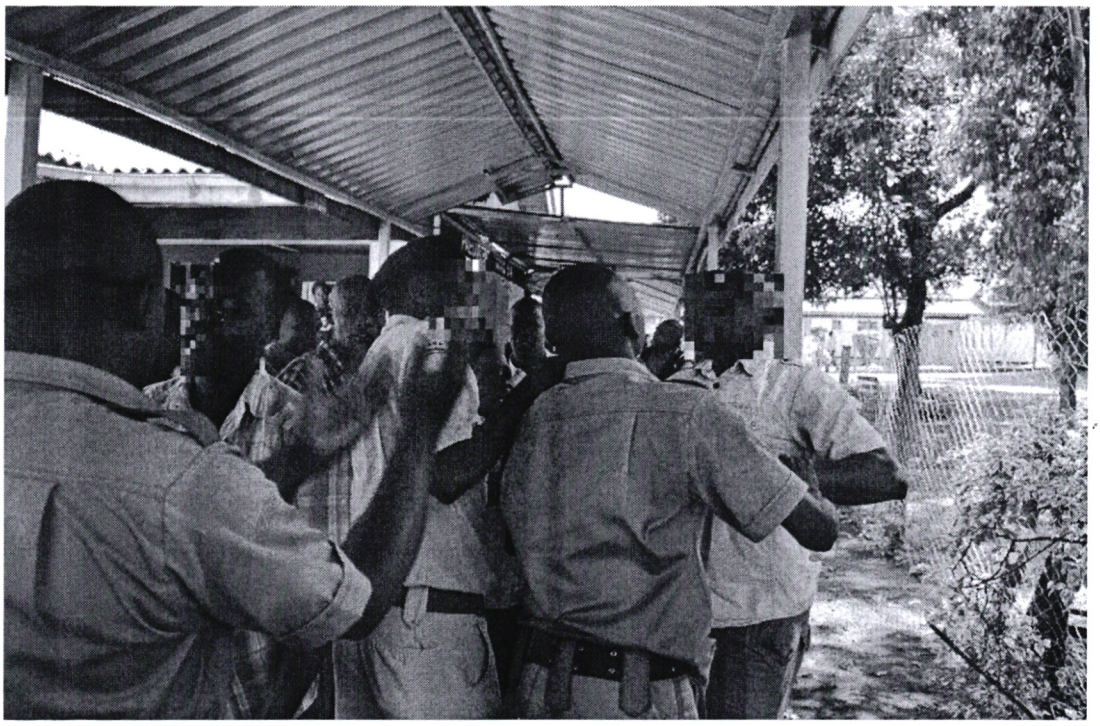
An attack on aspirant's vehicle in Matawa, Mumias West, Mumias County on Sunday 11th June 2017 at 10.00 am. (Photo courtesy: KNCHR 2017)

v. Threats and Violence Directed towards the Media

The members of the Fourth Estate were also victims of electoral violence during the 2017 General Election as is evidenced below:

> *On Monday 5th June, 2017 at around 1700hrs Mr. Namisi Cheptai who was in the company of his colleague Mr. Moses Masinde at Members Club, which is opposite Bungoma Police Station, was having a soft drink on the fateful evening. While there, he was approached by one of Hon. Ken Lusaka's bodyguard, a former Kenya Defence Force Officer called Mr. Kisaka Mufuta who assaulted him with kicks and blows occasioning injuries on his face, head and left leg. While this was happening, Governor Ken Lusaka was within the Club together with CEC for Public Administration Mr. Mokina Araptangunyi and Mr. Mahakara who also worked in the Governor's Office. The bodyguard while assaulting the journalist stated thus: "Umekuwa ukituharibia jina ya kwamba tuliuwa mama kadogo na kuharibu jina ya Governor kuhusu wheelbarrow" (Translation- "You have been soiling our reputation that we killed Kadogo's mother?? and also the Governor's name over the wheelbarrow saga"). The Journalist reported*

the case at Bungoma Police Station he was treated at Bungoma Hospital for the injuries he sustained following the assault from Hon. Lusaka's Bodyguard.



A Journalist of Media Max Limited being assaulted by Migori County Government security personnel on 10th June, 2017. (Photo courtesy: KNCHR 2017)

vi. Electoral Violence at Social Gatherings

1. *On 10th June 2017, during the burial ceremony of former Member of Parliament of Nyando the late Hon. Miruka Owuor, at Ahero Township, the supporters of Hon. Jack Ranguma and Hon. Fred Outa clashed. In attendance during the funeral ceremony included, Kisumu Central ODM Candidate Fred Ouda and Nyakach M.P Aduma Owuor. The violence started after the MCA of East Wawidhi Hon. Moses Ochele stood up to address the mourners. He told the Mourners that it was Hon. Fred Outa and Hon. Nyong'o who had stolen Hon. Ranguma's votes during the Party nomination exercise. Hon. Outa had stood-up to address the mourners when supporters of Hon. Ranguma started shouting at him to sit down. They claimed that he had helped to rig out Hon. Ranguma during the O.D.M nominations.*

The youths present, who were strong supporters of Hon. Ranguma and Hon. Ochele, shouted that since Hon. Outa was supporting Hon. Anyang Nyongo, he had no business

attending the funeral. They demanded that he should leave the burial ceremony immediately. The youths booed and heckled at Hon. Outa. The scene then turned violent as the youths moved to the podium where Hon. Outa was. This forced his security guards to shoot in the air to try and disperse the crowd that had already built up around Hon. Outa.

The police officers present used teargas to disperse the crowd. The rowdy youth threw stones, water bottles and chairs at the officers. Hon. Outa's car was smashed during the fracas. No one was injured during the commotion. Hon. Outa later on recorded a statement at the Kisumu Central Police Station.



Youth throwing chairs thrown at Hon. Fred Outa during a burial ceremony at Ahero township in Nyando Constituency on 10th June 2017. (Photo courtesy: KNCHR 2017)

2. *On 29th July 2017, during the burial ceremony of businessman, Edward Barasa, in Bungoma County at Chebukwabi Primary School which brought together various politicians in the region included, Hon. Eugene Wamalwa—Cabinet Secretary for Water and Irrigation, Hon. Ken Lusaka, Hon. Didmus Barasa, Hon. Juma Mukhuna who were all considered to be from one political affiliation, the Jubilee Party. This team of politicians was later joined by Wycliffe Wangamati and Hon. Justus Kibaba Makhoha who were considered to be from the opposing coalition, NASA. The presence of the two opposing sides led to violence at the funeral when irate youths blocked Hon. Justus Kibaba the then MCA for Kibingei from accessing the venue.*

The confrontation led to the disruption of the funeral service forcing the organizers to remove the body of the deceased from the scene since tension between the Jubilee and Ford Kenya Party followers had reached hostile proportions. After the body of the deceased had been removed from the venue, there was full-scale confrontation between supporters of the two parties. The youths affiliated to Jubilee were given wooden truncheons from a white prado which was packed next to the school gate with others pursuing their opponents amid chants of "maliza hao.....maliza hao" (Translation- "Finish them, finish them") referring to Hon. Wangamati's group who were making an exit from the venue. The police came in but it was too late since many people had been injured and cars (including one with Registration Number KBH 293 W) damaged.

KNCHR noted that during the fracas described above, one child aged about 10-years old was trampled upon during the violence, one lady was hit by a blunt object on her head and one man called Matthew Makanda was also hit on the right hand allegedly by goons aligned to Hon. Ken Lusaka. The case was reported at Kimilili Police Station by Hon. Wycliffe Wangamati for further investigation. This particular violence is key in drawing the nexus between funerals, politicians and the ensuing electoral violence which normally denies the bereaved the chance to moan their loved ones and instead focuses on dealing with the mess caused by the political chaos. KNCHR *call upon Kenyan politicians to rethink this retrogressive practice of invading the spaces of bereaved families to cause political mayhem and ask them to desist from turning funeral functions into political platforms. The Commission believe that most grieving families want a calm and sombre atmosphere so that they can mourn their loved ones in peace and dignity.*

3.2 The Right to Fair Electoral Campaign Opportunities and Practices.

3.2.1 Misuse of Public Resources

Abuse of public resources during electoral cycle is common among the incumbents. The act constitutes a form of corruption that is geared towards gaining undue political advantage over political opponents who do not enjoy the trappings of incumbency. Abuse of public resources during the electoral cycle ranges from illegal use of government vehicles, installations and

buildings during campaigns, distribution of material *goodies* and donations to the electorate, active involvement of public officers in partisan political activities aimed at influencing or tilting the choices of voters in the political contests.

In Kenya, it is illegal for the incumbent candidates to use public resources for their political campaigns. Section 14 and 15 of the Election Offences Act, 2016 prohibits the use of public resources as well as participation of public officers during campaigns. Section 14 states that; *"Except as authorised under this Act or any other written law, a candidate, referendum committee or other person shall not use public resources for the purpose of campaigning during an election or a referendum".*

Further, *"No government shall publish any advertisements of achievements of the respective government either in the print media, electronic media, or by way of banners or hoardings in public places during the election period".* Contravention of these provisions attracts conviction of a fine not exceeding Kenya Shillings two million or imprisonment for a term not exceeding six years or to both, while the use of public officers for partisan politics attracts a fine not exceeding Kenya Shillings ten million or imprisonment not exceeding six years or both.

During the campaign period, the Commission documented a total of seventy-seven (77) cases of direct public resources misuse and abuse of office across the country by politicians. The cases vary from the use of government vehicles, use of vehicles belonging to public schools, use of school playgrounds in holding political rallies, issuance and distribution of relief food and money and the commissioning and launch of projects. The cases mainly touch on public officers and candidates holding public office. Herein are some of the cases documented by the Commission.

1. *The Commission documented misuse of public resources by the Jubilee Party through the online portal (delivery.go.ke) launched on 10th April 2017 barely one month into the campaign period highlighting their achievements in the last four and a half years they had been in office. The Jubilee Party also vigorously ran advertisements in both print and broadcast media on its achievements in contravention of the law.*
2. *On 6th July 2017, the Commission documented the inducement of voters through issuance of cheques ranging from Ksh 50,000 and above to women groups by Hon. Maison Leshomo during her campaign trail in Ngari Sungari sub-location, Samburu*

Constituency, Samburu County. The voter inducement was premised in the name of "economic empowerment" by the women representative of Samburu County. It is worth noting that the Commission is not opposed to the empowerment of women groups but of concern is the timing on issuance of cheques which will ultimately in one way or the other influence the voting pattern.



Hon. Maison Leshomo issuing cheques to women during her campaign trail in Ngari Sungari sub-location, Samburu constituency on 6th July 2017. (Photo courtesy: KNCHR 2017)

3. *On 14th July 2017, during the official opening of the theatre unit at Awendo Sub County Health Centre, Migori County by the then incumbent (and now re-elected) Governor Hon. Zachary Okoth Obado, the Commission documented the use of public vehicles in the Governor's convoy. The Commission witnessed the use of a white Isuzu double cabin pickup, registration number GKB 103B mounted with a Public-Address System. Notably, in the convoy was a double cabin pick-up branded with Governor Obado's posters with the slogan "Sirkal Matiyo". Loose translation "...a working government..." mounted also with a Public-Address System. Conspicuously there wasn't any registration number plate attached to this vehicle.*

   The Governor was accompanied by several County Officials including County Cabinet Secretary, CS Public Health, CS Agriculture, Sub-County Health Officer, County Nutritionist, Ag. Director – Health. The County Cabinet Secretary Mrs. Iscah Oluoch actively in public drummed support for the re-election of the Governor. Part of the

statement made by Iscah include "Obado Tibim, Obado Kuome.... Waduaro ni mondo Waduok Jatelo kendo mondo wane dongruok kaka masani ni" which is loosely translated to mean "...we need to re-elect Governor Obado so as to get projects like the one he is officiating today in our County...".



Government vehicles and unmarked vehicle used during Hon. Okoth Obado's campaign on 14th July 2017 in Migori County. (Photo courtesy: KNCHR 2017)

On 1st July 2017, during the Frontier Alliance Party (FAP) political rally held at Kamboe of Logologo Laisamis Constituency in Marsabit County. The team was led by Governor Ukur Yattani, accompanied by Hon. Nasra Ibrahim Ibren, Hon. Joseph Lemasolai Lekuton, Mr. Galgalo Tuye and Burji (REGABO) elders. During the campaign, the Commission documented the use of a Toyota Land cruiser double cab pickup white in colour registration number plate ***10CG003A*** *belonging to the County Government of Marsabit ferrying supporters, majority being minors to and from the venue.*



Vehicle belonging to the County government of Marsabit ferrying supporters during political rally held at Kamboe of Logologo Ward of Laisamis Constituency on 1st July 2017.
(Photo courtesy: KNCHR 2017)

4. *On Monday, 20th June 2017, the Commission documented the use of Tendere Primary school playground in Bomachoge Chache Constituency, Kisii County during the launch of Kisii County Manifesto and official campaign for the ODM candidates. Those present included Governor Hon. James Ongwae, Hon. Joash Maangi, Prof. Ongeri, Hon. Janet Ong'era, and Hon. Gladys Wanga. It is worth noting that the venue was not appropriate as politicians interrupted school sessions and operations as learning was ongoing.*

5. *On 19th July 2017 at around 4.12 p.m the NASA Coalition Co-Principals led by Hon. Moses Wetangula and Hon. Musalia Mudavadi accompanied by local politicians arrived at Kaptama Centre, Mt. Elgon Constituency, Bungoma County. In their campaign trail, the Commission documented a black Toyota Land Cruiser VX V8 (J200) that bore registered number plates KBM 763V used by the New Ford Kenya woman aspirant for Bungoma County Catherine Wambilianga. Upon closer scrutiny, the Commission noticed it bore government registration number GKA 062R on its window screens.*



The vehicle above vehicle bears both civilian KBM 763V and GKA 062R registration numbers. It was spotted at Kaptama Centre, Mt. Elgon Constituency, Bungoma County during the NASA campaign trail on 6th July 2017. (Photo courtesy: KNCHR 2017)

6. *On 6th July 2017, during a trail of political rallies held at Emanani, Matungu, Busombi, Musaba, Harambee Market, Namulungu and Ebwayi, Kakamega County led by Wycliffe Oparanya, the Commission witnessed and documented the use of government vehicles, which included included Land Rover registration number 37CG049A belonging to the Sub-County Administrator and a Toyota Hilux registration number 37CGO25A.*



Kakamega County government vehicle in Hon. Oparanya's campaign trail at Emanani Grounds, Matungu Constituency on 6th July 2017. (Photo courtesy: KNCHR 2017)

3.2.2 Appropriateness and Accessibility of Venues.

The Commission also monitored the appropriateness and accessibility of campaign venues as well as that of locations where rallies were carried out, and the timings of the same. A good electoral practice is that all political campaigns must be open to all members of the public, including election observers. Notably, on 17th March 2017, the IEBC issued Gazette Notices Nos. 2693, 2694, 2695, 2696, 2697 stating that political campaigns or rallies should be carried out between 7am to 6pm.

The KNCHR documented instances where politicians did not adhere to the outlined timelines in their campaigns. It was observed that in some cases, politicians resorted to night meetings, which were highly secretive and limited to a specific and small number of individuals including door-to-door campaign strategies. The Commission is of the opinion that such secretive and exclusive meetings are not conducive as they could have been used as avenues for plotting or executing electoral malpractice. The night meetings were often not subjected to scrutiny hence offering an opportunity for the candidates to in one way or another mobilize, incite and induce

electorates. On venues usage, the Commission also documented instances where politicians used school playgrounds, social functions to include funerals and churches to campaign.

3.3 Incitement

Hate speech is the most common form of political incitement during Kenya's electoral cycles and the 2017 General Election was no exception. Hate speech is prohibited under Section 96 of the Penal Code[43]which describes incitement as:

> *A situation where a person without lawful excuse, utters, prints or publishes any words, or does any act or thing, indicating or implying that it is or might be desirable to do, or omit to do, any act the doing or omission of which is calculated to bring death or physical injury to any person or to any class, community or body of persons; or to lead to the damage or destruction of any property; or to prevent or defeat by violence or by other unlawful means the execution or enforcement of any written law or to lead to defiance or disobedience of any such law, or of any lawful authority.*

Section 13 of the NCIC Act, 2008[44]states that hate speech happens when:

> *A person uses threatening, abusive or insulting words or behaviour, or displays any written material; publishes or distributes written material; presents or directs the performance the public performance of a play; distributes, shows or plays, a recording of visual images; or provides, produces or directs a programme, which is threatening, abusive or insulting or involves the use of threatening, abusive or insulting words or behaviour commits an offence if such person intends thereby to stir up ethnic hatred, or having regard to all the circumstances, ethnic hatred is likely to be stirred up.*

Hate speech is also prohibited under Section 67 (g) (1) of the Elections Act[45].Section 110 of the Elections Act, 2011 provides for an Electoral Code of Conduct under the Second Schedule of the Act. The Code imposes a duty on parties involved in the electoral process to publicly and repeatedly condemn violence and intimidation and avoid the use of hate speech, language or any kind of action which may lead to violence or intimidation, whether to demonstrate party strength, gain any kind of advantage or for any other reason.

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[43] *Cap 63, Laws of Kenya.*
[44] NCIC Act No. 12 of 2008
[45] Elections Act No. 24 of 2011.

The Kenya National Commission on Human Rights notes that acts of hate speech have a reasonable chance of catalyzing or amplifying violence by one group against another. Hate speech is dangerous as it can easily spark acts of spontaneous violence or lead to seething anger or pent-up rage, which may erupt into violence at a later date. But defining what constitutes inflammatory language and elucidating how it can lead to violence is not easy because such language operates on multiple levels. Many potentially inflammatory terms are part of the national vernacular and appear often in daily conversations and media coverage. But these terms affect different people in diverse ways. For some, a certain term merely describes a situation in their complex social and political environment. For others, especially those already predisposed towards violence, the explicit and constant repetition of a potentially inflammatory term can amplify the dangerous nature of the language, with harmful consequences. Therefore, unless checked, such utterances may have dire consequences on the entire electoral cycle.

A question therefore arises as to how far it is proper or acceptable to limit the right to freedom of expression. The equation is even more complicated in the circumstances of an election. This is mainly because an election is precisely the moment when a variety of political views should be expressed. To limit expression of some of these views potentially limits not only the right to free speech but also the right of democratic participation. However, the highly charged atmosphere of an election period may be precisely the moment when inflammatory statements are likely to have the effect of inciting people to violence, thereby infringing on other people's rights. These issues are especially difficult to address in a country with a history of communal or ethnic violence. As a Commission, we monitored cases of hateful incitement on social media, through use of leaflets and inflammatory songs.

During the Political Party campaigns leading to the General Elections 2017, various cases of incitement including hate speech, use of insulting and derogatory language and ethnic profiling were witnessed in different parts of the country. The Commission documented cases in twenty-two (22) Counties but it was most prevalent in Kisumu County followed by Bomet, Garissa, Kakamega, Meru and Migori Counties. The Jubilee Party was also found to be the Political Party with the highest incidences of incitement followed by the Orange Democratic Movement (ODM) Party.

Some of the cases as monitored by the Commission include:

a) *On 13th May 2017 during a state function where the National Youth Service project was being launched at Bomani Grounds in Mumias Constituency in Kakamega County by the Deputy President His Excellency Hon. William Ruto, a Jubilee Party Aspirant, Rashid Mohamed while addressing the public stated that "Musalia uyu shali omuluhya tawe ne Wetangula no Muganda." Translation- Musalia is not a Luhya as well as Wetangula who is a Ugandan. He continues by saying "why should we follow them and they are not one of our own yet we know our lineage". These utterances were followed by demonstrations against Hon. Mudavadi and Hon. Wetangula.*

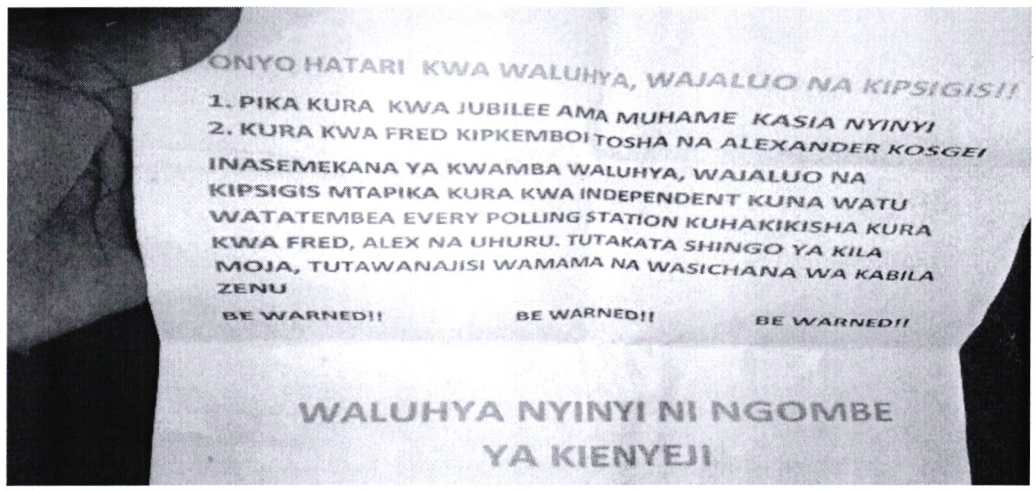
b) *On 13th May 2017 during a state function where the National Youth Service project was being launched at Bomani Grounds in Mumias Constituency in Kakamega County by the Deputy President His Excellency Hon. William Ruto, a Jubilee Party Aspirant, Rashid Mohamed while addressing the public stated that "Musalia uyu shali omuluhya tawe ne Wetangula no Muganda." Translation- Musalia is not a Luhya as well as Wetangula who is a Ugandan. He continues by saying "why should we follow them and they are not one of our own yet we know our lineage". These utterances were followed by demonstrations against Hon. Mudavadi and Hon. Wetangula*

c) *On 10th June 2017, during a funeral service for the late Martha Nyakerori Chacha at Masangora Market, MP aspirant for Kuria East Constituency, Mr John Boke stated that "people from other clans (apart from the Bukira Clan, where he hails from) should not be voted for to be the custodians of their resources." This angered the crowd. The three major clans of Nyabasi, Bwirege and Bukira were all present when he was making these remarks.*

d) *On 28th June 2017, at Central Park Grounds Nanyuki in Laikipia County, the Jubilee Party 'Mbele Iko Sawa' caravan made a tour of the town and Hon. Moses Kuria addressed the crowd. Part of his speech contained use of inappropriate language on the person of the NASA Leader Rt. Hon. Raila Odinga and which stood to aggravate his supporters. Some of the words he uttered about the NASA Leader were:*

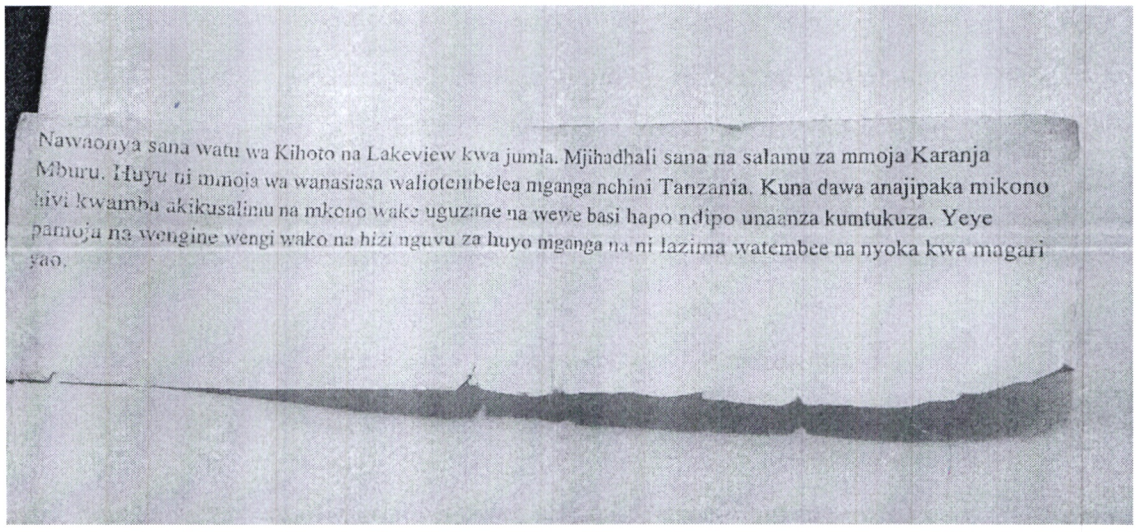
"Ni Joshua ya mai ma ng'ombe!" which loosely translates to: "He is Joshua of the cow dung!"

e) *On the night of 29th July 2017, leaflets emerged in Nandi County threatening other communities, namely Luhyas, Luos and Kipsigis, not to vote for Independent Candidates on August 8th, 2017. These communities were instead being called upon to vote for Fred Kipkemboi for MCA and Alex Kosgey for MP or else they will be forced to leave the town or face dire consequences and that their wives and daughters will be raped if they failed to heed this call.*



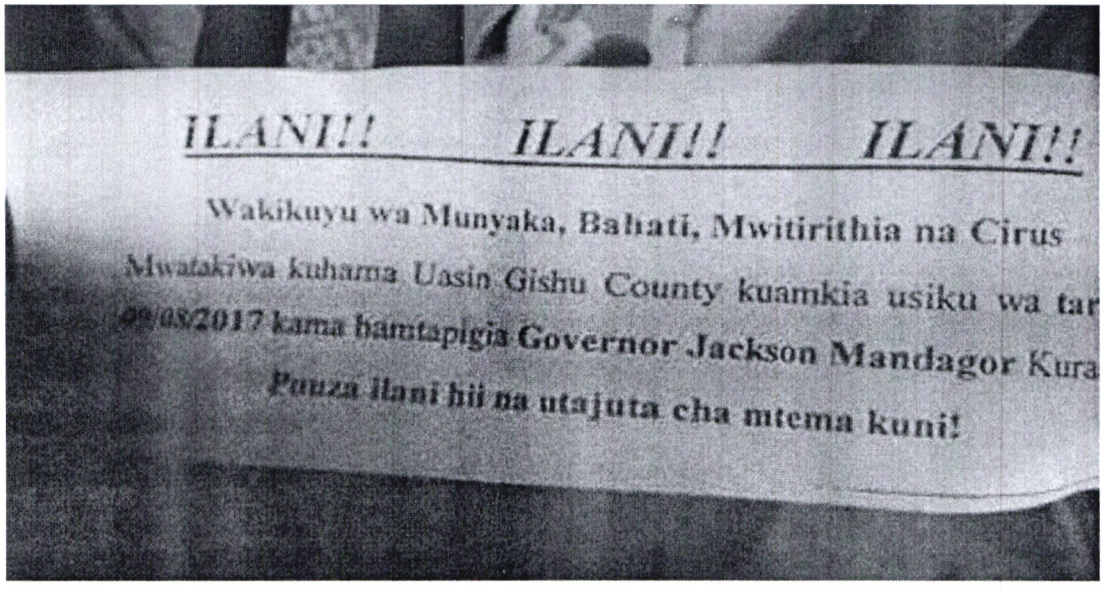
On 29th July 2017, leaflets threatening other communities in Nandi County.
(Photo courtesy: KNCHR 2017)

f) *Another threatening leaflet was found in Naivasha Constituency, Nakuru County warning the residents of Kihoto and Lakeview Wards against one Hon. Karanja Mburu, the MCA of Lakeview Ward who was alleged to have visited a witchdoctor. Following which, he was said to have gained powers from the potions that he applied on his hands that made people praise him, and further that he drove around with snakes in his car. This was aimed at discrediting Mr. Mburu's character and dissuading potential voters from voting for him.*



A propaganda leaflet that was being spread in Naivasha Constituency, Nakuru County on 20th July 2017. (Photo courtesy: KNCHR 2017)

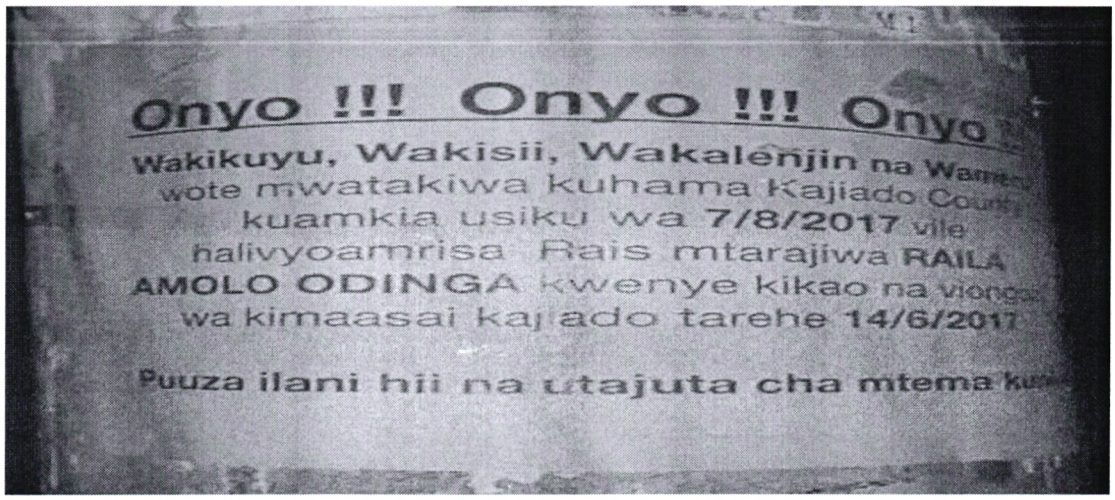
g) *Another leaflet was circulating in Eldoret Town, Uasin Gishu County on 25th July 2017, warning Kikuyus from Munyaka, Bahati, Mwitirithia and Cirus to leave the County on 9th August 2017 if they fail to vote for Jackson Mandagor as Governor. Further, it was stated that failure to adhere to the warning would have grave consequences.*



Leaflets being circulated around Eldoret Town, Uasin Gishu County on 25th July 2017. (Photo courtesy: KNCHR 2017)

h) *Leaflets were also found in the urban areas of Kajiado County warning non-Maasai's in particular, the Kikuyu, Kisii, Kalenjin and Meru communities to leave the County on*

the eve of 7th August 2017 as directed by Hon. Raila Amolo Odinga. This leaflet was linked to the meeting between Hon. Odinga's and the Maasai leaders in Kajiado on 14th June 2017 where he allegedly asked non-Maasais not to encroach on Maasai land. This was aimed at spreading fear and panic among the named communities.



Leaflet strewn in Kajiado Town within Kajiado County threatening to evict other communities. (Photo courtesy: Social Media circulation)

i) *On 7th July 2017, Kikuyu MP, Hon. Kimani Ichung'wa while addressing a rally at Kiromwok Trading Centre used derogatory words against the former Prime Minister Hon. Raila Odinga by stating that a 'Ng'etai' cannot lead the country'. The statement in Kipsigis means that the uncircumcised cannot lead the country and that the people of Bomet, should not vote for NASA on that accord.*

j) *On 21st July 2017, there was a political campaign held by Hon. John Serut, an Independent Candidate for Mt. Elgon Constituency in Tuikut Centre. He used local language to address the residents warning them that if they do not vote for him things will not go well. He urged them to shun his opponent Hon. Kapondi whom he said that, the latter will be his servant working in his farm after the elections. Furthermore, he warned one of the chief campaigners of Hon. Fred Kapondi, Mr. Nathan Wasama that he should stop dealing with a failure and back him for the elections. He also said "hata kama nikukuendea uganga nitaenda." The utterances shocked the residents who were also termed as "bananiik" in sabaot meaning "they were bewitched".*

k) *On 1st July 2017, Frontier Alliance Party (FAP) team led by Marsabit Governor Ukur Yattani, held a political rally at Kamboe of Loglogo Ward of Laisamis Constituency. During the rally, Governor Ukur Yattani made the following remarks that are possible recipe to incitement between communities living in Marsabit County;*

"Hawa wengine niwadaganyi leo wanaongea lugha tamu kuwa bahati mbaya najua hawatapata lakini kuwa bahati mbaya waki pata hii nafasi siku moja, itakuwa shida kwetu, itakuwa shida kupita kiasi. Saa hii wameficha bunduki nyuma. Sasa wanakuonyesha sura nzuri lakini bunduki na kisu iko kwa mfuko ya nyuma. Serikali yetu ikiteleza mara moja. Kwisha hii, kwanza Rendile Kwisha. Haswa wale wanaishi kwa hii mlima kwisha maneno yao. Kwa sababu hiyo ndio hatuta peana hawa nafasi."
Which loosely translates to: *"These others are liars who use flowery language. They will not win the seats but if by bad luck they should win this seat someday, it will be a big problem for us. They have currently hidden guns. They are now showing you their good side but a gun and knife are in their back pockets. If our County Government decides, the Rendile community will be finished particularly those who stay in this area. This is why we will not give them a chance".*

The Commission implored the National Cohesion and Integration Commission (NCIC) to reprimand political parties and candidates against ethnic and political polarisation and use of inflammatory and abusive language characterised by inter and intra-ethnic profiling. KNCHR noted that NCIC warned politicians against incitement and further urged them to carry on campaigns responsibly and refrain from hate speech. However, it is evident from the cases highlighted above that several candidates did not heed NCIC directives.

3.4 Voter Bribery

The Constitution of Kenya 2010 provides that elections in Kenya shall be free and fair. Parliament has enacted legislation that provide for election offences which if committed by persons vying for elective office adversely affect the consideration of elections as free and fair. Bribery is one of the most common election offences in Kenya. This offence involves a wide array of participants ranging from the political party leaders, political party agents, political aspirants and voters themselves.

Bribery can be described as an offence committed by one who gives, promises, offers money or any valuable inducement to an elector to corruptly induce the latter to vote in a particular way or to abstain from voting or as a reward to the voter for having voted in a particular way or abstained from voting.

Section 9 of the Election Offences Act describes bribery as a situation where one offers or receives money, a promise for employment or any other form of inducement to influence any voter to give or refrain from giving his vote, whether to a particular candidate or not. Voter bribery also occurs where a voter is influenced to attend, participate or refrain from attending a political meeting, a march, a demonstration or other political event. Offering inducement to a person to agree to be nominated as a candidate for elective office or refrain from becoming a candidate or withdraw if they have become candidates also falls within the confines of the offence of bribery.

During the party campaigns, bribery manifested itself in several ways including but not limited to:

i. *Aspirants attending fund-raising functions (Harambees) within the community during the electioneering period;*
ii. *Making promises of rewards such as jobs and reimbursing those who attended political rallies;*
iii. *Cash hand-outs, distribution of clothes, kangas (lesos), caps, blankets and water tanks;*
iv. *Household shopping to influence voters;*
v. *Distribution of relief food and*
vi. *Settling hospital bills and school fees for families with the intention of influencing their way of voting.*

The Commission documented cases of voter bribery in twenty (20) Counties but it was most prevalent in Kwale, Laikipia, Tana River, Bungoma and Kericho Counties. Some of the cases observed and documented by the Commission include:

a) *On 7th June 2017, the Laikipia Governor, Mr. Joshua Irungu accompanied by other Jubilee Party aspirants and Water Department heads and Umande Ward Water Committees, had a meeting with Umande Ward Community at Bingwa Primary School aimed at giving out water tanks to women groups within the ward. A hundred and sixty*

(160) water tanks were distributed to the targeted beneficiaries. While the distribution of water tanks by the water committees within the County is a noble act, the move at such a time was viewed as one aimed at winning over voters.



The beneficiaries and supporters of the then Laikipia Governor, Mr. Joshua Irungu at a function at Bingwa Primary School on 7th June 2017, where water tanks were distributed. (Photo courtesy: KNCHR 2017)

b) *On 7th June 2017, at Magombo Market in Kititu Masaba Constituency- Nyamira County, the President gave Ksh. 10 million shillings and a school bus to Nyambaria High School contrary to the provisions of the Election Act which states that a candidate is not supposed to give handouts to induce the voters to vote the candidate in. The Cabinet Secretary for Education, Fred Matiang'i who was in attendance also campaigned for the President in both Nyamira and Kisii County which is a violation of the Act which bars civil servants and cabinet secretaries from engaging in politics while still in office.*

In another incident on 11th July 2017, the President Hon. Uhuru Kenyatta donated a school bus to Maasai Girls High School in Ngong Town, Kajiado County.



Students from Masai High School receiving a school bus donated by President Kenyatta at the school, in Kajiado County.
(Courtesy: Youtube, at https://www.youtube.com/watch?v=3ZVeFO_VqFc&t=37s)

c) *On 9th June 2017, Mr. Hassan Mwanyoha, the incumbent MP and aspirant for Matuga Constituency under the ODM ticket held a meeting Chitsakamatsa Farm in Kombani, Waa Location. The meeting was attended by the youths drawn from Kombani Area. After the meeting, the MP gave out Ksh. 40,000 to be shared between the youths present. Every youth received an average of Ksh.200 each. The Commission monitor was present and witnessed the same.*

d) *On 14th June 2017, Mr. Silvanus Maritim made a visit to the elderly people of Kapchetoror in the evening. He went ahead and shared with them his manifesto and abilities if elected an MP in the area. He gave each elderly person a blanket and encouraged them to vote for him come August General Election. Majority of them were women.*

In another incident on 23rd July 2017, MP candidate for Ainamoi Constituency on a Jubilee Party ticket, Silvanus Maritim was in Kapsoit Village doing house to house campaigns. In each house he visited, he gave out gifts of a kilogram of sugar in polythene bags, after which he encouraged the household members to vote for him and for the Jubilee Government. He also handed out blankets.



Blankets being distributed to elderly persons by the Jubilee Party MP Candidate for Ainamoi, Mr. Maritim in Kapchetoror, Kericho County on 14th June 2017. (Photo courtesy: KNCHR 2017)

e) *On 5th July 2017, Jubilee Party Women Representative aspirant, Hon. Zainab Chidzuga while campaigning in a meeting at Kalalani Village, Mwavumbo Ward- Kinango Constituency, Kwale County gave a speech where she asked people to vote for Jubilee Party and then distributed ten (10) blankets to those in attendance. Those present at the meeting were mostly elderly men and women.*

In a separate incident on 27th July 2017, Hon. Zainab Chidzuga, met the residents of Bofu Area in Kasemeni Ward to campaign for her re-election. She was the only aspirant at the venue. She was joined by the Kinango Sub-County Jubilee Party Coordinator Mr. Richard. She said if re-elected she would help the youth especially the bodaboda riders by buying them motor bikes and they will pay for them in instalments. Before she left she said she had recently started a new programme of giving out of blankets which aimed at helping the elderly and the disabled. Members were picked randomly according to their advanced age. A total of ten (10) blankets were given out as follows: Four (4) women, Five (5) men and One (1) PWD. She also gave out Ksh. 15,000 which

was shared as follows: Ksh. 7,000 to women, Ksh. 5,000 to men and Ksh. 3,000 to the youth present.

f) *On 12th July 2017, Mr. Mwangi Kiunjuri the CS in the Ministry of Devolution and Planning visited Moyeni, Mwabila, Malomani and Kinagoni areas situated in Kinango Constituency, Kwale County in a number of public functions whose main aim was distribution of relief food to the locals. The meetings were attended by several candidates from the Jubilee Party including Hon. Salim Mvurya, Mr. Mshenga Ruga Vuyaa, Mr. Gonzi Rai and Mr. Said Nzuga. In addition, the Assistant County Commissioner- Samburu Sub-County, the area chiefs, the OCS, village elders of the respective sub-locations and residents drawn from Chengoni-Samburu Ward. During the distribution of the relief food, the CS also campaigned for Jubilee Party. A total of one hundred and fifty (150) bags of rice, two hundred and fifty (250) bags of maize and one hundred (100) bags of beans were distributed.*



Mr. Mwangi Kiunjuri, CS in the Ministry of Devolution and Planning, distributing Relief food to locals in Kinango Constituency, Kwale County. (Photo courtesy: KNCHR 2017)

g) *On 20th July 2017, during KNCHR monitoring at Baricho Market in Kerugoya Constituency Kirinyaga County, Ms. Anne Waiguru, the candidate for Jubilee Party vying for the gubernatorial seat made a speech and requested the people to vote for her during the August 8th election. After her speech, her campaign team organised the people in groups of ten (10) and distributed cash to the masses. Each group was given Ksh.1, 000 which they were to split amongst themselves.*

h) *On 30th July 2017, residents of Malava in Kakamega County were urged to vote for Hon. Wycliffe Oparanya owing to the "goodies" they had received from him in the past during the campaign trail. The then incumbent Governor proceeded to give out goods to the elderly in Malava and he stated that he was not as mean as his opponents particularly referring to Hon.Bonny Khalwale of Ford Kenya who was his main challenger and the other two being the Jubilee Party candidate and ANC's Osundwa Mike.*



The then incumbent (and now re-elected) Governor of Kakamega County, giving out free goods to the elderly at Malava Constituency on 30th July 2017.
(Photo courtesy: KNCHR 2017)

i) *On 3rd August 2017 at Golf Club Hotel, Kakamega, the gubernatorial seat candidate on a Ford-K ticket, Hon. Boni Khalwale, invited residents of Kakamega to the launch of his manifesto. Among those in attendance were members of the business community, the media and members of the public. Khalwale asked all the aspirants in the crowd to move into a tent and asked the rest of the crowd to go behind the tent and make two queues, one for women and the other men. Khalwale then started dishing out Ksh.200 in denominations of Ksh.100 to each person. All the while his security personnel were monitoring the queues for any person trying to capture the moment. The Commission monitor was present and witnessed the same.*

j) *On 4th August 2017, a meeting was convened for college students by the Mombasa Governor Ali Hassan Joho at Aga Khan Hall. He was accompanied by Hon. Raila Amolo Odinga and Hon. Rashid Bedzimba and other ODM supporters. There were*

about 2,000 youth in attendance. There was restricted access to members of the public as one had to show a student ID card to gain entrance to the venue. Everyone in the meeting was given Ksh.500 for attending. The Commission monitor was present and witnessed the same.

k) *On 15th July 2017, Member of Parliament candidate for Embakasi East, Mr. Francis Mureithi while campaigning with his team distributed maize flour to residents of Embakasi in a move aimed at inducing the voters.*



Mr. Francis Mureithi distributing maize flour to residents of Embakasi on 15th July 2017. (Photo courtesy: NTV at: https://www.youtube.com/watch?v=h0s2NZDLGdg*)*

The Commission notes with great concern the continued acts of blatant voter bribery witnessed and documented during the election campaigns across the Counties. Bribery constitutes an outright election offence that runs foul to the principle of free, fair and credible elections as it seeks to unduly influence the voter from making an independent and informed choice at the ballot. Notwithstanding the extensive electoral reforms and amendments in the electoral laws which sought to explicitly proscribe elections offences and impose stiff penalties and sanctions, the political actors and players from both government and opposition continue with similar voter-bribery trends and patterns witnessed in the past elections. It is disquieting that some

State Officers and Public Officers were observed openly on the campaign trail engaging in acts of bribery and inducements which constitute electoral offences.

The Commission further noted that in some instances, aspirants distributed basic commodities such as foodstuffs and blankets under the disguise of assisting vulnerable groups—the youth and elderly. In Kisii and Nyamira Counties, the Government through the National Consultative Coordination Committee on Internal Displacement (NCCC) and County Commissioners offices disbursed funds to Integrated Internally Displaced Persons (IIDPs) and issued title deeds, a process which was highly politicized. Ordinarily these acts can be seen as being tantamount to attempts aimed at influencing voters to vote in a particular manner or for a particular candidate or political party.

3.5 Right to Security during Elections

The right to security is a fundamental human right guaranteed in Article 29 of the Constitution of Kenya. To promote the enjoyment of this right, national security organs and other critical actors play a pivotal role in ensuring that relevant security laws and policies are effected.

In Kenya, one of the most important processes that put to test the actualization of this right is the electoral cycle that usually takes place every five years. Article 238(2b) of the Constitution calls for national security to be pursued in compliance with the law and with utmost respect for the rule of law, democracy, human rights and fundamental freedoms. This is further complimented by the National Values and Principles of Governance under Article 10, which include; human dignity, non – discrimination, protection of the marginalized and the participation of the people.

In an election year, national security is one of the key pillars that impact and enhance the realization of the *right to vote* and the right *to be voted for*. The presence of adequate and efficient security system allows political candidates to traverse the country with ease and comfort. It also ensures that, despite the existence of differing political opinions, voters get an opportunity to listen to the politicians campaigning and projecting their respective political parties' manifestos. This in turn enable the voters to meaningfully exercise the right to make political choices by remaining tolerant to opposing views in an environment that is free from fear or intimidation. The role of the security agencies in creating an electoral environment that is free from fear and intimidation is paramount. In its efforts to complement the electoral security measures put in place by the Office of the Inspector General of Police, the KNCHR

held various meetings with the security sector actors and shared information on how to enhance electoral security from a human rights perspective.

During the 2017 political campaign period, which began in June and ended on August 5th, the Kenya National Commission on Human Rights set out to monitor the impact of security in the achievement of a free, fair and credible electoral process. Having set out to monitor the security agenda from a human rights perspective, KNCHR was keen to monitor public order management in respect to the promotion of the Freedom of Assembly entrenched in Article 37 of the Constitution, the Right to Security of the Person in Article 29 and Rights of the Arrested Persons as entrenched in Article 49.

KNCHR closely monitored strategies by the Ministry of Interior and Coordination of National Government and those of the National Police Service in promoting adherence to the rule of law during the course of the electoral period. The Commission acknowledges and appreciates the efforts by the Office of the Inspector General of Police to collaborate with relevant actors in the elections cycle to ensure security remained a priority agenda during the electioneering period. Together with the IEBC, a joint handbook on elections security 2017 dubbed *The Elections Security Arrangement Project (ESAP)* was launched which aimed at cultivating a culture of cooperation between stakeholders in promoting and ensuring security of the campaign periods through best practices in negotiated public order management. The handbook emphasised the importance of public participation in promoting election security and the need to mount credible and objective investigations which lead to prosecutions of electoral offences.

3.6. Internally Displaced Persons

Unlike what was witnessed in the 2007 electioneering cycle where about 350,000 people were internally displaced across the country, resulting from contested presidential election[46], there were no massive displacements of Kenyans during the 2017 electoral cycle. However, the Commission documented a few cases of internal displacements that stemmed from various motives including militia attacks and cattle rustling. In most areas, the displacement was short-lived and people returned back to their habitual places of residence. There were however a few cases where people were forced to move to satellite camps.

[46] http://www.knchr.org/portals/0/reports/knchr_report_on_the_brink_of_the_precipe.pdf

The national, regional and international legal frameworks safeguard the rights of displaced families and affected communities during any displacement cycle. The existing frameworks task the relevant states to put in place mechanisms to enable displaced families to participate and exercise their rights, including their right to participate in elections. In Kenya, the right of those displaced are enshrined in the Constitution and the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act, 2012 is further amplified in Great Lakes Protocol on Protection and Assistance to Internally Displaced Persons (2006) and the United Nations Guiding Principles on Internal Displacement (1998).

During the 2017 General Election, internal displacement occurred in parts of Laikipia, Baringo, Samburu, Marsabit, Turkana, and Isiolo Counties. This stemmed from cattle rustling, leading to destruction of property and in some cases the destruction included schools mapped out by the IEBC to serve as polling centers. According to the Human Rights Watch[47], prior to the General Election, attacks were carried out in Baringo South Constituency, in particular Mukutani, Arabal, Mochongoi and Chebinyiny locations. Following these attacks, twenty-two (22) primary schools and three (3) secondary schools that were to serve as the polling stations were shut down[48]. In July 2017 there were attacks that led to displacement of persons which were reported in Kamwenje area, Laikipia West, which could have driven some voters away and hence denying them the right to participate in the August 8th, 2017 polls.[49]

In Lamu County, incidents of militia attacks were witnessed, leading to displacement of persons and destruction of property. Following the attacks, in the month of July 2017, the Commission undertook an assessment in Pandanguo, Lamu West Constituency to assess the impact of human rights violations. The attacks were carried out by persons believed to be Al-Shabaab militants and they led to the displacement of estimated one hundred and twenty-four (124) households within Kakathe, Jima, Tangemi, Chimburu and Maleli. Some of the affected families sought refuge in Katsakakairu, Africa Inland Church and Anglican Church of Kenya both situated at the Witu Shopping Centre. Others were locally integrated within Witu and Mpeketoni shopping centres. On July 17th, 2017, the President asked residents residing in far-

[47] https://www.hrw.org/blog-feed/kenya-elections-2017

[48] https://www.hrw.org/blog-feed/kenya-elections-2017

[49] http://www.dailymail.co.uk/wires/afp/article-4690240/Bandits-kill-6-police-Kenyas-Laikipia-region.html

flank places to relocate to nearby shopping centres to minimize the risks posed by the imminent attacks until the security situation normalised.

During the attack, those directly affected lost their vital documents including their national identification cards, which eventually meant that they were denied their right to vote. Pandanguo Primary School, one of the listed polling stations (Pandanguo Primary School- 01) was destroyed during the attack.

In relation to the impact of attacks to the General Election, the Commission noticed that IEBC did not take steps to avail mobile polling stations to families at the satellite camps within Witu. Instead, most IDPs had to travel to Pandanguo Primary School Polling centre to vote, while others opted not to vote at all citing insecurity at Pandanguo. The attacks compromised the constitutional rights of the IDPs, which are further anchored under section 9, sub-section 1(h) of the National IDP legislation[50] which highlights the IDPs equal participation in public affairs to include elections[51], and Principle No. 22 of the Guiding Principles on IDPs, whether living in camps or not., The Principle provides that *"IDPs shall not be denied the right to vote and to participate in governmental and public affairs*". As already noted, this right was violated by denying the displaced population the option of mobile polling stations.

3.6.1 Movement of Persons

As the country was nearing the actual polling day, a spot check by the Commission confirmed a seemingly large number of people travelling with their belongings from urban areas to destinations believed to be ancestral regions to either vote or to avoid any potential violence. Equally some foreigners left the country based on the travel warnings issued by their countries including the US State Department cautioning their citizens ahead of the country's General Election. This was premised on the disputed 2007 General Election that led to violence in Kenya, and the political rallies marred with violence and protests prior to the Election Day. For instance, at the Machakos upcountry bus terminus in downtown Nairobi, large numbers of travellers were observed leaving with the hike of fare being obvious., For travellers headed to Western Kenya they were paying between Ksh 1600 and Ksh.2000, up from normal fare of Ksh 500 to Ksh 700. In some instances, travellers were asked by "*touts*" to confirm if they were

[50] Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act, 2012,

[51] http://bcckenya.org/assets/documents/PrevProtAsstoInternDisPersAffComsAct56of2012.pdf

registered at their intended destinations before being allowed to travel as a way of minimising low voter turnout in Nairobi County. The same was reported in Nakuru and Mombasa among other counties. In Naivasha; mass relocation of communities who felt threatened by political activities left for their rural homes a week leading to the polling day.

The voluntary relocation or movement of persons was a concern to politicians, most of them weighed in to call for the government to ensure security in areas perceived to be hot-spots to deter movement of persons. For instance, during a NASA political rally in Nakuru, Hon. Wetangula urged the NASA supporters to remain in Nakuru as opposed to moving to rural areas. In majani mingi Rongai Sub-county, the communities perceived as fewer in numbers (from Western Kenya and Nyanza) were also seen relocating to rural areas fearing for violence.

i. Illegal Transfer of Voters

In the month of June 2017, the political leaders from Mandera County, led by Senator Billow Kerrow criticised the Independent Electoral and Boundaries Commission (IEBC) over the missing of 50,000 names of voters from the voters' register, affecting Ashabito and Rhamu Wards in Mandera North Constituency to give the Degodia Community an upper hand in the General Election. The politicians accused IEBC of having interfered with the voters' register leading to disfranchised voters in the above areas. The case was filed in the high court of Nairobi barring the IEBC from reversing the transferred votes pending hearing and determination of the suit filed against them, as the reversal was likely to cause inter-clan clashes.

On 12th June 2017, four (4) IEBC clerks were arrested and arraigned in court but the police sought for twenty-one (21) days to conclude their investigations. The complainant was the IEBC through DCI Mandera County and the same was lodged vide OB No. 41/12/06/2017. The case was mentioned on 7th July 2017. The charges that were preferred against them vide CR No. 521/95/2017 were on account of making a false entry on a document contrary to section 6(a) of the Election Offences Act No. 37 of 2016.

3.7 Impact of Terror-Threat on the General Election

Acts of terror have previously posed a great danger to security in Kenya because of their spontaneity and evolution over time. At first, the threat was deemed external, before violent extremism took over and locals began to be inducted into the acts.

While the country has enjoyed relative calm in recent times from terror attacks, three (3) separate cases were recorded in parts of Mandera, Garissa and Lamu counties which targeted mainly security agents and telecommunication installations. The attacks, though minimal and contained, slowed down the movement of KNCHR staff and monitors especially in Mandera and Lamu counties.

The Commission commends the security agencies for their concerted efforts in providing adequate security and ensuring that the election campaigns in the affected regions continued without any major incidence. In Lamu and Garissa, where a 6 a.m to 6 p.m curfew had been effected, the Commission noted that the same did not affect candidates' efforts as it fell within the stipulated campaign period set by the IEBC of 7 am – 6 pm daily. The threat of terrorism didn't hinder any of the electoral activities and its diminished impact on the elections was a testament to the improved security presence in the volatile regions.

3.8. Inter-Ethnic Tensions

The Commission recorded complaints of security threats on individuals related to their ethnic background through its monitors who collected information on persons who were moving to safer grounds, about two or so weeks leading to the General Election. Those who were allegedly moving felt that the areas they reside belong to communities different from them and were thus afraid of any possible retaliation. KNCHR recorded these movements in Nairobi and Naivasha. KNCHR obtained an exclusive interview from a witness on the mass movement of some minority ethnic groups in Naivasha who were heading to Nyanza and Western regions of the country.

In one of the visits in Narok, KNCHR met with one of the County's security officers who together with his teams had mapped potential hotspot areas of inter-ethnic conflict. These included Narok town constituency where tension supposedly was growing between the Maasai and non-Maasai's as well as inter-clan tensions between the Siria and the Purko communities

who were supporting either of the two main gubernatorial candidates. The town is largely inhabited by non - Maasai (Kikuyu) and the Maasai's allegedly felt that the "*foreigners*" should not participate in the elections to vote for the Governor's seat.

In Mandera County, the County security agencies had received reports that inter ethnic tension between the four (4) main communities; Degodia, Gare (*majority*), Murule and the Corner tribes (*minority tribes within the county*) were being experienced especially for the position of the Member of Parliament. The Deputy County Commissioner confirmed his security team was working on beefing up security especially in the run up to 8th August.

Further, perceived "*non – locals*" in Mandera who include a section of quarry workers, civil servants and businessmen from other parts of the county (*estimated to be around two thousand five hundred (2500) in number*), were concerned about their safety. They had informed the area security agencies that that they will return to their home towns a few days to the election despite being registered as voters in Mandera County. It was being said that their collective votes could determine the winner and thus they were being cautious of their –safety and security.

3.9 Peace Forums and Promotion of Electoral Security

The second schedule of the Elections Act 2011 provides for the establishment of peace committees to be coordinated through County Commissioners as avenues for fostering peace and peaceful campaigns. The Commission documented the use of peace forums and convening the Peace Committees by the County Commissioners' offices to foster unity and peaceful campaigns.

One of the key duties of the Peace Committee is to liaise with government security agencies in the constituency and report suspected election malpractices. The Commission commends County Commissioners for their efforts in facilitating these meetings and notes they are a step in the right direction in enhancing community policing within the respective counties.

The Peace Committee meetings assisted the regions in devising strategies of managing criminal gangs that are known to exist during the campaign period. KNCHR commends the efforts of the NCIC for coordinating these peace meetings in conjunction with other stakeholders.

During the Campaign period, KNCHR attended and documented more than 30 of such meetings, which were attended by senior security officers. The areas include Kwale, Kisii, Narok, Kisumu, and Nakuru among others.

i. *In Kwale County, the peace meetings were avenues for gathering intelligence and information that posed challenges in security during the campaign period.*

ii. *In Kisii County, among the key issues raised included the fear of possible tension by specific groups which included youths, bodaboda operators, politicians, media, police and community policing members.*

iii. *In Kisumu, residents lamented that peace campaigns failed to reach potential victims and perpetrators of electoral violence in rural areas. That, too often the meetings were targeting the "informed" rather that the "uninformed" which resulted in limited trickle-down effects for the local community. They also urged the police to improve community-police relations, since this would put more confidence on the citizens in reporting violence before it happens.*

iv. *In Nakuru, main agenda of one of such meetings was to map out areas of potential conflict or violence before, during and after elections and help security agents to take action toward averting the same before it happens. There were many reports on violence happening in various places in Nakuru including burglary, sale of illegal brew, mysterious deaths. They however expressed doubt as to whether the events were related to the upcoming election.*

3.9.1 The Right to Assembly and Peaceful Demonstrations

Article 37 of the Constitution of Kenya provides that: *"Every person has the right, peaceably and unarmed, to assemble, to demonstrate, to picket, and to present petitions to public authorities"*. The right to peaceful and unarmed assembly protects the right to non-violent organized gatherings in public and in private.

During the political campaigns, officers drawn from the Regular Police, Administration Police, the General Service Unit and the National Youth Service were dispatched to provide security and maintain law and order. In most areas that the Commission monitored the political campaigns, security personnel were present during the events.

There were no major incidences that were necessitated by lack of adequate numbers of security personnel or denial of permits to hold rallies. It was also noted that the Police played a key role in the mapping out of potential violence hotspots within the country and subsequently deployed officers to those regions to prevent possible escalation of violence.

The insecurity incidents and invasion of private ranches and farms in Laikipia County by Samburu, Pokot and Turkana herders were perceived to be engineered by politicians to displace large landowners and Kikuyu peasants with promises that the 'repossessed' land would be given out to the Samburus and Pokots. The invasion of land in this region led to the displacement of the locals, who are mainly Kikuyus, to areas seen as safer for resettlement. The Commission was further informed that the invasion of land in the region had not only begun this year [2017]. However, it was noted that previously, the invasion had been non-violent but that in 2017, it had happened with a lot of violence. It was expected that with the continued failure of the long rains in Samburu County, Samburu herders were likely to return to Laikipia County, which was likely to result in the displacement of Kikuyu peasants around Sosian Ward and Rumuruti areas.

Despite the good efforts of the Security Agencies to provide security prior to the August 8th General Election and on the actual polling day, there were incidences that threatened to negate the efforts made by the security agencies in ensuring that security was assured. Some of these included the following:

i. *In Kakamega County, the police made four arrests in connection to an attack on NASA affiliated candidates who were set upon by around 10 assailants. Mr. Cleophas Malala, the Amani National Congress (ANC) senatorial candidate, Mumias Central MCA Mr. Suleiman Odanga (Independent) and his rival for the MCA seat Mr. Charles Odanga (ANC). The aspirants were from attending a church service in Matawa, Mumias Constituency, when they were attacked by the armed youth. The latter sustained a deep cut on his head and he was rushed to St Mary's Mumias Hospital for treatment. The victims reported the case to Mumias Police Station and the arrests were made after the victims positively identified the perpetrators.*

ii. *In Kisumu County, in Ahero market, a vehicle that was transporting over twelve (12) armed youths to disrupt a rally in Rabuor. This plan however did not materialize as the public made urgent reports to the Kisumu County Commissioner and Nyando Deputy County Commissioner who alerted their officers at Ahero police station to find out more details on the matter. As a result, the police officers reportedly found the culprits with four (4) machetes, two (2) knives and rolls of bhang. According to Ahero OCS, the*

culprits were intercepted at around 10a.m. as they were heading towards the Rabuor rally. He also added that later in the day, they were arraigned at Nyando Laws Courts.

iii. *Three (3) persons were murdered in Chepkurkur Mt Elgon, an action that drew the attention of local politicians who included Hon. Fred Kapondi, MCA Enock Chemorion. Hon Kapondi is said to have uttered "Serut ajiuwe badala ya kuua wananchi kwa sababu ya siasa na tutamkujia kama serikali haitachukua hatua kuakikisha haki imetendeka kwa familia ya hawa watu wenye wengine wamejeruhiwa" (translated to indicated that 'Serut should kill himself instead of killing the citizens due to politics. We will come for him if the government will not take action to ensure that justice is served for the affected families."). The uttered words caught the attention of the area Chief and Deputy County Commissioner who called for calm as action was being taken by security officers.*

3.9.2 Special Interest Groups (SIGs).

The Constitution of Kenya 2010 specifically provides for and guarantees the protection of the rights and interests of various SIGs which include the women, PWDs, minorities and marginalized. Fundamentally, the law requires the mainstreaming of SIGs in all affairs including in the electoral cycle. The state and all its agencies and organs are obliged to observe, respect, protect and take all positive steps and measures to promote the rights and liberties entitled to SIGs as contained in the Bill of Rights.

In the light of the foregoing constitutional provisions, the Commission in undertaking the election monitoring 2017 gave due attention to SIGs with a view of determining whether or not, their constitutional right to participate in the election process was actualized. The monitoring focused on how several stakeholders/actors in the election process especially IEBC, Political parties involved and ensured SIGs actively take part in the campaigns in the lead up to the General Election 2017. The Commission collated and collected data and information that directly concerned persons with disabilities, children and women.

i. Persons with Disabilities (PWDs)

The Constitution entitles all persons with disability the right to be treated with dignity, respect and to be addressed or referred to in a manner that is not demeaning. They are also entitled to reasonable access to all places, transport and information. In terms of their communication, the

Constitution guarantees them the use of sign language, braille or other appropriate means of communication and the access to materials and devices that will enable them to overcome the constraints that arise from their disability.

The spirit and letter of the law is to guarantee the inclusion of persons with disabilities in the electoral process by ensuring that PWDs enjoy considerable conditions and a conducive enabling environment to fully and actively participate in elections. The inclusivity envisaged attaches to both elective and appointive positions pursuant to Article 54(2) which explicitly entrenches the constitutional principle that at least 5% of the membership in public bodies must comprise of PWDs be it in appointive or elective positions.

The Persons with Disabilities Act[52] places a duty on the government to use its resources to the maximum extent possible so as to enable persons with disabilities achieve the full realization of their rights. [53] In addition, persons with disabilities are entitled to a barrier-free and disability friendly environment so as to enable them to gain access to buildings, roads, and other social amenities and assistive and other equipment to promote their mobility.[54]

The Act at Section 29 further provides for the PWD's right to be assisted in voting and provides for the procedure and manner of how it should be undertaken. It states thus:

> (1) All persons with disabilities shall be entitled at their request, to be assisted by persons of their choice in voting in presidential, parliamentary and civic elections.
> (2) A person who undertakes to render assistance under subsection (1) shall do so strictly in accordance with the instructions of the voter.
> (3) A person described in subsection (2) shall bind himself, in the prescribed form, to comply with that subsection.
> (4) A person who contravenes subsection (2) is guilty of an offence.

Section 30 of the Act sets out the provisions for the setting up of polling stations in regard to Persons with disabilities. It is a legal requirement that all polling stations ought to be made

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[52] Act No. 14 of 2003
[53] Section 11 of Persons with Disability
[54] Section 21 of the Persons with Disabilities

accessible to PWDs during elections and instructively, that the necessary and assistive devices and services be provided to facilitate PWDs in realizing this fundamental right.

Section 7 of the Election General Regulations of 2017 provides that in determining the number of polling stations and the location of any polling station, the IEBC shall have regard to geographical considerations, accessibility for persons with special needs, (including persons with disabilities), population and any other factors affecting communication between places within the electoral area.

(3) Subject to sub regulation (2), the Commission may alter the number of polling stations and the location of any polling station made under sub-/regulation (1), and shall thereupon publish a notice in the *Gazette* specifying the alteration at least three months before the date of any election. Section 8 (4) of the Election regulations provides that the Commission may not designate as a polling station, any place which, by its nature may compromise the freedom of any voter to exercise his or her right to vote.

During the campaigns monitoring, the Commission witnessed several incidents that were targeted at PWDs specifically and whose net effect, served to negate the PWD's right to participate freely and actively in campaigns. They include:

a) *On Sunday 11th June 2017 at around 8.00pm during a radio talk show hosted by Ithaga FM in Nakuru, there was an altercation between Hon. Kimani Ngunjiri, the incumbent MP and aspirant for the Bahati Constituency and Mr. John Mbugua Honest, an aspirant for the same seat. Reports indicated that Hon Ngunjiri assaulted Mr. Mbugua upon being questioned on the misappropriation of funds during the GDC project in the constituency. It is further reported that he hurled abusive and demeaning language to the effect.... "Wewe ni kiwete na kiwete hawezi ongoza watu" which translates to: "you are a disabled person and disabled people cannot lead." He proceeded to beat up Mr Mbugua and removed his prosthesis (artificial leg). Mr. Mbugua sustained varied degree of injuries on his left leg, knee joint and right hand. The matter was reported at Central police station vide OB No: 74 11/6/2017 and later sought medical attention at the Nakuru Provincial General Hospital.*

b) The Commission further undertook an assessment of select and targeted polling stations across thirty (30) counties to determine the accessibility or otherwise of them stations

for the PWDs. It was noted that most polling stations were situated in public primary institutions, some of which had ramps and hence were accessible to PWDs.

However, PWDs faced challenges in accessing the following polling stations:

i. *In Sesik Primary school, Bungoma County, Mt. Elgon Constituency the inaccessibility is attributed to a big trench caused by Gully erosion at the school entrance.*

ii. *Bomani primary school in Kwale County whose access is a broke bridge that would is a problem for PWDs to access.*

iii. *Ole Soilal polling center, Kilgoris Constituency Narok County, whose terrain is hilly accessing it from the north (Kona shopping center and its environs) is difficult as it is very steepy.*

iv. *In Isiolo County, the entrances to Bula Mpya Pry, Bula pesa dispensary, Kambi ya Juu Nursery, Marire Nursery, Pepo la Tumaini, Waso Pry and Water Kiosk are not accessible easily to PWDs with wheelchairs. In Wabera Primary School, the entrances have staircases with no ramps for PWDs.*

v. *In Kericho County, the Bureti IEBC headquarters, is not friendly to people living with disability as it is located in 4th floor without a lift. Also in the same county Kapkaren primary is inaccessible to PWDs as there is no ramp to access the rooms with stairs entrances.*

vi. *In Kisumu County, the following polling stations had entrances that were too narrow for a PWD with a wheelchair to access; Obwolo Primary School, Mamboleo Market, Chiga Primary School, Manyatta "B" Center, Kassagam Secondary School, Nyalenda "A" Community Hall, Dago Nursery, Nyamasaria Primary School, Ogango Primary School and Tido Primary School.*

vii. *In Murang'a County, the following polling stations are located in steep hilly terrain hence difficult for PWDs to access; Karurumo primary school, Kerure primary school, Tutho primary school, Wajerere Primary School, Kanyenya-ini Primary School and Ishishe Primary School*

viii. *In Uasin Gishu, Kiborokwa primary school is located on top of the hill and persons with disabilities and the elderly have difficulty accessing it.*

ix. *In Meru County; Some roads leading to polling centers (like Liburu primary school, Kalui primary school, Nkanga primary school, Matirine primary school, Nkoe primary school) in Igembe Central constituency are sloppy and rough thus not accessible by persons with disability. This makes it difficult for PWDs especially those using wheelchairs to access these roads as they may even get injured on the way.*

x. *In Nakuru, DEB Primary School, the entrances to the classrooms have steep stairs hence not easily accessible for persons with disabilities.*



DEB Gilgil Primary School Polling Center, in Nakuru County, Gilgil Constituency showing steep stairs at the entrance of polling center. (Photo courtesy: KNCHR 2017)



A polling center in Kite Primary School in Rongo Constituency in Migori County showing the stairs that are a barrier to a person with disability.
(Photo courtesy: KNCHR 2017)

ii. Women

The Commission notes with great concern that women participating in the electoral process as candidates, continued to face gender based electoral violence that hindered their active and full participation. These forms included harassment, intimidation and violence so as to make it difficult for them to campaign and to hinder their supporters from supporting them.

a) *On Friday 23rd June 2017 at around 1700hrs, Mr. Laurence Mokosu, an MCA candidate in Kinyoro Ward, Saboti constituency in Trans Nzoia county while campaigning at Chepkui area uttered the following words 'Wamama hawafai wang'ang'anie viti yenye ilitengewa wanaume'..... Women should not vie for seats that have been reserved for men.... which were directed against Ms. Milka Psiwa, a female candidate on KANU ticket for the same seat. As a result, the youth supporters of the female candidate were infuriated and started pelting stones at the dais. In the process, four (4) people sustained varied degree of injuries and were rushed to Kitale County hospital.*

b) *In Bungoma County, the KNCHR documented an incident where a businessman was killed by unknown gunmen at his home. Two members of his family were violently attacked. During the burial of the businessman, a scuffle arose between the supporters*

of two gubernatorial candidates in the County and in the process, one child was injured and a woman hit by blunt object on the head.

c) *On Tuesday 25th July 2017, at Kibingo in Kirinyaga at around 5.30pm and 6pm, one of the gubernatorial aspirants Anne Waiguru held a meeting with her supporters whereupon her departure a team of about eighty (80) men who were in Toyota cabin and bodabodas arrived at the venue and begun attacking one of the vehicles (Toyota surf-) that was carrying Anne waiguru's campaign meeting public address system. This caused Waiguru's supporters and the coordinator of the campaign team to intervene by ensuring that the vehicle which was being targeted for destruction was surrounded. In the process three (3) men were injured among them was the campaign coordinator Moses Waweru who sustained serious injuries to his finders, ribs and legs while the other two had minor injuries. Moses was rushed to the hospital where he was admitted. The police were called to deal with the security situation and were able to shoot in the air and successfully dispersed the crowds. Waiguru's supporters later on reported the matter to the police station and also two (2) key witnesses were able to record their statements, that is, Moses Waweru and Millicent a member of team Waiguru's campaign team under OB number OB No.s 47/ 25/7/2017 and 48/25/7/2017. The two stated that Ann Waiguru had also recorded a separate statement with the police on the issue. Further, they stated that the attackers were using vehicles (pick-ups) which had stickers written Ngirici and sons. As a result of this incident a group of about 100 women stormed the Kirinyaga County commander (CCPO) demanding an assurance from the police on the security of women in the county.*

d) *In Kisumu County, the KNCHR documented an incident where Hon. Farida Salim alleges that she was slapped in the county assembly by Hon. Edwin Anayo of Milimani market ward, who harassed her by telling her that since she is a Muslim, she should step down for a male colleague who was contesting in the same seat of Kisumu central Constituency.*

e) *Women candidates were also subjected to media harassment and social media bullying. In Nakuru, for instance the Nakuru County senatorial aspirant Hon. Speaker Susan Kihika was the subject of a story on the media that there was a male sponsor behind her campaigns. According to the aspirant this was not the case as she got the campaign*

funds from her friends. These issues violate the aspirants right to human dignity which should be protected and respected

f) In other incidences, the media focused on non-issues when reporting on the female aspirants thereby tarnishing their reputations and diminishing their social standing. A good example was the trending image of Hon. Esther Passaris in a black see through dress at a private event that went viral on the social media. According to the aspirants, the media should focus on the important stories and protect their privacy. This issue violates the aspirants' right to privacy whereby their information relating to their private life should not be revealed.

g) On 28th July 2017, at Chrisco Church Centre at Railways club Nairobi, a group of youths attacked a women's meeting that had been organized by Rachel Shebesh and several women were injured. The youth claimed that their votes of baba (Raila Odinga) were being sold [55] and that the women were not sticking to one party.



A video grab showing women scampering for safety during the meeting that was disrupted. (Courtesy of NTV)

iii. Children

During the political campaign period, the Commission noted with concern the increase in the participation of children in political activities, despite the fact that they do not form part of the

[55] https://www.youtube.com/watch?v=9Xg2h2JC0GA

electorate. The said campaigns took part when schools were open and learning was disrupted in some instance so as to allow political activities to take place.

Article 53 of the Constitution makes provision that every child has the right to be protected from abuse, neglect, harmful cultural practices, all forms of violence, inhuman treatment and punishment, and hazardous or exploitative labour.

Further, the Constitution encapsulates that a child's best interests are of paramount importance in every matter concerning the child. This would mean therefore that children to be treated with care and understanding of their vulnerability and frailties.

The KNCHR notes that having children participate in political activities is not in their best interest as such activities disrupt their prescribed learning hours. This period is crucial in the development of the child as it is when they are most productive and receptive to knowledge. Such disruptions infringe on right to education as they directly interfere with learning processes.

Political campaigns should only be targeted at the electorate, and should NOT involve children as they do not form part of the electorate.

In ensuring the safety of learners and school property, a directive from the Cabinet Secretary was issued on 30th January 2017 to County and Sub-County Directors and Head teachers to desist from disrupting the learning of students by allowing them to participate in political events such as singing to politicians, moving out of schools to cheer politicians on the roadside among others.

A further directive was issued on the 14th May 2017 to ban the use of school grounds to host political rallies and the use of school buses to ferry people to political rallies.

Despite the directives, the Commission has noted with concern the continued use of School grounds, buses and children in political campaigns by some political parties.

Teachers employed by the Teachers' Service Commission and education officials are public officers and are thus expected to maintain their professional competence and ethics. They are also to maintain political neutrality and not to conduct themselves in a manner that is likely to suggest that they can be improperly influenced.

Section 15 of the Election Offences Act makes it an offence for public officers to engage in political activities which include campaigns and use of public resources for the purpose of supporting a candidate or political party. Upon conviction, one is liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding three years, or to both. This is similarly provided under section 43 of the Elections Act of 2011.

Whereas the IEBC receives campaign schedules from candidates, it is worth noting that candidates have scheduled most of their campaigns to take part in school grounds, raising concerns as to the involvement of school heads and Education Boards involvement in the planning of the said campaigns in defiance of the directive. In Getenga, Boikanga, Bogetenga, Chitango wards in South Mugirango Constituency in Kisii County, the campaign schedules submitted to the IEBC all were venues of schools.

a. On 13th June 2017, students of Makutano Primary School in West Pokot were caught up in the disruption that ensued during a rally that resulted to some students being beaten and teargassed by police officers after a crowd of youth surged in an attempt to get closer to one of the Presidential candidates who was campaigning near their school grounds. The injured students were taken to Lilyon Nursing home for treatment.



School children from Makutano Primary school in Kapenguria Constituency in West Pokot County who fainted after experiencing the effects of teargas. (Photo courtesy: Standard Media Group 2017)

b. On the 5th June 2017, in Nyamira County, North Mugirango constituency at Ekerenyo stadium grounds, students of Kebabe Primary School and St. Charles Lwanga Academy Primary School were allowed to move out of class and leave the school compound to attend a political rally.



Students of St. Charles Lwanga Academy and Kebabe Primary school attending a political rally at Ekerenyo stadium in North Mugirango Constituency in Nyamira County. (Photo courtesy: KNCHR 2017)

c. On 2nd June 2017, students of Nyandarua Boarding primary school in Nyahururu left class under instruction from teachers when one of the Presidential candidates, his entourage and supporters came to campaign in the area. [56]

d. On 11th June 2017, a school bus belonging to Namang'ofulo Secondary School ferried persons to attend a political rally at Posta grounds, Kanduyi constituency in Bungoma County. The bus had posters of politicians stuck on the windows of the bus to display to all who the persons in the bus were supporting.



[56] As reported by Standard Media Group on 2 Jun 2017 while covering the campaign trail of President Uhuru Kenyatta in Nyandarua and Laikipia counties https://www.youtube.com/watch?v=_i7vVydfDbs viewed on 3rd June 2017

Namangófulo Secondary School Bus ferrying supporters to a campaign rally at Posta Grounds in Kanduyi in Bungoma County. (Photo courtesy: KNCHR 2017)

e. On the 12th July 2017, the students participated in a political activity during the Commissioning of Ahero - Isibania Road while jubilee was campaigning in Kisii County.



Students waving flags in support of the Jubilee party after the launch of the Isebania-Migori Road (Photo courtesy: KNCHR 2017)

f. On the 12th July 2017, learning was disrupted at Tendere primary school after ODM campaigns were held at a place immediately adjacent to the school that led to having children sent home.



Students of Tendere Primary School in Bomachoge Chache, in Kisii County leaving to pave way for campaigns. (Photo courtesy: KNCHR 2017)

g. On the 23rd June 2017, Students of Kapsokwony D.E.B primary School were seen attending a NASA rally in Kimilili town, Bungoma County, after their learning was stopped and children were sent home at 9:00 am in the morning to allow the Jubilee party to hold campaigns on their school grounds.



Students of Kapsokwony D.E.B primary school attending rally in Kimilili Constituency, in Bungoma County. (Photo courtesy: KNCHR 2017)

h. On the 17th July 2017, children were seen at Kizingitini Island in Lamu County actively participating in the Jubilee campaigns



Children actively participating in a Jubilee rally at Kizingitini Island, Kizingitini ward, Lamu East Constituency in Lamu County. (Photo courtesy: KNCHR 2017)

While children are to be encouraged to nurture their talents, political rallies should not be used as platforms to showcase the talents of these students to the amusement of politicians and their supporters and at the expense of the time that these students would otherwise spend learning in their classrooms.*On 24th June 2017, several Jubilee candidates from Baringo including Kiptis for Governor, Chelugui for senator,Susan Chesyna for women representative and David Kerich alias " Dawa" held a campaign rally at Kabarnet Boys, Baringo Central Constituency, Baringo County which is a boy's boarding school. The rally interrupted activities of the students because there was a lot of noise hence students could not concentrate on studies. Also students had to forego sporting activities for the day.*



Students of Pura Primary School in Samburu West Constituency in Samburu County with fliers of Candidate Naisula Lesuuda. (Photo courtesy: KNCHR 2017)

KNCHR is also of the view that school routines and programmes should not be disrupted when politicians are in the vicinity, holding their campaign rallies as this disadvantage the students who are supposed to preoccupy themselves with learning. The Ministry of Education should bar the holding of political rallies both in school and in locations that are close to schools so as to not disrupt the ongoing process of learning in schools.

That teachers and school heads are not to expose their students to risks that are associated with political rallies especially when the rallies are disrupted and turn violent. School heads should guarantee the safety of students and uphold the safety standards for all learners.

KNCHR through an advisory to the that the Cabinet Secretary in charge of education and the Teachers Service Commission called for stern action to be taken against the head teachers of the above-mentioned schools and their respective education officials by subjecting them to the relevant disciplinary procedures and measures.

KNCHR also recommended that in support of the directives of the Cabinet Secretary, the Ministry of Education and the Teachers Service Commission issue circulars to all education

boards and school heads regarding the conduct of teachers and education officials, the use of public school property and the use of students during the period of political campaigns.

CHAPTER 4: THE GENERAL ELECTION POLLING DAY FINDINGS

Introduction

The voting day presents a vital point in the electoral cycle through which all processes before and after stem from. It is on this day that the actual act of vesting power by the people of Kenya upon their various elected representatives is exercised. This importance of the polling day is reflected in the date set out in the Constitution which is the second Tuesday of August on every fifth year. This is the first election since 2010 that this date is being operationalized and henceforth it shall be.

In accordance with the mandate to promote and protect human rights, the Commission made preparations internally in anticipation of this day so as to monitor the compliance of the various actors with the set law. The Commission developed a polling-day tool through which it trained and obtained accreditation for its monitors and staff before it deployed them to monitor the process in one thousand two hundred and eighteen (1,218) Polling Centres in four hundred and thirty-six (436) Wards, one hundred and ninety-one (191) Constituencies located in forty-three (43) Counties. To support the fieldwork, the Commission restructured its electoral nerve centre, The KNCHR Election Hub to receive information and operate 24 hours in order to facilitate the actualization of appropriate and timely interventions.

This being the first time for prisoners to participate in the General Elections, the Commission targeted to monitor twenty-seven (27) main prisons that had the largest number of registered voters from the total of one hundred and eighteen (118) registered prison centres. In addition, the Commission issued a statement to notify the public of its intended role of monitoring the polls and advised all key stakeholders to uphold the bare minimum as required by the law regarding the General Election.

On the polling day, KNCHR observed the voting processes, the conduct of IEBC officials, party agents and voters from the onset of opening the polling stations at 6am to the counting, collating, tallying, transmission and announcement of results at the various polling stations and tallying centres.

The Commission documented various issues emanating from the polling process that could potentially have an impact on the right to vote or be voted for. The tools developed guided the

monitoring process and various human rights issues were observed and documented accordingly.

4.1 Security on Polling Day

Security is an integral component on the polling day. A secure environment guarantees the potential voters safety while engaging with the electoral process in respect to making an independent and free choice of whom to vote, and more importantly being able to mark and cast their ballot papers. This role of provision of security on the Election Day is a key responsibility of the National Police Service who are mandated to work directly and with the instructions of the Independent Electoral and Boundaries Commission at all polling and tallying centres.

The National Police Service is responsible in the provision of security to; all electoral staff and their premises with special focus on the Presiding and Returning Officers, the electoral equipment and materials including the electronic gadgets, ballot papers and boxes, the voters, the polling centres especially during the vote casting and counting, among others. The purpose is to minimize, stop and contain any incidences or apprehend persons who may interfere or violate the right to political participation. The new and elaborated National Police Service Standing Orders must guide the police operations especially in respect to Public Order Management.

KNCHR commends the NPS and the IEBC for the preparations and organization towards ensuring the proper management of security on the polling day. Physical presence of Police Officers was witnessed in all the polling and tallying centres that were monitored with each Polling Station having at least one officer. This presence ensured peace, voter confidence, general public order and it acted as a deterrence to any threats or potential conflicts.

However, there were some reported incidences that pointed to breaches of security that in one way or the other interfered with the right to political participation in respect to peace and tranquility at the polling stations and voters' participation;

i. *In **Nairobi City County**[57], Ruaraka Constituency, Utalii Ward at Drive in Primary School Polling Centre[58], there were reported cases of violence when rowdy youths attempted to storm into the primary school. There was a scuffle at the school gate but*

[57] No. 047

[58] No. 1402. Polling Centre Code No. 007. Registered voters 6,361 with 10 Polling Stations

it was later brought under control when police officers provided the requisite reinforcement. This lead to calm and the voting process continued.

ii. ***In Nairobi City County**, Ruaraka Constituency, Lucky Summer Ward at Tiba Junior Academy Polling Centre[59], there was violence when a rowdy youth attempted to break the school gate, this was occasioned as a result of some members of the public who didn't want to queue bringing disorder. But the situation was dealt with when some ununiformed police officers swung into action and calmed the situation.*

iii. ***In Nairobi City County**, Ruaraka Constituency, Mathare North Ward, Mathare South Social Hall and Embakasi East Constituencies, Matopeni Spring Valley Ward at the Soweto Social Hall and Embakasi Ward at the Embakasi Social Hall Polling Centres respectively, there was violence when a group of youths confronted the police who were guarding the polling centre. The youth attempted to disrupt the queues due to the very large number of people who were awaiting to cast their votes. The police manage to control the situation before it escalated further.*

iv. *In **Mombasa County**[60], Likoni Constituency, Bofu Ward at Daru Ulum Madrasa Polling Centre[61], there was violence outside the polling station where a group people were fighting for an unknown reason. Police Officers responded immediately leading to restoration of calm within the polling station. Further, additional reinforcement of Police Officers was added to deal with any matter that could have arisen thereafter and ensure law and order.*

v. ***In Mombasa County**, Mvita Constituency, Majengo Ward at the Lasco Social Hall (KPA) Polling Centre[62], there was violence when the crowd became unruly after agents raised concerns regarding a Presidential ballot box. It was reported that they had spotted a hole in the Presidential ballot box and also there was an absence of a physical/manual backup voter register. This scuffle led to a delay in the commencement of the voting process. However, the voting process resumed when order was restored by the Police Officers from the GSU. Meanwhile the Presidential ballot box with a hole was changed and the manual backup register was produced.*

4.2 Electoral Environment

An enabling social-political environment is a prerequisite for the realization of the citizen's right to freely cast their vote and for their preferred candidates in a free, fair and regular manner. The voting process is a prerequisite to the realization of the right to political participation. This ought to be conducted in an environment that enables the voters to exercise their right to choose

[59] Code No. 01404, Polling Centre Code No. 014. Registered voters 6,391 with 10 Polling Stations

[60] County No. 001

[61] Code No. 0023, Polling Centre Code No. 014. Registered voters 6,656 with 10 Polling Stations

[62] No. 0030, Polling Centre Code No. 054. Registered voters 1,897 with 3 Polling Stations

their preferred candidates by secret ballot without any hindrance, influence, intimidation or interference.

During the polling day, the Commission monitored several polling stations and focused on monitoring the compliance to the laid down regulations under the IEBC Act and the Persons with Disability Act. These two regulations encapsulated how the electoral environment provided a voting process that was accessible, appropriate, peaceful and conducive to voters in respect to secrecy and the requisite infrastructure. The Constitution of Kenya, 2010 has set out the principles in Article 81 that the process must be; by secret ballot, free from violence, intimidation, improper influence or corruption, conducted by an independent body, administered in an impartial, neutral efficient, accurate and accountable manner.

It is important to note that the Presiding and Returning Officers are very instrumental in ensuring that the surrounding electoral environment in and around the polling and tallying centres are conducive. Their key roles are to ensure and work together with the NPS and the rest of the IEBC staff, especially the clerks, to remove, stop or reduce any irregularities that are obvious to them before and during the polling.

The Commission observed the following irregularities which had a negative impact on the prevailing electoral environment;

i. *Campaign materials which were in the form of posters within polling stations;*
ii. *Individual candidates and supporters who were conspicuously campaigning at the polling stations;*
iii. *Cases of voter bribery,*
iv. *Interferences or hindrances in accessing the polling station;*
v. *Ferrying of voters to the polling stations;*
vi. *Restive Crowds and Long queues.*

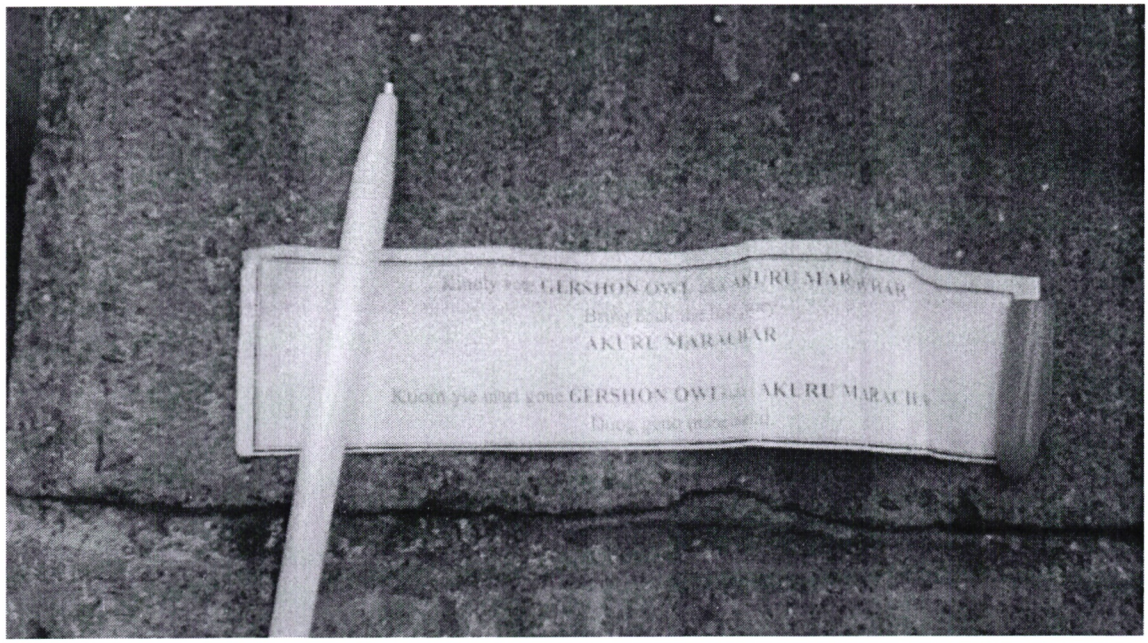
4.2.1 Campaigns in and around the Polling Centres

Sections 14 of the Elections Offences Act and Section 5 of the electoral Code of Conduct, outlaws campaigning at or around the polling centres. Out of the 1,218 polling stations monitored, the Commission documented cases of campaign activities in fifty-five (55) polling stations. The campaign activities were manifested by the candidate's' presence at the polling stations; directly asking people to vote for them, interacting with the voters along the queues in an inappropriate manner by issuing notes or directions on who to vote for, presence of advertising materials through posters, branding, campaign regalia or persons wearing campaign materials and donning party-coloured attires at or around the polling stations.

The Commission observed and documented these trends at various polling stations;

i. *In Busia County[63] at Ministry of Public Works[64] Polling Centre, Ag'orom Ward, Teso South Constituency, Busia County the banner of one of the candidates Captain Ali Noor was just 20 meters away from the polling centre.*

ii. *In Migori County, Central Sakwa Ward at Sony Complex Nursery[65] Polling Centre, there were some leaflets on the ground calling on people to vote for ODM's MCA candidate Gershom Owi,*



A leaflet being distributed at Sony Complex Nursery Polling Centre, Central Sakwa Ward, Awendo Constituency, Migori County.
(Photo courtesy: KNCHR 2017)

iii. *In **Nairobi City County,** Woodley/Kenyatta Golf Course Ward, Kibra Constituency at Upper Hill Secondary[66] School Polling Centre, free copies of The People Daily which had the headlines 'VOTE WISELY' and a photo of the President and the Deputy President on the front page were being distributed.*

*A similar situation was witnessed in **Kiambu County**, Limuru Central Ward, Limuru Constituency at Limuru Primary[67] Polling Centre.*

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[63] County No. 40

[64] Code No. 01127, Polling Centre Code No. 005. Registered voters 906 with 2 Polling Stations

[65] Code No. 1268, Polling Centre Code No. 071. Registered voters 1,033 with 2 Polling Stations

[66] Code No. 1389, Polling Centre Code No. 011. Registered voters 1,980 with 3 Polling Stations

[67] Code No. 0602, Polling Centre Code No. 013. Registered voters 5,264 with 8 Polling Stations



Free copies of The People Daily Newspaper being distributed at Upper Hill Secondary School Polling Centre and Woodley/Kenyatta Golf Course ward, Kibra Constituency, Nairobi County. (Photo courtesy: People Daily 2017)

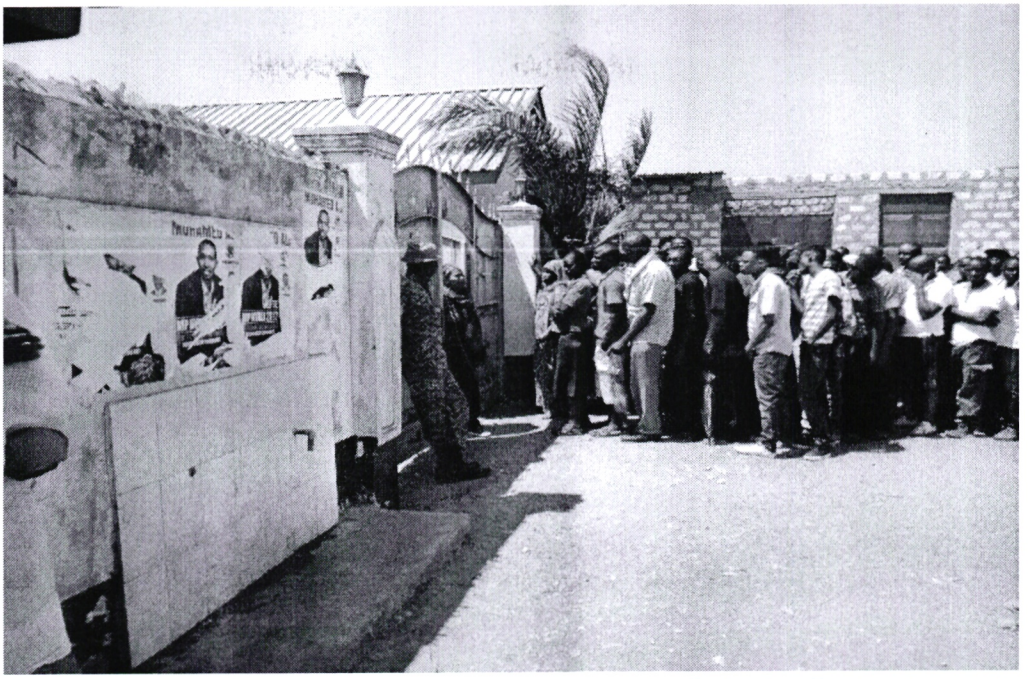
iv. ***In Nairobi City County,*** *Starehe Constituency, Ngara Ward, Parklands Primary School*[68] *Polling Centre, posters of the MCA candidate Joel Baite Ikiungu were stuck on the floor entrance of and the fence leading to the Polling Centre. This was the similar situation in Embakasi East Constituency, Embakasi Ward on the main road leading to both Embakasi Primary School*[69] *and Embakasi Social Hall.*

v. ***In Mombasa County****, Changamwe Constituency, Chaani Ward, Mikadini Primary School*[70] *Polling Centre, campaign posters for the Independent candidate Elias Fondo were located at the entrance gate. Further another Independent candidate Ali Bwenge who was also vying for MCA in the same Chaani Ward was observed campaigning at the same Polling Centre.*

[68] Code No. 1440, Polling Centre Code No. 009 Registered voters 1,560 with 3 Polling Stations

[69] Code No. 1423 Polling Centre Code No. 006. Registered voters 9,101 with 14 Polling Stations

[70] Code No. 0005, Polling Centre Code No. 023 Registered voters 3,880 with 6 Polling Stations



Campaign posters Mombasa County, Nyali Constituency, Ziwa la Ng'ombe Ward at National Industrial Training Authority[71] Polling Centre. (Photo courtesy: KNCHR 2017)

vi. ***In Mombasa County,*** *Nyali Constituency, Frere Town Ward at Khadija Primary School[72] Polling Centre, banners for ODM candidates David Ngele, Charles Kitula were placed on the wall about 100 meters from the gate.*

vii. ***In Kwale County***[73]*, Msambweni Constituency, Gombato Bongwe Ward, Jogoo Football Grounds*[74] *Polling Centre, Gombato Bongwe Ward, the MCA candidate Tumaini Mwachauga was observed campaigning at the Polling Centre.*

viii. ***In Nyamira County***[75]***,*** *North Mugirango Constituency, Ekerenyo Ward at Chisaaria DEB Primary School*[76] *Polling Centre, an area chief was seen campaigning for the Jubilee Party. However, he was arrested by the Police.*

ix. ***In Marsabit County***[77]***,*** *Saku Constituency, Sagante/Jalde Ward at St. Peter's Primary School*[78] *Polling Centre, voters were observed being issued with small*

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[71] Code No. 0017, Polling Centre Code No. 008 Registered voters 3,564 with 8 Polling Stations

[72] Code No. 0016, Polling Centre Code No. 001 Registered voters 5,138 with 8 Polling Stations

[73] County No. 46

[74] Code No. 0031, Polling Centre Code No. 009 Registered voters 6,363 with 10 Polling Stations

[75] County No. 45

[76] Code No. 1361, Polling Centre Code No. 073 Registered voters 508 with 1 Polling Station

[77] County no. 10

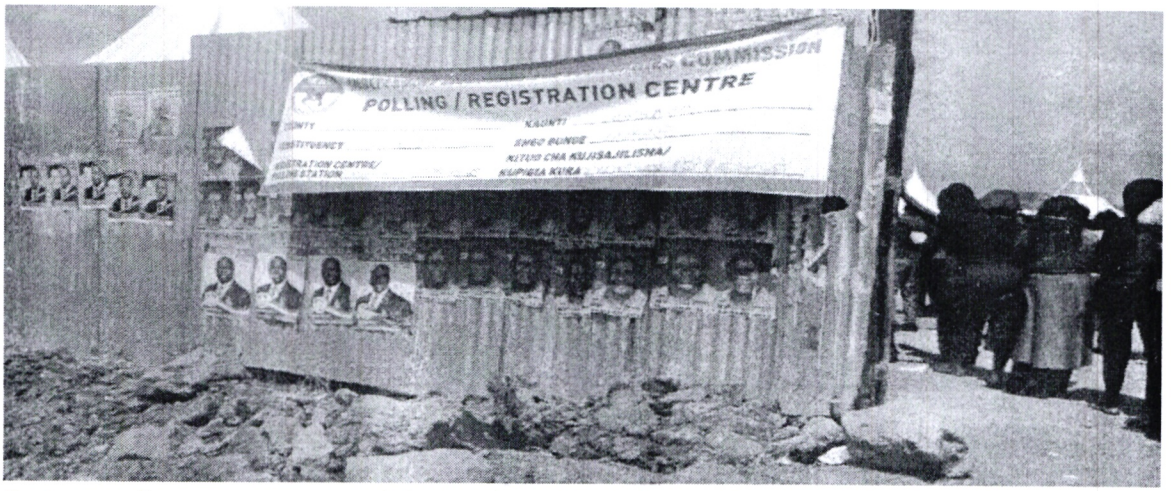
[78] Code No. 0233, Polling Centre Code No. 002 Registered voters 613 with 1 Polling Station

pieces of paper with names indicating who to vote for. These papers had the names of candidates; Mohamud Mohamed Ali, Gido Ali Raso, Godana Hargura, Sofia Sheikh Adan and Sofa Katelo.

Further, at Boru Haro Primary School[79] Polling Centre, the voters were also issued with the list with names of the above candidates.

x. ***In Kiambu County**, Githunguri Constituency, Ngewa Ward at Mitahato Primary School[80], there were chairs inside the Polling Stations branded in the name of the incumbent Women Representative and candidate Ann Nyokabi.*

xi. ***In Machakos County[81]**, Mavoko Constituency, Syokimau/Mlolongo at Syokimau borehole[82] Polling Centre campaign posters with images of candidates were affixed on the walls of the Polling Station. Ironically, the IEBC banner was placed directly above these posters.*



Posters for various candidates in Machakos County, Mavoko Constituency, Syokimau/Mlolongo Ward at Syokimau borehole Polling Centre. (Photo courtesy: KNCHR 2017)

4.2.2 Interference at Polling Centres

It is incumbent upon the IEBC to ensure an enabling electoral environment, for voters to go to the polling stations on their own free will to choose the leaders of their choice without any interference whatsoever. KNCHR closely monitored and documented incidents at various polling stations to establish how accessible and free it was for the various voters to exercise

[79] Code No. 0233, Polling Centre Code No. 007 Registered voters 557 with 1 Polling Station

[80] Code No. 0580, Polling Centre Code No. 036 Registered voters 1,819 with 3 Polling Stations

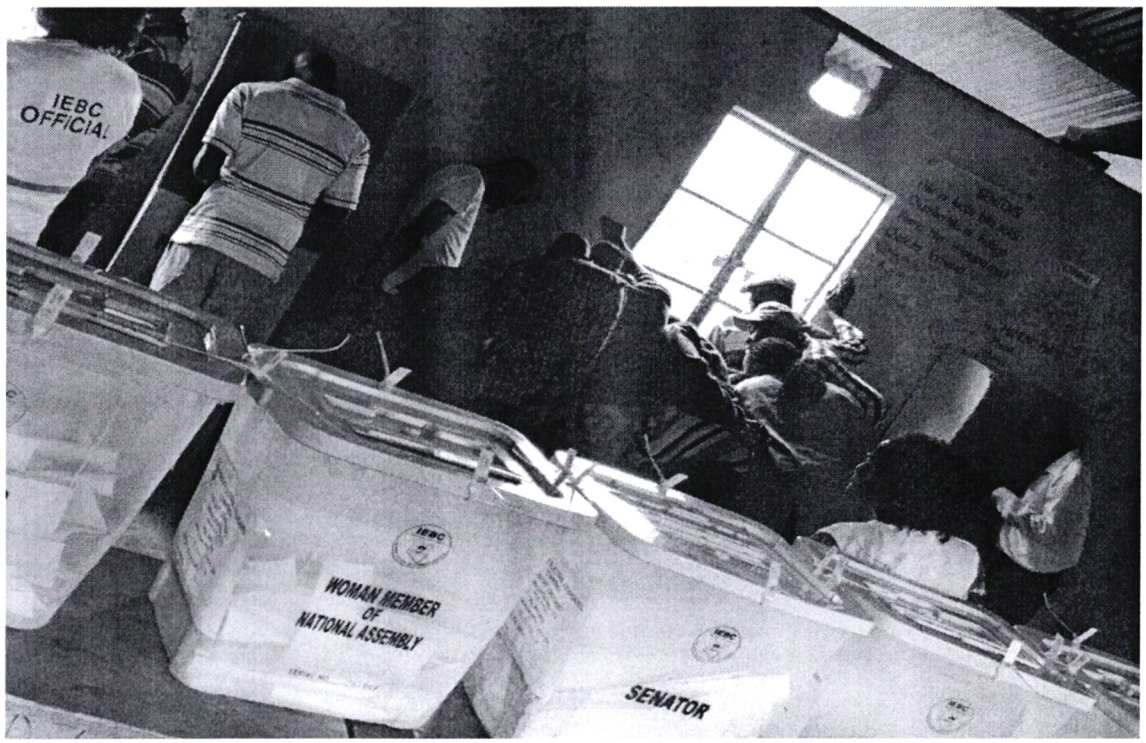
[81] County No. 16

[82] Code No. 0397, Polling Centre Code No. 041 Registered voters 8,588 with 13 Polling Stations

their right to political participation. These are some of the incidences that were observed and documented;

i. ***In Nairobi City County***, *Mathare Constituency, Ngei Ward at Lions Health Clinic*[83] *Polling Centre, at around 4:30 p.m. some youths who had congregated at the gate, were preventing vehicles from accessing the Polling Centre. In one incident, an IEBC driver and officer were refused to access the venue by the youth. The driver was assaulted by the youths but the Police Officers intervened and calmed the crowd of youths. The Police Officer directed the IEBC officer to park their vehicle outside the Polling Centre.*

ii. ***In Kakamega County***[84], *Mumias West Constituency, Mumias Central Ward at Mumias Muslim Primary School*[85] *Polling Centre, the assisted voters who were mainly illiterate and older members of society complained that during the marking of their ballot papers, they felt overwhelmed by the overcrowding of the various party agents who oversaw what the Presiding Officer was marking.*



Party agents crowding over an assisted voter at Muslim Primary School, Mumias Central ward, Mumias West Constituency, Kakamega County. (Photo courtesy: KNCHR 2017)

[83] Code No. 1448, Polling Centre Code No. 007 Registered voters 13,054 with 19 Polling Station

[84] County No. 37

[85] Code No. 1020, Polling Centre Code No. 007 Registered voters 2,227 with 4 Polling Station

iii. ***In Isiolo County***[86], *Isiolo North Constituency, Bulla Pesa Ward at Bula Pesa Water Kiosk*[87] *Polling Centre, it was observed that there were particular set of people who were queuing and they would give way to the people behind them in the pretext that they are giving way to the older members of society and women. During these moves, they were in fact influencing voters to vote for a particular candidate based on ethnicity and religion.*

iv. ***In Isiolo County,*** *Isiolo South Constituency, Kinna Ward at Bibi Water Supply*[88] *Polling Centre, the supporters of the MCA candidate Fayo Abduba were observed sending a person to accompany particular voters to make sure that they voted for the aspirant. They were also seen displaying his photograph to voters while on the queue asking them to vote based on the displayed photograph.*

v. ***In Kirinyaga County***[89], *Ndia constituency, Kiine Ward at Kibirigwi Primary School*[90] *Polling Centre, one of the chief campaigners of the gubernatorial candidate, Anne Waiguru was spotted wearing a red jacket with a Jubilee logo on the front right side. He was seen moving from one queue to another spreading the message on whom he was representing in that station.*

vi. ***In Kiambu County,*** *Kiambu Constituency, Ting'ang'a Ward at Ting'ang'a Model Primary School*[91] *Polling Centre, some of the IEBC Jubilee accredited agents who were supposed to be inside the Polling Station were seen outside with the voters on the queues campaigning for the party.*

vii. ***In Laikipia County***[92]***,*** *Laikipia North Constituency, Sosian Ward at Mathenge Farm*[93] *Polling Centre, in two Polling Stations, the accredited party agents were allowed to inform the voters whom they should vote for. At this point the Commission's monitoring officer raised this issue as a matter of concern thereby prompting the Presiding Officer to order that no party agent was allowed to talk inside the Polling Station again.*

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[86] County No. 11

[87] Code No. 0242, Polling Centre Code No. 015 Registered voters 2,076 with 3 Polling Station

[88] Code No. 0249, Polling Centre Code No. 028 Registered voters 900 with 2 Polling Station

[89] County No. 20

[90] Code No. 0510, Polling Centre Code No. 035 Registered voters 1,688 with 3 Polling Station

[91] Code No. 0582, Polling Centre Code No. 003 Registered voters 3,271 with 5 Polling Station

[92] County No. 31

[93] Code No. 0822, Polling Centre Code No. 015 Registered voters 4,410 with 7 Polling Station

viii. ***In Kajiado County***[94], *Kajiado North Constituency, Nkaimurunya Ward, at Nakeel Primary School*[95] *Polling centre, in Polling Station No. 01, a list with names of candidates proposed to be voted for was being distributed to the voters while on queue.*

ix. *In* ***Bomet County***[96], *Bomet Central Constituency, Mutarakwa Ward, at Tarakwa Primary School*[97] *Polling Centre, a male civilian was found by the Police Officers near Tarakwa Primary School Polling Centre influencing voters to vote for his preferred candidate in return of some handouts. The Police Officers arrested him and placed him in custody at Bomet Police Station.*

4.2.3 Bribery and Inducement

Section 9 of the Election Offences Act, prohibits acts of bribery with a sanction penalty of KES.2m or imprisonment not exceeding 6 years or both if convicted of this offence. Bribery is a human rights violation since it gives undue influence to voters using resources at the expense and disadvantage of those without. The Commission observed that bribery manifested itself where the voters were issued with money, food items that included water.

The Commission monitored and documented the following cases of bribery:

i. ***In Busia County***, *Nambale Constituency, Nambale Township Ward at Nambale Youth Polytechnic*[98] *Polling Centre, two party agents for the MCA candidates Mwajuma Toloi and a Mr.Odongo were observed bribing voters at the gate to the Polling Centre. They were issuing voters with KES 50 notes. However, when they saw the Commission's monitoring officer, they fled the scene.*

ii. ***In Meru County***[99], *Igembe Central Constituency, Athiru Ruujin Ward at Kabukuro Primary School*[100] *Polling Centre, a political agent for MCA candidate Suset Kagwi was observed bribing voters to vote for his preferred candidate. However, he was arrested by the Police Officers and taken to Maua Police Station.*

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[94] County No. 34

[95] Code No. 0913, Polling Centre Code No. 018 Registered voters 9,839 with 15 Polling Station

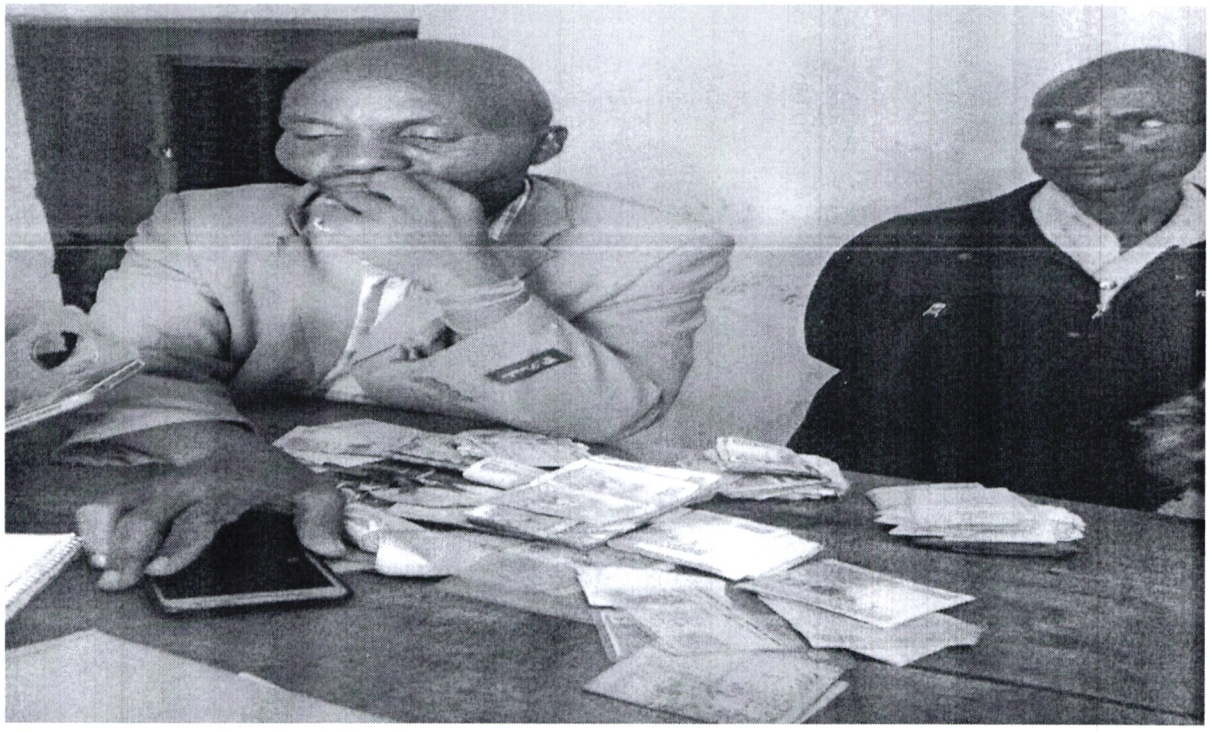
[96] County No.36

[97] Code No. 0985, Polling Centre Code No. 075 Registered voters 1,003 with 21 Polling Station

[98] Code No. 1133, Polling Centre Code No. 011 Registered voters 1,574 with 3 Polling Station

[99] County No. 12

[100] Code No. 0257, Polling Centre Code No. 035 Registered voters 708 with 2 Polling Station



The party agent (left) for MCA Suset Kagwi at Maua Police Station s after being arrested for issuing bribes at Kabukuru Primary School Polling Centre in Igembe Central Constituency, Meru County. (Photo courtesy: KNCHR 2017)

iii. ***In Tana River County***[101]*, Garsen Constituency, Garsen West Ward, at Garsen Primary School*[102] *Polling Centre, two women were observed distributing water and biscuits to the voters who were on the queue. The items were provided by the candidate Ibrahim Sane. The Presiding Officer intervened and the two were ordered out of the Polling Centre.*

iv. ***In Tana River County****, Bura Constituency, Madogo Ward at Mororo Primary School*[103] *Polling Center, the supporters of the incumbent candidates Governor Hussein Dado and MCA Abdi Ergamso were observed offering Ksh100 to voters who were on the queue to vote for their preferred candidates.*

v. ***In Isiolo County,*** *Isiolo North Constituency, Bulla Pesa Ward, at Waso Primary School*[104] *Polling Center, Hon. Mohammed Kuti 's agents and the aspirant himself were seen issuing voters with money at the entrance of the Polling Station.*

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[101] County no. 4

[102] Code No. 0090, Polling Centre Code No. 057 Registered voters 3,059 with 5 Polling Station

[103] Code No. 0100, Polling Centre Code No. 072 Registered voters 1,831 with 3 Polling Station

[104] Code No. 0242, Polling Centre Code No. 012 Registered voters 3,653 with 6 Polling Station

vi. ***In Elgeyo Marakwet County***[105], *Keiyo North Constituency, Kamariny Ward, at Kapteren Primary School*[106] *Polling Centre an employee of the county government, a Mr. Silas whose position is that of Director of Sports was seen bribing voters near the Polling Centre. He was reported to the police who arrested him immediately and he was detained at Iten Police Station. The bundles of money that was still in his possession was confiscated by the police.*

4.2.4 Ferrying of Voters

The Commission notes that there are appropriate and noble ways of assisting voters without undue influence. Long distance to the polling centres especially by special interest groups, older members of society and the sick would ordinarily pose difficulties.

The Commission documented cases where there was an apparent direct link between ferrying of voters with specific candidates. This was observed as a form of inducement and motivation for the voters to reciprocate and vote for the candidates facilitating their movement to the polling centres. Some of these cases documented were;

i. ***In Laikipia County***, *Laikipia North Constituency, Sosian Ward at Mathenge Farm Polling Center*[107], *there was mass voter transportation from different locations organised by the gubernatorial candidate Nderitu Mureithi and the Laikipia North MP candidate Dr. James Lowassa.*

ii. ***In Isiolo County***, *Isiolo South Constituency, Kina Ward at Kinna Primary School*[108] *Polling Centre, the MP candidate Mohamed Tubi organised more than three (3) buses to ferry voters and dropped them just a short distance from the Polling Centre to avoid suspicion.*

4.2.5 Restive crowds and Long Queues

Section 38A of the Election Act, provides that for purposes of providing efficient and effective conduct of elections, the number of voters per polling station shall not exceed seven hundred (700). This law was amended in 2016 due to the lessons drawn from the 2013 General Election that was characterized by very long queues and uncontrollable crowds thereby clogging the voting process.

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[105] County No. 28

[106] Code No. 0742, Polling Centre Code No. 030 Registered voters 1,003 with 2 Polling Station

[107] Code No. 0822, Polling Centre Code No. 015 Registered voters 4,410 with 7 Polling Station

[108] Code No. 0249, Polling Centre Code No. 025 Registered voters 1,180 with 2 Polling Station

However, the Commission noted that the purpose of this provision was not actualized by the fact that the Polling Centres, though substantially many, had huge crowds which remained the same. The 700 voters capping was only applied in respect to classrooms, halls or desks in a tent which was re-labelled as Polling Station (formerly referred to as Stream). It was observed that IEBC did not utilize the entire space available at the Polling Centre to at least ensure that the Polling Stations were evenly spread out in the entire Polling Centre. The purpose of section 38A of the election Act was negated and there were long queues next to each other due to the constricted access. This created confusion and anxiety. In many instances, the queues became unmanageable and the special interest groups especially women, older members of society, the sick, expectant mothers and persons with disabilities bore the brunt. It is important to note that in most polling stations there was only one queue for each Polling Station and uncomfortable squeezing led to some voters opting out of the line. This was common with women who profess the Muslim faith.

These scenarios were witnessed in the following areas;

i. ***In Nairobi City County**, Kibra Constituency, in Sarangombe Ward at Olympic Primary School*[109] *Polling Centre, there were large numbers of people that queued to access the Polling Centre with a lot of difficulties.*
A similar situation was also witnessed at Embakasi Social Hall[110] *Polling Centre in Embakasi East Constituency and Kariokor Social Hall* [111] *Polling Centre in Ziwani/Kariokor, Starehe Constituency. In these two polling centres there where more than fifteen (15) Polling Stations which were crammed in one hall with one common entrance. This caused confusion in terms of locating one's actual Polling Station. Equally the ventilation was poor and some people even missed to vote because by the time they located their Polling Station they were already late and fatigued.*

ii. *In **Nairobi City County**, Dagoretti North Constituency, Kabiro Ward at St. Anthony's Mixed High School*[112] *Polling Centre, the Commission noted that by 7.45a.m. the crowds had become extremely long and unmanageable due to the layout of the Polling Centre. It had a very narrow entrance to the Polling Stations. This slowed down the voting process and by 8a.m. the voters had started getting unruly. This led to a lorry full of National Police Service Officers from the GSU to be deployed to quell the situation. Unfortunately, women with children and the older members of society were caught up in the melee.*

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[109] Code No. 1390, Polling Centre Code No. 021 Registered voters 7,896 with 12 Polling Station

[110] Code No. 1423, Polling Centre Code No. 005 Registered voters 14,292 with 21 Polling Station

[111] Code No. 1442, Polling Centre Code No. 017 Registered voters 13,404 with 20 Polling Station

[112] Code No. 1375, Polling Centre Code No. 020 Registered voters 6,103 with 9 Polling Station



Long queues witnessed at ACK Kahawa Sukari Polling Centre in Kahawa Sukari Ward, Ruiru Constituency in Kiambu County. (Photo courtesy: KNCHR 2017)

iii. ***In Nairobi City County**, Embakasi North Constituency, Dandora Ward at Tom Mboya Primary[113] Polling Centre, the voters' queues were quite long in the morning thereby overwhelming the IEBC Clerks. The voters started storming into the Polling Stations uncontrollably and that also overwhelmed the Presiding Officers and their Clerks.*

iv. ***In Machakos County**, Mavoko Constituency, Athi River Ward at Athi River Social Hall[114] Polling Center, there was little space for voters to queue within the polling centre and thus they had to queue outside along the streets.*

v. ***In Nairobi City County** Soweto Social Hall[115] Polling Centre, Lower Savannah Ward, Embakasi East Constituency, there were long queues that went all the way outside and into the streets such that the essence of a Polling Centre perimeter was defeated. This exposed voters to campaigns and interference from various political interests as they were waiting outside the Polling Centre.*

[113] Code No. 1414, Polling Centre Code No. 010 Registered voters 13,943 with 20 Polling Station

[114] Code No. 0394, Polling Centre Code No. 005 Registered voters 2.092 with 3 Polling Station

[115] Code No. 1422, Polling Centre Code No. 004 Registered voters 19,399 with 28 Polling Station



Long queues at Soweto Polling Centre in Embakasi East Constituency, Nairobi City County. (Photo courtesy: KNCHR 2017)

vii. *In Thigio Primary School*[116] *in Limuru Constituency,* ***Kiambu County***[117]*, Soweto and Embakasi Social Halls in Matopeni and Embakasi Wards respectively, Ruaraka and Embakasi East Constituencies in Nairobi City County the IEBC line management clerks were outnumbered by the number of voters. In Ruaraka and Embakasi East, the use of the Social Halls demarcated into a number of polling stations was highly inappropriate due to poor ventilation and no physical barriers or markings to ensure that the same was made more orderly. Further, it took the intervention of additional Police Officers to ensure that the large number of voters were more manageable in the Social Halls.*

viii. ***In Laikipia County****, Laikipia East Constituency, Thingithu Ward at Railway Club*[118] *Polling Centre, long queues were witnessed moving towards a makeshift tent that was the Polling Station.*

[116] Code No. 0603, Polling Centre Code No. 026. Registered voters 2,338 with 4 Polling Stations

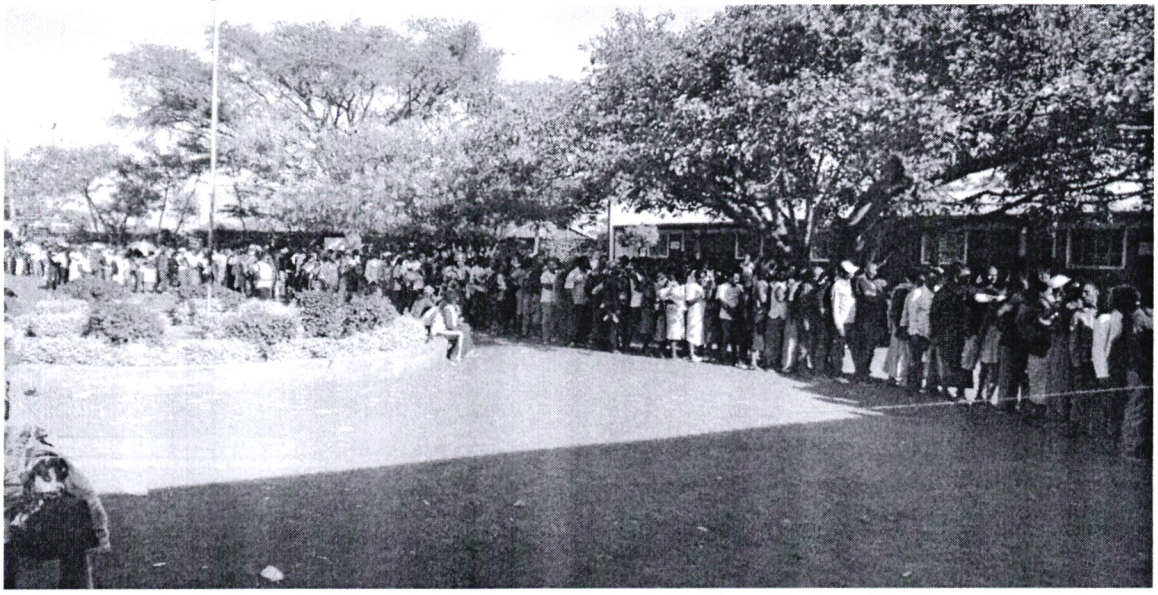
[117] County No. 22

[118] Code No. 0819, Polling Centre Code No. 053 Registered voters 2,673 with 4 Polling Station



Long queues of voters at Railway Club Polling Center, Thingithu Ward, Laikipia East constituency, Laikipia County. (Photo courtesy: KNCHR 2017)

ix. ***In Kirinyaga County**, Mwea Constituency, Tebere Ward at Ngurubani Primary School[119] Polling Centre, the main entrance to the Polling Centre was overcrowded since the names of the voters were displayed at the main gate. Many voters did not know which specific Polling Station they were supposed to vote thereby causing crowding at the main gate.*



Long queues of voters at Matopeni Primary School Polling Centre, Biashara Ward, Ruiru Constituency in Kiambu County.
(Photo courtesy: KNCHR 2017)

[119] Code No. 0503, Polling Centre Code No. 090 Registered voters 6,53413 with 10 Polling Station

x. ***In Uasin Gishu County***[120]*, Soy Constituency, Segero/Barsombe Ward at Broncho Dairies*[121] *Polling Centre, some party agents were standing too close to the ballot marking booth because the Polling Station was a tent. This compromised the voter's right to secrecy.*

xi. ***In Kilifi County***[122]*, Kilifi South Constituency, Shimo La Tewa Ward at Mtwapa Chief's Office* [123] *Polling Centre, the use of tents made the makeshift Polling Stations deplorable due to the large crowds. Rain water also drained into the tents since it had poured the previous night.*



The deplorable state of the Polling Station at the Mtwapa Chief's Office in Shimo la Tewa Ward, Kilifi South Constituency, Kilifi County
(Photo courtesy: KNCHR 2017)

[120] County No. 027

[121] Code No. 0703, Polling Centre Code No. 042 Registered voters 544 with 1 Polling Station

[122] County No. 003

[123] Code No. 0060, Polling Centre Code No. 028 Registered voters 12,524 with 18 Polling Station



Overcrowding at Wareng High School [124] Polling Centre in Langas Ward, Kapseret Constituency, Uasin Gishu County. At some point the voters were allowed inside the Polling Station due to the pouring rain. (Photo courtesy: KNCHR 2017)

The long queues and overcrowding had an impact on voters in that they had to wait for long hours before casting their vote, others returned home and never cast their votes which led to disenfranchisement.

The Commission noted that IEBC Queuing Clerks who were supposed to ensure orderly queuing and voting were overwhelmed and least prepared in crowd management tactics. Many of them opted to stand aside and watch helplessly or seek the assistance of the Police Officers. Further, in the polling centres monitored many of the IEBC Queuing Clerks appeared not to appreciate the integral nature of their role including directing the voters to the appropriate Polling Stations based on their names. This could also be attributed to the late and inadequate training they received leading to the polling day. It is worth noting that the Commission election monitors were in many instances confused for IEBC Officials due to similarity in their branded apparels. Therefore, voters frequently sought assistance from KNCHR election

[124] Code No. 0726, Polling Centre Code No. 057 Registered voters 3,072 with 5 Polling Station

monitors on where to vote and also shared the challenges they were experiencing with long queues.

The Commission also noted that in some precincts, IEBC lacked the proper signage and labelling of Polling Stations and that would have easily assisted and guided the voters to their appropriate Polling Stations. A printout of the register should have been affixed at the entrance or another proximate area to the Polling Station to ease the congestion. The IEBC's SMS verification system and the public portal was an appropriate system.

4.3 Polling, Counting and Results Transmission Process

The Commission monitoring of the polling process was pegged on the efficiency of the Kenya Integrated Electoral Management System (KIEMS) kits. The KIEMS kit was integral to unlocking the entire electoral process from identification to the final transmission. The Commission was also very keen on the actual voting, how the special interest groups' voters were assisted in the voting process, votes counting, vote's transmission, the role of agents, domestic, regional and international observers to ensure transparency and accountability of the entire election. The Commission observed that in all the Polling Centres monitored, the polling process was smooth apart from a few challenges that affected the start of the voting process.

4.3.1 Commencement of Voting

The electoral regulations provide that voting must take place from 6a.m. to 5p.m. The Commission undertook to monitor a number of polling stations country-wide to ascertain this compliance. Prior to the opening of the polling stations, the Presiding Officer (PO) briefed all present specifically the IEBC clerks, party agents and observers on how the process was to begin and proceed throughout the day. The PO displayed to those present the six (6) ballot boxes to confirm they were empty. The boxes were then sealed and the seal numbers recorded.



IEBC official displaying empty ballot boxes before being sealed at Igena Itambe Primary School Polling Center, Bwirege West Ward, Kuria East Constituency, Migori County. (Photo courtesy: KNCHR 2017)

The Commission observed that in most polling stations IEBC officials had all election materials. In many polling stations there was orderly flow of voters and the Presiding Officers adhered to the opening time and carried out the laid down opening procedures including the opening up of the KIEMS kits. In most Polling Centres, appropriate measures had been put in place to ensure easy accessibility by PWDS, the sick, expectant women and the older members of society. In general, the polling stations opened on time and had enough essential voting materials and election staff. However, a few polling stations experienced some delays for instance:

i. ***In Kericho County***[125], *Ainamoi Constituency, Kipchebor Ward at Kericho Boarding Primary School*[126] *Polling Centre, a Polling station opened at 0750 Hrs since the PO was unable to unlock the KIEMS kit. The problem was later sorted out by the IEBC ICT clerk who came from the Constituency office.*

[125] County No. 35

[126] Code No. 0947, Polling Centre Code No. 054 Registered voters1,524 with 3 Polling station

ii. ***In Kajiado County**, Kajiado North, Ngong Ward at Ngong Township Primary School[127] Polling Centre, a Polling Station opened at 7.20 a.m because the KIEMS kit malfunctioned.*

iii. ***In Nakuru County**[128], Rongai Constituency, Visoi Ward, Lengenet FCS Stores[129] Polling Station opened on time but the voting began at 7.07 a.m as the KIEMS kit kept switching on and off before it was rectified.*

iv. ***In Kiambu County,** Limuru Constituency, Ndeiya Ward at Thigio Primary School[130] Polling Centre, in two Polling Stations, the KIEMS kit caused a delay for more than 3 hours because it kept being non-responsive- commonly known as "hanging". It was later changed by the IEBC ICT Officer who was sent from the Constituency office. However, this delay caused a lot of anxiety, long queues and the special interest groups were seriously frustrated by the process.*

v. ***In Migori County** at Muslim Primary, **Bungoma County** at Kaploboi Primary School Polling Centre and in **Kakamega County** at Shinyulu Primary School[131] Polling Station (specifically Butere Constituency, Marenyo-Shianda Ward), the two missed Form 32A when the stations opened and photocopies had to be taken late and the voting continued.*

vi. ***In Kakamega County**, Khwisero Constituency, Kisa Central Ward at Ematundu Primary School[132] Polling Station, there was no indelible ink to mark the voters who had voted in one of the Polling stations. The Presiding Officers was forced to improvise and used a normal ink pen ink in a bottle top to mark those who had voted.*

vii. ***In Kirinyaga County**, Kirinyaga Central Constituency, Kerugoya Ward at St Joseph's Kerugoya Boys Polling Centre[133] and Kaitheri Youth Polytechnic[134] Polling Centre, there was delay because party agents were late and therefore the Presiding Officer could not start the process without them.*

Conclusively, the Commission noted that some of the reasons for late opening at some Polling Stations was as a result of the Presiding Officers having difficulties in logging into the KIEMS

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[127] Code No. 0915, Polling Centre Code No. 032 Registered voters 3,151 with 5 Polling station

[128] County No. 32

[129] Code No. 0862, Polling Centre Code No. 067 Registered voters 604 with 1 Polling station

[130] Code No. 0603, Polling Centre Code No. 026 Registered voters 2,338 with 4 Polling station

[131] Code No. 1034, Polling Centre Code No. 036 Registered voters 637 with 1 Polling station

[132] Code No. 1040, Polling Centre Code No. 056 Registered voters 674 with 1 Polling station

[133] Code No. 0514, Polling Centre Code No. 032 Registered voters 4,141 with 6 Polling station

[134] Code No. 0514, Polling Centre Code No. 033 Registered voters 3,879 with 6 Polling station

kit, lack of some voting materials e.g. Form 32A and the indelible ink, breakdown or non-responsiveness of the KIEMS kit and late arrival of party agents, among others.

The Commission lauds the IEBC for putting in place a number of appropriate measures to ensure that the commencement of polling day run smoothly and the challenges that arose were well managed. The Commission was satisfied with the degree of compliance with the Polling Centres opening procedures.

4.3.2 The Kenya Integrated Elections Management System (KIEMS)

The KIEMS kit was being used for the first time in the 2017 General Election. The identification of voters using the KIEMS kit was the first step in determining whether voters were able to cast their ballot or not at the polling stations. The Presiding Officer was the key person who was to unlock the kit using a specific and individualized password and the barcode of the ballot papers issued. This was to be done in the presence of the all election officers present. The voting process could not commence or take place without initializing this process. Out of the One thousand, two hundred and eighteen (1,218) polling stations monitored by KNCHR, the findings on the efficiency of the KIEMS showed that majority of the IEBC officers were able to access the system. Where there were challenges, the Commission recorded a delay of a maximum 10 minutes. There were a few recorded cases where the POs forgot the passwords and had to go for a reset at the tallying centre or call for assistance as illustrated.

Once the KIEMS kit was activated, the PO displayed to the agents and observers to confirm that the KIEMS kit reading was at '00'. This reading meant that no voter had been identified or voted. The KIEMS kit was then handed over to the respective registration clerk who would use it first to identify the voter before they cast their vote.

The IEBC clerk used the KIEMS kit to identify the voter biometrically using fingerprints or alphanumerically upon producing either a National Identity Card or National Passport whichever they used to register or through a barcode scan of the new generation ID card. Those identified either alphanumerically or through ID scan were required to fill form 32A in the presence of the PO and party agents present.

The use of Form 32A was observed in many polling centres where KNCHR election monitors were stationed. KNCHR field reports also indicated a misuse of the same as elaborated in (i) below.



An older member of society being assisted by an IEBC Officer for identification using the KIEMS kit in one of the Polling Stations at St. Loise Secondary School[135] *Polling Centre, Thingithu Ward Laikipia East Constituency, Laikipia County.*
(Photo courtesy: KNCHR 2017)

i. Mismanagement of Form 32A

Regulation 69 of the Election (General) Regulations 2017, prescribes the voting procedure to begin with the production of an identification document which would then allow the voter to be identified electronically through biometrics, alpha-numeric or new generation identity card scan. In the event the aforementioned modes of identification fail, the law provides for manual identification and verification through a hard copy of the voter register and filling of Form 32A in the presence of the agents and candidates.

In most of the polling centres monitored by the Commission, the hard copy voter register was not available to the Presiding Officer despite them applying Form 32A on voters.

One of the anomalies identified was that Form 32A lacked security features. Where the original forms ran out, some POs made photocopies which were not serialized, making them difficult

[135] Code No. 0819, Polling Centre Code No. 064 Registered voters 579 with 1 Polling Station

to account for. Another anomaly saw the distribution of Form 32A to be uneven from one polling station to another. The Commission recorded a few cases where voters were turned away because the form was not availed to the PO as part of the electoral material or they could not be identified at all in the system. KNCHR further recorded incidences where POs agreed with the party agents available to allow persons with ID but who could not be identified by use of the three steps to still cast their ballot. In other cases the voters did not even fill Form 32A. Where voters who were not identified through the three steps but their names were on the manual register pinned at the Polling Centre, the POs issued them with Form 32A and allowed them to vote. In some Polling Centres, when voters missed to be identified using their fingerprints, the PO did not proceed to alpha numeric or ID scan and thus did not appropriately apply the use of Form 32A despite having them.

It is clear that the POs in various Polling Stations had a different understanding of Form 32A and how to administer it. Indeed, the application of Form 32A was apparently confusing to POs. It's important to note that if a voter cannot be identified in the KIEMS kit then it means that they cannot equally be found in the printed manual register because the latter is supposed to be a duplicate of the KIEMS. KNCHR observation is thus; the use of Form 32A is redundant.

ii. Domestic, Regional and International Observers and Monitors

A General Election is a national exercise with varied interest emanating from the region and also globally. Therefore, no election worldwide is left to the local election management body to play the roles of the judge, jury and executioner. The roles of Election observers and monitors have historically become crucial in subsequent elections in the Republic of Kenya and cannot be understated.

The IEBC has specifically published a handbook on election observers to guide them in their roles and engagement with the electoral process. This handbook states that observers provide an impartial and accurate assessment of the electoral processes as witnessed through the various operations of the elections management body. Further, the election monitors promote the compliance of all in the rule of law and the electoral legal framework to assist in the deterrence of malpractices. It is imperative that observers and monitors are non partisan. Section 42 of the Elections Act 2016, provides that the IEBC may accredit any person as an agent or media representative or as an institution to report on the General Election.

The accreditation was provided to all observers and included the verification and formal authority to access all polling venues. At the National Tallying Centre at the Bomas of Kenya, accreditation was limited to two (2) persons per institution. There was an additional clearance and accreditation badge that was digitized to facilitate physical access into the Bomas of Kenya Tallying Centre hall.

The Commission observed that majority of the observers had their badges displayed and therefore did not have any challenge in accessing the polling or tallying venues. There were few instances when some observers were asked to produce their identity cards to confirm the ownership of the badge.

The Commission interacted with various domestic, regional and international observers at the IEBC Constituency offices, Polling and Tallying Centres. These included the following;

i. ***Domestic Observers***

(a) *State Organs:* The Independent Policing Oversight Authority (IPOA), National Cohesion and Integration Commission (NCIC), Office of the Registrar of Political Parties (ORPP), National Gender and Equality Commission (NGEC) and National Cohesion and Integration Commission (NCIC).

(b) *Non-State Organs:* Kenya Human Rights Commission (KHRC), Catholic Justice and Peace Commission (CJPC), Election Observation Group (ELOG), National Council of Churches of Kenya (NCCK), Coast Interfaith Council of Clerics (CICC), Legal Resources Foundation Trust (LRF), National Coalition on Human Rights Defenders (NCHRD), International Commission of Jurists (ICJ), Kenya ICT Action Network (KICTANet) and Global Veterans and Peace Ambassadors.

ii. ***Regional Observers*:** African Union (AU), South African High Commission and Uganda High Commission.

iii. ***International Observers:*** European Union (EU), Carter Centre, Kenyan Diplomatic Community including USA, Finland, Royal Netherlands, United Kingdom, Norwegian and Sweden, among others.

The role of observers was very critical as it acted as a deterrent to the politicians or their agents who wanted or had planned to influence the voters to vote for them or their preferred candidates. Further the presence of observers also forestalled, stopped or reduced any political

pressure that would have impacted on the role of Presiding Officers or the Returning Officers during opening, voting, closing, counting and transmission.

Observation Case: In **Nairobi City County**, *Embakasi East Constituency, Umoja II Ward at Unity Primary School*[136] *Polling Centre, during the ballot counting, a disagreement arose regarding the validity of ballots that had no IEBC official stamp. It took the intervention of the KNCHR election monitor who showed a copy of the official Memo from IEBC, to the IEBC Officer and the agitated agents, on the correct position in respect to the later Memo. It had expressly read that "a ballot paper that was not stamped by IEBC was invalid". This intervention by the Commission's election monitor reduced the tension and the IEBC officer was less pressured by the agents.*

The Commission noted that there were no major incidences hindering the election observer's work either by IEBC or the security agents present.

iii. Political Party and Independent Agents

The Elections Act provides for the accreditation of political party and independent candidates' agents. The agents are appointed by the respective political parties or independent candidates to monitor the electoral process and ensure their interests are protected all through. Unlike observers, agents are more actively engaged in the electoral process and IEBC is obligated to ensure that any issues raised is considered, clarified and a decision made. The Political Parties and independent candidates are expected to submit the agents' names and details to IEBC for accreditation. The agent's role among others includes; confirmation of the integrity of all electoral material before polling starts, observe the voting, assisting voters where need be and closing, confirming counting, collating and tallying of votes and transmission and escorting the sealed ballot boxes to the Constituency Tallying Centres.

The Commission observed that majority of the agents in most Polling Stations monitored did not have IEBC agent badges but rather letters from IEBC only. This was attributed to the late response of the Political Parties and independent candidates to submit the names of their proposed agents to IEBC Constituency offices for accreditation. As a result, some Presiding Officers had difficulty in admitting some agents with the IEBC issued letters until they received clarification from the County Tallying Centres. It is important to note that this delay did not in

[136] Code No. 1427, Polling Centre Code No. 003 Registered voters 14,963 with 22 Polling Station

any way impact negatively to the voting process as the matters were quickly and amicably resolved.

The Commission observed that in most of the Polling Centres there was at least an agent and in instances where they were more than one, the Presiding Officer ask them to re-distribute themselves accordingly to other Polling Stations. In some instances, there were queries regarding the agent's identification documents. Some agents had only Political Parties' or Independent candidates' letters of appointment, while others had badges from IEBC. Despite this disparity, only few cases resulted in the political agents being prevented from accessing the Polling Stations.

The Commission noted a number of issues that impacted directly on the capacity and role of the Political Parties and independent candidates' agents. It was apparent that many agents had not received any or quality training and were thus operating from their previous knowledge and engagement in past General Elections. Indeed, many of them had no digital training and did not understand the use of the KIEMS kit requirements.

iv. Assisted voters

Section 71 of the Election General Regulations 2017, defines *an assisted voter to be one who by reason of disability is unable to read or write and may therefore be unable to vote in the manner envisaged by the electoral body*. The regulations allow for such persons to be assisted either by a person of their choice. This person must be an adult and should sign the oath of secrecy. The assisted voters were also required to fill Form 32. If the assisted voter was not escorted, then the Presiding Officer would assist the voter in the presence of the Political Parties' and independent candidates 'agents at the respective Polling Station.

The Elections Regulations also provides for special consideration to pregnant women, persons with disability, older members of society and women with small children to be given first priority to vote at the Polling Stations. The Commission observed that most Presiding Officers were keen to identify such persons who required special considerations. The PO worked hand in hand with the security personnel to ensure order in their movement and facilitation.

The Commission however noted that assisting a voter who came to the polling centre un-escorted, violated their right to secrecy of the ballot. The representative agents were all present to listen in to the voter's choice of candidate and what the PO marked. This was made worse for the assisted voters who were either visually impaired or their hearing impaired. This

exposed the challenged voters to a great deal of indignity in some instances. It is the responsibility of IEBC to ensure that there are ballot papers written in braille at the bear minimal. It's important to note that in the 2013 General Election, IEBC had printed ballot papers in braille but these were never used since the POs had not be trained on how to use them.



Agents surrounding an "assisted voter" at Lokichar Mixed Primary School, Lokichar Ward, Turkana South Constituency, Turkana County. (Photo courtesy: KNCHR 2017)

In respect to the assisted voters who were older members of society and illiterate, the Presiding Officer in most Polling Stations allowed them to be accompanied by only one assistant and where there was none, the PO took charge immediately and invited agents present to witness the voting process.

The Commission also noted that in many Polling Stations, there were either one or two booths for the voters. In Polling Centres where KNCHR monitored there were no special booths for persons with disabilities, the older persons, sick or people of shorter physique due to the height

of the ordinary booth. It is worth noting that the appropriate booths were available at the Constituency and County warehouses but were not utilized.

Table 1: Select KIEMS Related Incidents

Issue	Polling Station Occurrence	County	Constituency	Ward	Polling Station/Centre
KIEMS	The system malfunctioned for 1hr 20 minutes. Manual backup was not used as the PO immediately contacted the IEBC ICT Officer who gave the necessary assistance.	Kajiado	Kajiado North	Ngong	Ngong Township Primary School[137]
	The system malfunctioned but the PO was able to sort out the problem within 30 minutes.	**Kisumu[138]**	Kisumu Central	Market Milimani	Kisumu Social Center (Tents)[139]
	The system malfunctioned and voting started later in the afternoon. The system started working after the memory card was removed and replaced.	**Kiambu**	Githunguri	Komothai	Gathiruini Primary School[140]
	The system did not work for 40 minutes but was later	**Nandi[141]**	Nandi Hills	Ol' Lessos	Ol'Lessos ACK Church[142]

[137] Code No. 0915, Polling Centre Code No. 032 Registered voters 3,151 with 5 Polling Station

[138] County No. 42

[139] Code No. 0581, Polling Centre Code No. 051 Registered voters 671 with 1 Polling Station

[140] Code No. 0233, Polling Centre Code No. 002 Registered voters 613 with 1 Polling Station

[141] County No. 29

[142] Code No. 0763, Polling Centre Code No. 077 Registered voters 1,111 with 2 Polling Station

	restored by the IEBC Officers.				
Names missing in KIEMS	The voters who could not be identified using the system were referred to IEBC Constituency Tallying Centre to be assisted by the IEBC officers.	**Kisumu**	Kisumu East	Kajulu	Mamboleo Market[143]
		Kisumu	Kisumu East	Nyalenda 'A'	Kassagam Secondary School[144]
	Sixteen (16) elderly voters were turned away because their names were missing from the system.	**Kitui**[145]	Kitui East	Voo/Kyamatu	Imale Primary School[146]
	The Presiding Officers in two (2) Polling Stations sent away voters who could not be identified using the system.	**Kitui**	Kitui Central	Kyangwithya	Ngwani Market[147]
	The voters whose names could not be identified using the KIEMS were asked to leave and therefore could not vote.	**Meru**	Igembe North	Amwathi	Kamweline Primary School[148]
	The Manual Register was used to identify the voters	**Siaya**	Bondo	West Sakwa	Bondo County Council Hall[149]

[143] Code No. 1186, Polling Centre Code No. 009 Registered voters 3.988 with 6 Polling Station

[144] Code No. 1189, Polling Centre Code No. 032 Registered voters 2,391 with 4 Polling Station

[145] County No. 15

[146] Code No. 0362, Polling Centre Code No. 085 Registered voters 438 with 1 Polling Station

[147] Code No. 0358, Polling Centre Code No. 143 Registered voters 743 with 2 Polling Station

[148] Code No. 0265, Polling Centre Code No. 078 Registered voters 379 with 1 Polling Station

[149] Code No. 1179, Polling Centre Code No. 081 Registered voters 1,333 with 2 Polling Station

	whose names were missing in the KIEMs.				
	The PO would send a message to the IEBC systems to get a verification code to ensure that the person being assisted was in the system. This would be done when the person was identified in the register but their finger prints would not be read by the system.	**Kajiado**	Kajiado North	Ngong	Ngong Township Primary
		Kiambu	Kikuyu	Kikuyu	Kikuyu Township Primary School[150]
	The voters whose names could not be picked using biometric, used the manual register and their names crossed out after voting.	**Kisumu**	Kisumu East	Nyalenda 'A'	Kassagam Secondary School
	The PO refused to use the Manual Register to check voters' names which were missing. They were instead referred to the Constituency Returning Officer.	**Nakuru**	Bahati	Lanet/Umoja	KamFam Trading Centre[151]

[150] Code No. 0599, Polling Centre Code No. 034 Registered voters 11,889 with 17 Polling Station

[151] Code No. 0868, Polling Centre Code No. 071 Registered voters 2,215 with 4 Polling Station

4.4. Close of Polling:

The Elections (General) Regulation, 2012[152] provides the time for closing the polling station to be 5 p.m. The law permits the presiding officer to extend time based on the minutes or hours lost if the polling station opening time was interrupted for valid reasons and therefore opened later than 6a.m. The extended duration is based on the amount of time lost during the opening of the Polling Station. This scenario is announced at the beginning or at the time when that interruption occurs and is rectified and therefore known to all interested persons in that particular polling station.[153] Moreover, any person who is on the queue for intent and purpose of voting before this time is allowed to vote despite the fact that voting time may extend past 5p.m.

[152] Regulation 66 Elections (General) Regulation, 2012- Elections Act No.24 of 2011

[153] Regulation 64, *ibid*



IEBC Officials using mobile phones as torch-light at Ogango Primary School[154] *Polling Center, Kolwa Central Ward, Kisumu East Constituency, in Kisumu County at the closure of the Polling Station.* (Photo courtesy: KNCHR 2017)

The Commission observed that various IEBC officials in the polling stations, complied with the laid down regulations and where there was a variance, reasons were given for early or late closure of the polling stations and the same recorded. The Commission's monitoring parameters as far as closure of polling was concerned included the following: "Whether polling stations closed at 5 p.m, if not the reasons given by the PO" and "whether there were any voters on the queue and if so were they allowed to vote?"

The Commission observed that Moipei Primary School[155] Polling Centre, Ildamat Ward, Kajiado Central Constituency, Kajiado County closed at 4 p.m. which was earlier than the prescribed time and contrary to the provisions in law. The reason given by IEBC was that there

[154] Code No. 1190, Polling Centre Code No. 039 Registered voters 3,572 with 6 Polling Station

[155] Code No. 0917, Polling Centre Code No. 011 Registered voters 875 with 2 Polling Station

were no more voters left on the queue. The Regulations provide that a polling station is to be closed at 5p.m. irrespective of whether there are voters on the queue. This should be contrasted with *HGM Kinoo Primary School*[156] *Polling Centre, Kinoo Ward, Kikuyu Constituency, Kiambu County* which by 4p.m. had no one on the queue in any of its polling stations but the polling centre remained opened.

Further at Embakasi Social Hall [157] Polling Centre, Embakasi Ward, Embakasi East Constituency in Nairobi City County, the common gate to the Polling Centre was closed at exactly 5pm despite the fact that there were many polling stations which had opened at different times and some were still open a few minutes after 5 pm. The Police Officers at the gate refused the voters entry stating that they were late. While this may have been so, they were each going to different polling stations and therefore at that time not all polling stations were closed. The other reason advanced for polling stations closing past the prescribed time of 5p.m. include:

i. Delayed opening of polling stations

Some polling stations in a number of polling centers extended the closing time because there had been a delay in opening of the polling stations. The following are specific cases:

a. *Onyalo Primary School and Migori Muslim Primary*[158] *Polling Centres both in Suna Central Ward, Suna East Constituency, Migori County closed at 5.30 p.m.*
b. *Kathome Trading Centre* [159] *Polling Centre, Mua Ward, Machakos Town Constituency, Machakos County, closed at 7.30 p.m.*
c. *Samoei Nursery School* [160] *Polling Centre, Nandi Hills Ward, Nandi Hills Constituency, Nandi County, closed at 6.10 p.m.*
d. *Eldume Primary School*[161] *Polling Centre Polling Station 001, Ilchamus Ward, Baringo South Constituency, Baringo County,* [162]*closed at 5.51p.m.*

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[156] Code No. 0600, Polling Centre Code No. 035 Registered voters 2,953 with 5 Polling Station
[157] Code No. 1423, Polling Centre Code No. 005 Registered voters 14,292 with 21 Polling Station
[158] Code No. 1270, Polling Centre Code No. 018 Registered voters 3,148 with 5 Polling Station
[159] Code No. 0399, Polling Centre Code No. 002 Registered voters 1,204 with 2 Polling Station
[160] Code No. 0761, Polling Centre Code No. 022 Registered voters 859 with 2 Polling Station
[161] Code No. 0799, Polling Centre Code No. 002 Registered voters 613 with 1 Polling Station
[162] County No. 30

e. *Parkarin Primary School*[163] *in Marigat Ward, Sandai Primary School*[164]*, Cheploch Primary School* [165]*, Chepkotoyan Primary School* [166] *Polling Center all in Mochongoi Ward, Baringo South Constituency, Baringo County, closed at 5.30p.m*

However, in a few of the polling centres monitored by KNCHR, some voters were turned away despite the fact that some polling stations had delayed at the opening time. This was observed at Tiba Junior Academy[167] Polling Centre, Lucky Summer Ward in Ruaraka Constituency and at Unity Primary School[168] Polling Centre, Umoja II Ward, Embakasi West Constituency, both in Nairobi City County.

ii. Interrupted Voting because of KIEMS Malfunction

The Commission observed that ten (10) polling stations experienced malfunctioning of KIEMS kit which interfered with and/or caused delay during the voting process. However, additional time was given to allow voters to exercise their right to vote and this resulted in these stations closing after 5p.m. The following are specific cases:

a. *At Namaondo Primary School* [169] *Polling Centre, Mukunyuni Ward, Kabuchai Constituency, Bungoma County*[170]*, closed at 6p.m. since the process had stopped for one hour,*
b. *At Kihunguro Primary School*[171] *Polling Centre, Kakuzi/Mitumbiri Ward, Gatanga Constituency, Muranga County*[172]*, closed at 5.40p.m. due to failure of KIEMS kit at the commencement of the process,*
c. *At St. Joseph Kerugoya Boys Primary School Polling Centre, Polling Station No. 005, Kerugoya Ward, Kirinyaga Central Constituency, Kirinyaga County,*
d. *At Igoji Boys Secondary School Polling Station*[173]*, Igoji East Ward, South Imenti Constituency, Meru County, closed at about 9p.m.*
e. *At Mororo Primary School Polling Station No. 002, Madogo Ward, Bura Constituency, Tana River County,*
f. *At Imani Primary School*[174] *Polling Center, Kaloleni Ward, Kaloleni Constituency, Kilifi County,*

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[163] Code No. 0798, Polling Centre Code No. 007 Registered voters 132 with 1 Polling Station
[164] Code No. 0800, Polling Centre Code No. 097 Registered voters 468 with 1 Polling Station
[165] Code No. 0800, Polling Centre Code No. 106 Registered voters 176 with 1 Polling Station
[166] Code No. 0800, Polling Centre Code No. 099 Registered voters 284 with 1 Polling Station
[167] Code No. 1404, Polling Centre Code No. 014 Registered voters 6,391 with 10 Polling Stations
[168] Code No. 1427, Polling Centre Code No. 003 Registered voters 14,963 with 22 Polling Stations
[169] Code No. 1088, Polling Centre Code No. 065 Registered voters 807 with 2 Polling Stations
[170] County No. 39
[171] Code No. 0546, Polling Centre Code No. 021 Registered voters 1,179 with 2 Polling Stations
[172] County No. 21
[173] Code No. 0291, Polling Centre Code No. 027 Registered voters 572 with 1 Polling Station
[174] Code No. 0065, Polling Centre Code No. 039 Registered voters 684 with 1 Polling Station

g. *At Shariff Nassir Secondary School*[175] *Polling Centre, Tononoka Ward, Mvita Constituency, Mombasa County, delayed closing by 3 hours to compensate for the technical hitches experienced with the KIEMS,*
h. *At Diemo Primary School Polling Centre*[176]*, Central Seme Ward, Seme Constituency, Kisumu County,*
i. *At Misikhu Girls Boarding Primary School*[177] *Polling Centre, Ndivisi Ward, Webuye East Constituency, Bungoma County, closed at 5.20 p.m because the KIEMS machine went off due to lack of power and charged batteries,*
j. *At Kathome Trading Centre Polling Centre, Polling Station No.001, Mua Ward, Machakos Town Constituency, Machakos County, closed at 7.30p.m. due to KIEMS failure. The process was delayed by 2 hours.*

The Commission observed that there were still a number of voters on the queues at polling stations at closing time in the various polling stations it monitored. The voters were allowed to vote past the stipulated time and in accordance with the law. To facilitate this, a number of measures were taken to ensure that only those on the queue at closing time would vote and not latecomers. This included stationing a security officer after the last voter at each queue at the time of closure. This was observed at;

a. *Uhuru Primary School*[178] *Polling Centre, Nakuru Town West Ward, London Constituency, Nakuru County,*
b. *Mukhonje Primary School*[179] *Polling Centre, Isukha West Ward, Shinyalu Constituency, Kakamega County,*
c. *Embakasi Social Hall Polling Centre, Polling Station No. 005, Embakasi Ward, Embakasi East Constituency, Nairobi City County, and*
d. *Ringa Primary School*[180] *Polling Station, Kedowa/Kimugul Ward, Kipkelion East Constituency, Kericho County.*

The Commission noted that some voters were turned away because they had queued in the wrong polling stations and by the time they made their way to the correct queues, their respective polling stations had already closed. This was particularly so in the polling centres that had huge voter turnout and the voting venues were not properly organised such as social halls. This was the case in Gilgil DEB Primary School[181] Polling Centre, Gilgil Ward, Gilgil

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[175] Code No. 0028, Polling Centre Code No. 027 Registered voters 1,093 with 2 Polling Stations
[176] Code No. 1203, Polling Centre Code No. 028 Registered voters 1,322 with 2 Polling Stations
[177] Code No. 1105, Polling Centre Code No. 023 Registered voters 1,761 with 3 Polling Stations
[178] Code No. 0871, Polling Centre Code No. 011 Registered voters 762 with 2 Polling Stations
[179] Code No. 1046, Polling Centre Code No. 082 Registered voters 750 with 2 Polling Stations
[180] Code No. 0937, Polling Centre Code No. 032 Registered voters 671 with 1 Polling Station
[181] Code No. 0844, Polling Centre Code No. 006 Registered voters 4,326 with 7 Polling Station

Constituency in Nakuru County, Embakasi Social Hall, Embakasi Ward, Embakasi Constituency in Nairobi City County and at Water Kiosk Polling Centre, Bulla Pesa Ward, Isiolo North Constituency in Isiolo County.

Despite the foregoing, the Commission notes that IEBC officials complied with the law in respect to voters who arrived at a polling station/centre after 5 p.m. (or the extended time) which was the official closure time. Such voters were not permitted to vote and were instead turned away to their disappointment as witnessed at:

a. *Bahawani Primary School*[182] *Polling Centre, Kadzandani Ward, Nyali Constituency, Mombasa County;*
b. *Makutano Market Polling Centre*[183]*, Municipality Ward, North Imenti Constituency, Meru County;*
c. *Ilkarian Primary School*[184] *Polling Centre, Polling Station No. 001, Lolgorian Ward, Kilgoris Constituency, Narok County*[185]*;*
d. *Busara Primary School* [186] *Polling Centre, Umoja II Ward, Embakasi West Constituency, Nairobi City County;*
e. *Mwembe-Tayari Public Health* [187] *Polling Centre, Tononoka Ward, Mvita Constituency, Mombasa County and*
f. *Mwijo Primary School*[188] *Polling Centre, Kayafungo Ward, Kaloleni Constituency, Kilifi County.*

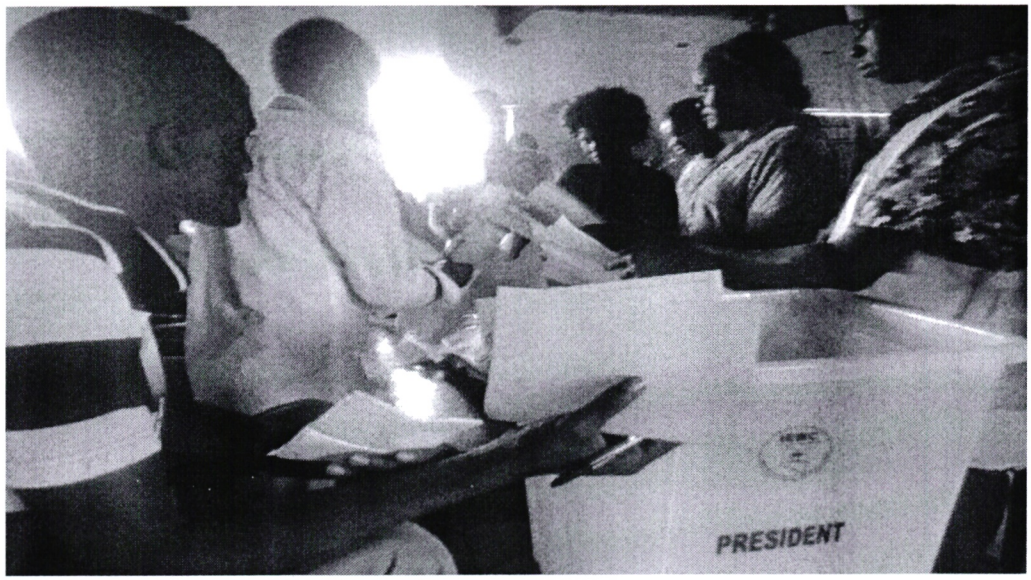
In conclusion, the Commission observed that most of the polling centres it monitored complied with the Regulations on closing of polls. Polling Stations that had voters still on the queue at closing time were allowed to exercise their democratic right to vote and in a few instances where voters turned up after the official closing of the polling stations, they were turned away.

4.5 Counting, Collating and Tallying Process

The Commission noted that before the commencement of the counting, collating and tallying process, the POs supported by the clerks sorted and verified all the votes cast beginning with those of Presidential candidates. The Presiding Officers (POs) and Clerks rearranged the Polling Stations to ensure visibility of all the ballot boxes and allow ample counting space to

[182] Code No. 0020, Polling Centre Code No. 024 Registered voters 2,028 with 3 Polling Stations
[183] Code No. 0276, Polling Centre Code No. 018 Registered voters 2,563 with 4 Polling Stations
[184] Code No. 0886, Polling Centre Code No. 110 Registered voters 2,377 with 4 Polling Stations
[185] County No. 33
[186] Code No. 1427, Polling Centre Code No. 002 Registered voters 13,018 with 19 Poiling Stations
[187] Code No. 0028, Polling Centre Code No. 024 Registered voters 3,334 with 5 Polling Stations
[188] Code No. 0064, Polling Centre Code No. 023 Registered voters 1,077 with 2 Polling Station3

ensure transparency. This was followed by the PO confirming and recording the serial number of the seals before breaking them open in the presence of the agents and observers. The ballot papers were to be sorted by only the IEBC clerks while the POs counted them according to the specific candidate, vote's validity and invalid vote's categories. The Commission observed that each candidate's' vote was counted separately, while tallying the rejected votes distinctly. After the entire process all bundles labelled before were returned to each of the respective empty IEBC ballot box. Each ballot box was then resealed and the seals recorded in the presence of the agents and observers.



IEBC officials and agents observing as the ballot papers were being sorted at Nalemusekon Primary School[189] *Polling Centre, Lokichar Ward, and Turkana South Constituency in Turkana County.* (Photo courtesy: KNCHR 2017)

The Commission documented forty three (43) incidences where sorting, verification and counting of ballots cast was stopped or interrupted for various reasons including: power blackout, IEBC officials taking rest breaks, disparities of the KIEMS data and ballots cast, consensus seeking regarding the counting process especially on what constituted invalid, rejected or disputed votes, disagreements between various political parties or independent agents, interruption by candidates accompanied by rowdy supporters or agents and disagreements between the candidates agents and the POs on how to sort the ballot papers or the miscalculation of the valid votes. The Commission documented a number of incidents relating to the sorting, verification and counting of ballots cast, which included:

[189] Code No. 0635, Polling Centre Code No. 080 Registered voters 760 with 2 Polling Stations

1. *At Muthangene Primary School[190] Polling Centre, Abothuguchi West Ward, Central Imenti Constituency in **Meru County** the counting of votes was stopped for 30 minutes to enable the IEBC officials to rest after having worked for long hours;*
2. *At St. Matthews Hall Polling Center in Starehe Constituency, **Nairobi City County**, the counting of votes was stopped twice to allow the IEBC clerks and party agents to rest due to exhaustion after working for long hours;*
3. *At Busara Primary School Polling Centre, Umoja II Ward, Embakasi West Constituency, **Nairobi City County**, the counting was stopped for some time when it was interrupted by some agent of Jubilee Party who were drunk and disorderly;*
4. *At St. Dominic Primary School[191] Polling Center, Mwiki Ward, Kasarani Constituency, **Nairobi City County**, the counting stopped when an ODM agent who was outside, tried to access a Polling Station claiming that there was no agent inside that particular Polling Station representing the NASA coalition;*
5. *At Bomu Primary School[192] Polling Centre, Polling Station No. 014, Port Reitz Ward, in Changamwe Constituency, **Mombasa County**, the PO requested for a break of five minutes for the IEBC officials and agents to rest. However, the break lasted for about 30 minutes;*
6. *At Star of the Sea Primary School[193] Polling Center in Mji Wa Kale/Makadara Ward, Mvita Constituency, **Mombasa County**, the counting stopped when a chief agent from Jubilee Party, interrupted the process complaining that the PO had allowed for the counting of the gubernatorial votes while they were to be counted last as had been agreed by all parties present;*
7. *At Karangi Primary School Polling Center, Laikipia West Ward, Laikipia Constituency, **Laikipia County**, the counting was stopped because a KANU agent monitoring the senatorial seat wanted to force himself into the Counting hall without the necessary documentation;*
8. *At Uriri Primary School[194] Polling Centre, Polling Station 3, South Kanyamkago Ward, Uriri Constituency, **Migori County**, the counting was stopped for some time, due to chaos caused by some of the drunk agents;*
9. *At Nado-Enterit Primary[195] Polling Station in Keekonyokie Ward, Kajiado West Constituency, **Kajiado County**, the counting of votes was stopped because some agents complained that the IEBC clerks were not audible when counting forcing them to repeat the entire counting;*
10. *At Ongata Rongai Open Air Market[196] Polling Centre, Polling Station No. 022 in Ongata Rongai Ward, Kajiado North Constituency, **Kajiado County**, the exercise was*

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[190] Code No. 0287, Polling Centre Code No. 052 Registered voters 1,550 with 3 Polling Stations

[191] Code No. 1397, Polling Centre Code No. 008 Registered voters 11,883 with 17 Polling Stations

[192] Code No. 0001, Polling Centre Code No. 001 Registered voters 9,625 with 14 Polling Stations

[193] Code No. 0026, Polling Centre Code No. 004 Registered voters 1,932 with 3 Polling Stations

[194] Code No. 1280, Polling Centre Code No. 067 Registered voters 1,796 with 3 Polling Stations

[195] Code No. 0926, Polling Centre Code No. 024 Registered voters 692 with 1 Polling Station

[196] Code No. 0912, Polling Centre Code No. 017 Registered voters 17,392 with 25 Polling Stations

stopped when some ODM agents were dissatisfied with the IEBC approach on sorting out the ballot papers. They demanded the PO to repeat the process and ensure that they displayed all the ballot papers as they sort them out. The interruption caused a lot of tension between the IEBC officials and the agents present. The Police Officers were called in and the PO agreed to start the whole process all over again. Despite this, no discrepancies were found;

11. *At Moipei Primary School Polling Center, in Ildamat Ward, Kajiado North Constituency,* ***Kajiado County****, the vote counting was stopped at the presidential tallying when the candidate Raila Odinga votes were not adding up. After the recount, the discrepancies were noticed and rectified and counting continued on well;*
12. *At Kimumu Secondary School*[197] *Polling Centre, Polling Station No. 005, Kimumu Ward, Moiben Constituency,* ***Uasin Gishu County****, the counting stopped due to a dispute by some agents regarding whether or not to reject two presidential ballot papers that bore a symbol that was not earlier contemplated as acceptable. The voters had marked the portrait of the Presidential candidate instead of the box provided in the ballot paper;*
13. *At Kilusu Primary School*[198] *Polling Center, Ilmotiok Ward, Narok West Constituency,* ***Narok County****, the vote counting was stopped because the voter turnout contained in the KIEMS was 366 while the votes cast were 401 thus the numbers and votes were not tallying and*
14. *At Kacheliba Mix Primary School* [199] *Polling Center, Suam Ward, Kacheliba Constituency,* ***West Pokot County***[200]*, the counting stopped when a case was reported on discrepancy of the figures contained in the KIEMS and the actual number of votes cast.*

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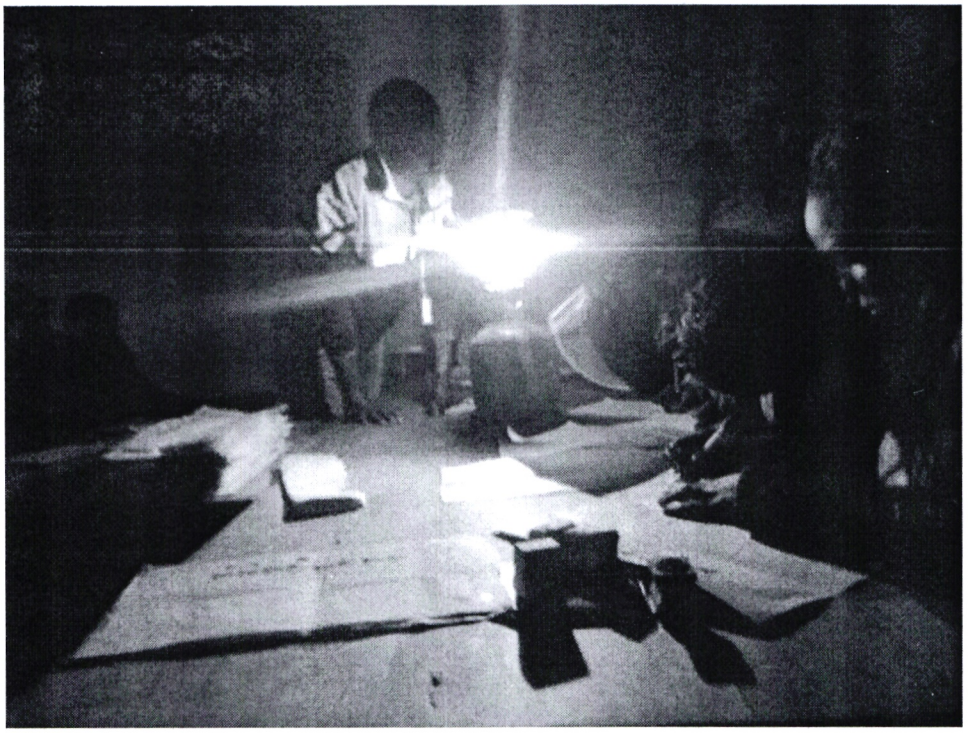
[197] Code No. 0718, Polling Centre Code No. 093 Registered voters 4,345 with 7 Polling Stations

[198] Code No. 0182, Polling Centre Code No. 010 Registered voters 1,105 with 2 Polling Stations

[199] Code No. 0651, Polling Centre Code No. 003 Registered voters 1,049 with 2 Polling Stations

[200] County No. 24



At Londiani township primary school, Kedowa/Kimugul Ward, Kipkelion East Constituency, Kericho County, poor lighting was witnessed during the counting of the votes.
(Photo courtesy: KNCHR 2017)

4.5.1 Tabulation, Announcement and Signing off the Final Results

The Commission observed that the results at the polling stations were tabulated and keyed into the IEBC statutory Form depending on the six electoral levels i.e. Member of County Assembly[201], Member of Parliament[202], County Woman Representative[203], Senator[204], Governor[205] and President[206]. The Commission further observed and documented the tabulation for each candidate's' results in their respective statutory forms. After tabulation, the PO announced the results immediately at the Polling Station and the Constituency Returning Officer at the Constituency Tallying Centre.

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[201] Form 36A [Reg.79 (2) (b)] Member of county assembly election results at the polling station.

[202] Form 35A [Reg.79 (2) (b)] Member of national assembly election results at the polling station and Form 35B [Reg.83 (1) (e)] Declaration of member of national assembly election results at the constituency tallying centre.

[203] Form 39A [Reg. 79(2) (b)] County woman representative to the national assembly election results at the polling station and Form 39B [Reg. 87(1) (a)] Collation of county woman representative to the national assembly election results at the constituency tallying.

[204] Form 38A [Reg. 79(2) (b)] Senate election results at the polling station and Form 38B [Reg. 87(1) (a)] Collation of senate election results at the constituency tallying centre.

[205] Form 37A [Reg. 79(2) (b)] County governor election results at the polling station and Form 37B [Reg. 87(1) (a)] Collation of county governor election results at the constituency tallying centre.

[206] Form 34A [Reg.79 (2) (a)] Presidential election results at the polling station, Form 34B [Reg.87 (1) (a)] Collation of presidential election results at the constituency tallying centre, Form 34C [Reg.87 (3) (b)] Declaration of results for election of the president of the republic of Kenya at the national tallying centre and Form 34D [Reg.87(3)(f)] Certificate of the president- elect of the republic of Kenya

In the Polling Stations monitored by KNCHR, the Commission observed that the POs announced the signed final results for each candidate. However, a few incidences were documented where agents present did not sign the results announced or the presence of political agents was absent altogether especially in the prisons. The following prisons were identified:

1. *At Kamiti Main Prison[207] Polling Station, **Nairobi City County**, the forms were not signed by agents as there were none. The PO was innovative and obtained the signatures from the prisoners who voted to sign-off in the statutory forms;*
2. *At Shimo La Tewa Women[208] Prison Polling Station, **Mombasa County**, there were no party agents at the centre to sign the forms;*
3. *At Naivasha Main[209] Prison Polling Station, **Nakuru County**, at the point of signing, there were no political party agents to sign the forms and therefore their sections were marked with a dash as opposed to leaving them blank and*
4. *At Naivasha Women[210] Prison Polling Station, **Nakuru County**, the Presiding officer signed the statutory forms without the presence of any party agents.*

4.5.2 Issuance and Displaying the Final Results at Polling Stations

The Commission observed and documented the use of the prescribed IEBC statutory forms by the POs and ROs while they tabulated each candidate's' results. The forms had multiple carbon-copies to minimise clerical work especially while getting copies of results for the agents of the respective candidates. Copies of the final results were issued to various political parties' and independent agents at the close of polls as required by law.

However, the Commission documented instances where the POs did not issue copies of the results to the agents and instead issued either a single copy to all agents or read out results. These situations caused challenges with the agents in the following areas:

1. *At Segero Trading Centre [211] Polling Station, Segero/Barsombe Ward, Soy Constituency, **Uasin Gishu County**, the PO did not display the results in a conspicuous place at the end of polling. This was because the Polling Station was a tent which was later pulled down after the voting exercises was concluded;*
2. *At Kagio Primary School[212] Polling Center, Mutithi Ward, Mwea Constituency, **Kirinyaga County**, the PO did not display the results in a conspicuous place at the end of polling. He instead read out the results to all present;*

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[207] Constituency Code 292, Code No. 1451, Polling Centre Code No. 113 Registered voters 653

[208] Constituency Code 292, Code No. 1451, Polling Centre Code No. 002 Registered voters 10

[209] Constituency Code 292, Code No. 1451, Polling Centre Code No. 073 Registered voters 236

[210] Constituency Code 292, Code No. 1451, Polling Centre Code No. 075 Registered voters 4

[211] Code No. 0704, Polling Centre Code No. 054 Registered voters 667 with 1 Polling Station

[212] Code No. 0496, Polling Centre Code No. 001 Registered voters 2,794 with 4 Polling Stations

3. *At Nakeel Primary School Polling Centre*[213]*, Polling Station No. 001, Nkaimurunya Ward, Kajiado North Constituency,* ***Kajiado County*** *and YMCA Hall*[214] *and Naivasha Municipal Park*[215] *Polling Centres, Viwandani Ward, Naivasha Constituency,* ***Nakuru County*** *and at Nyamataro Market*[216] *and Nyakoe TBC*[217] *Polling Centres, Kitutu Central Ward, Kitutu Chache South Constituency,* ***Kisii County***[218]***,*** *the POs also read out the results to those present and they were not displayed;*
4. *At Umoja 2 Trading Center* [219] *Polling Centre, Lanet/Umoja Ward, Bahati Constituency,* ***Nakuru County****, the PO did not display the results in a conspicuous place at the end of counting because polling station was inside the compound of a mosque. The PO was not allowed by the Sheikh to pin up the results.*
5. *At Kapsowar Primary School*[220] *Polling Centre, Kapsowar Ward, Marakwet West Constituency in* ***Elgeyo/Marakwet County****, the PO did not display the results in a conspicuous place at the end of polling exercise. Instead the results were taken to the Constituency Tallying Center and*
6. *At Soweto Social Hall Polling Centre, Lower Savannah Ward, Embakasi East Constituency,* ***Nairobi City County,*** *out of the twenty-eight (28) Polling Stations, only one (1) PO displayed the results in a conspicuous place after the counting and announcement of results.*

4.5.3 Transmission of Results

The transmission of results is outlined in the Elections Act and Election (Technology) Regulations of 2017, Section 44, which requires IEBC to tally, tabulate, announce and transmit the final results electronically using the various statutory forms at Polling Stations simultaneously, to the Constituency Tallying Centre, County Tallying Centre and to the National Tallying Centre.

The IEBC deployed the use of the Results Transmission System (RTS) to transmit all the results at the four levels. IEBC contracted three internet service providers; Safaricom, Airtel and Telkom to provide the network coverage and ensure that there is effective functioning all the time for the RTS system. However, on 2nd August 2017, the IEBC stated that out of the forty thousand eight hundred and eighty three (40,883) Polling Stations, eleven thousand one hundred and fifty-five (11,155) Polling Stations (27%) were not within the 3G or 4G GSM network coverage[221]. IEBC would therefore look for alternatives and also use the Satellite

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[213] Code No. 0913, Polling Centre Code No. 018 Registered voters 9,849 with 15 Polling Stations

[214] Code No. 0843, Polling Centre Code No. 084 Registered voters 3,125 with 5 Polling Stations

[215] Code No. 0843, Polling Centre Code No. 083 Registered voters 5,596 with 8 Polling Stations

[216] Code No. 1344, Polling Centre Code No. 046 Registered voters 1,489 with 3 Polling Stations

[217] Code No.1343, Polling Centre Code No. 034 Registered voters 1,536 with 3 Polling Stations

[218] County No. 45

[219] Code No. 0686, Polling Centre Code No. 003 Registered voters 1,149 with 2 Polling Stations

[220] Code No. 0739, Polling Centre Code No. 110 Registered voters 1,083 with 2 Polling Stations

[221] https://www.iebc.or.ke/resources/?Non_3G_Network_Polling_Stations

phones which were issued to each Constituency without coverage. However, no further breakdown of these specific Polling Stations was provided even when the Commission sort for specificity.

The Commission documented instances where the Results Transmission System (RTS) worked and in areas that malfunctioned lack of network connectivity which information was based on the POs' accounts. In some Polling Stations, the POs travelled to the Constituency Tallying Centres to upload the forms into the KIEMS where the POs scanned Form 34A, sent the text and image through the RTS. This was confirmed through a display of a "*sent notification*". Although, the Commission observed that the Presidential results started streaming in and displayed on the television screen, the same was not immediately available in the public portal. The IEBC, started uploading Forms 34A in the public portal after the announcement of Presidential results. Some of the Polling Centres that were impacted negatively by the lack of 3G and 4G network to facilitate the RTS transmission include;

Issue	Polling Station/Centre
Disparity in the number of ballots cast and the number of voters in the KIEMS	*Kacheliba Mixed Primary School Polling Center, Suam Ward, Kacheliba Constituency,* ***West Pokot County***
The KIEMS were not used to transmit the results due to the lack of 3G or 4G network connectivity at the Polling Centres	*National Industrial Training Authority*[222] *Polling Centre, Ziwa la Ng'ombe Ward, Nyali Constituency,* ***Mombasa County*** *Muthangene Primary School Polling Center, Abothuguchi Ward, Central Imenti Constituency,* ***Meru County*** *Utangwa HGM Primary School*[223] *Polling Centre, Polling Station No. 002. Kithungo/Kitundu Ward, Mbooni Constituency,* ***Makueni County***[224] *Ifwetere Primary School*[225] *Polling Centre, South Kabras Ward, Malava Constituency,* ***Kakamega County*** *Frere Town Primary School*[226] *Polling Centre, Frere Ward, Nyali Constituency,* ***Mombasa County***

[222] Code No. 0017, Polling Centre Code No. 008 Registered voters 3,564 with 6 Polling Stations

[223] Code No. 0413, Polling Centre Code No. 092 Registered voters 917 with 1 Polling Station

[224] County No. 17

[225] Code No. 1008, Polling Centre Code No. 096 Registered voters 1,025 with 2 Polling Stations

[226] Code No. 0016, Polling Centre Code No. 004 Registered voters 6,057 with 9 Polling Stations

	Ola Yaa Nur School[227] *Polling Centre, Sagante/Jaldesa Ward, Saku Constituency,* ***Marsabit County*** *Suneka Primary School Polling Centre, Bomorenda Ward, Bonchari Constituency,* ***Kisii County***

4.5.4 Transportation of the Electoral Materials

Section 44(5) of the Elections Act, 2017, provides among other things; information security, data availability, accuracy, integrity, confidentiality and retention of the voting materials for a period of three (3) years following the elections. Further the Constitution under Article 86(d) and the Elections Act Section 2 and Regulation 93(1) provides that; all election materials, including ballot boxes, ballot papers, counterfoils, information technology equipment for voting, seals and other materials, are to be retained in safe custody by the Returning Officers after the results of the election have been declared.

The Commission observed that after closing of the polls, the POs delivered the elections materials listed above to their respective Constituency Returning Officers for safe keeping. Transportation of these materials was done by motor vehicles hired by IEBC that comprised of school buses, vans and public service vehicles. The electoral materials were also escorted by Police Officers until delivery to their final destination. In some areas, the Political Parties and independent candidates' agents were allowed to accompany the IEBC officials up to the Constituency Tallying Centres. There was no significant incident observed in respect to the transportation of the ballot materials.

4.6 Prisoners Right to Political Participation

Since independence in 1963, Kenyans have participated in General Elections with the exceptions of persons deprived of their liberty, held in one hundred and seventeen (117) prisons. Since 1990's and especially in the agitation for a new Constitution in 1997 and 2010, non-governmental organisations together with KNCHR maintained the view that prisoners too have rights and should be able to participate not only in referendums but also in the General

[227] Code No. 0233, Polling Centre Code No. 007 Registered voters 116 with 1 Polling Station

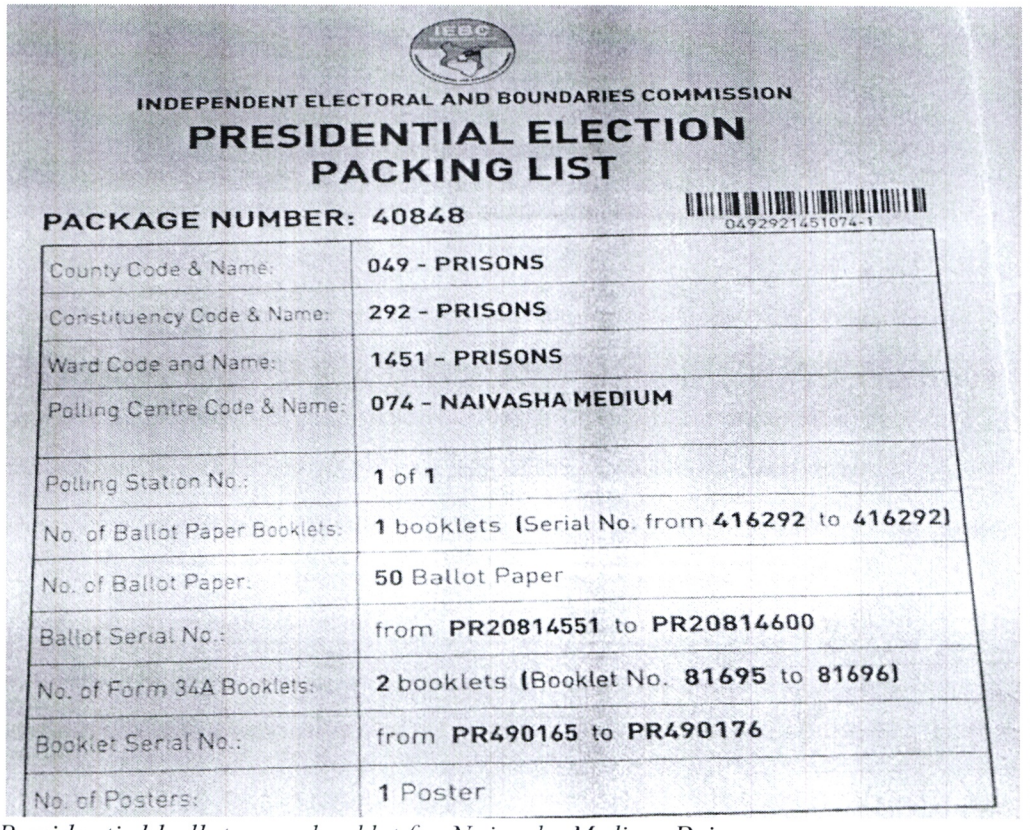
Elections. On 14th December 2012, *Kituo cha Sheria* filed another Public Interest Litigation (PIL) petition[228] which was premised on the provisions of Articles 22(2) and 258(2) of the Constitution 2010. The petition sought the enforcement of and the realization of the rights of prisoners to be registered as voters and their right to political participation on the 4th March 2013 General Election, others future elections and referenda. The High Court agreed with the petitioners that prisoners too had a right to political participation under Article 38, of Constitution 2010. However, IEBC submitted that there was not adequate time to prepare for the prisoners to participate in the March 2013 elections, hence the prisoners did not participate in the election. On 31st January 2017 IEBC, Gazetted the 118 prisons as Registration Centres and Polling Stations for the prisoners. During the registration period, between 20th and 27th February 2017 a total of five thousand five hundred and twenty-eight (5,528) prisoners were registered to vote. These voters were gazetted to vote for the Presidential candidates only. The following had the highest number of registered voters (Polling stations with more than 100 prison voters);

	Name of Polling Station	**County**	**No. of Voters**
1	Kamiti Main Prison	Nairobi City	653
2	Shimo La Tewa Main Prison	Mombasa	324
3	Meru Main Prison	Meru	237
4	Naivasha Main Prison	Nakuru	236
5	Embu Main Prison	Embu	234
6	Kisumu Main Prison	Kisumu	206
7	Nyeri Main Prison	Nyeri	177
8	Kakamega Main Prison	Kakamega	171
9	Kamiti Medium Prison	Nairobi City	160

[228] Petition 574 of 2012; Kituo cha Sheria v Independent Electoral and Boundaries Commission & another [2013] eklr;

10	Manyani Prison	Taita Taveta	157
11	Malindi Prison (B)	Malindi	148
12	Kibos Main Prison (B)	Kisumu	141
13	Nanyuki Prison	Laikipia	130
14	Makueni Prison (B)	Makueni	124
15	Machakos Women Prison	Machakos	124
16	Langata Women Prison	Nairobi City	114

IEBC mapped out all the prisons and gave them a national code No. 049. These Polling Stations were to be distinct from the other prison community Polling Stations. This meant that these Polling Stations were reserved only for prisoners. The prison staff and the neighbouring community were to have their own and separate Polling Stations.



INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION

PRESIDENTIAL ELECTION PACKING LIST

PACKAGE NUMBER: 40848

0492921451074-1

County Code & Name:	049 - PRISONS
Constituency Code & Name:	292 - PRISONS
Ward Code and Name:	1451 - PRISONS
Polling Centre Code & Name:	074 - NAIVASHA MEDIUM
Polling Station No.:	1 of 1
No. of Ballot Paper Booklets:	1 booklets (Serial No. from 416292 to 416292)
No. of Ballot Paper:	50 Ballot Paper
Ballot Serial No.:	from PR20814551 to PR20814600
No. of Form 34A Booklets:	2 booklets (Booklet No. 81695 to 81696)
Booklet Serial No.:	from PR490165 to PR490176
No. of Posters:	1 Poster

The Presidential ballot paper booklet for Naivasha Medium Prison.

(Photo courtesy: KNCHR 2017)

The Commission also focused on the rights of prisoners to political participation with particular focus on their right to vote. This monitoring was undertaken in two phases; voter registration exercise and voting as follows;

4.6.1 Registration of Prisoners

The Commission mapped out and monitored twenty-nine (29) prisons in respect to how IEBC with the support of the Kenya Prison Services (KPS) undertook the registration process. This was particularly important for the Commission as it was the first-time prisoners being a special and vulnerable category, were being registered to participate in the General Election. Further, under the Persons Deprived of Liberty Act, 2016, the Commission has a special mandate to inspect and monitor compliance of places of detention with Human Rights principles; and receive complaints from the prisoners[229]. The following observations were made;

a) Identification Card

The Commission noted that most of the prisoners were unable to register because they did not have their identification cards (ID). This was mainly because at the point of arrest, most of the prisoners either didn't have identification documents on themselves or they were left at the police stations. For those prisoners who were willing to cooperate, the Kenya Prisons Service facilitated them to communicate with relatives or friends to avail ID cards for their registration in prison.

Other prisoners were facilitated with replacement of their IDs through the Office of the Registrar of Persons. However, this support by KPS was not done uniformly because a lot depended on the goodwill of the Prison Officers especially the Officer-in-Charge in collaboration with the Welfare Officers. Therefore, many prisoners were locked out of the registration thereby were not eligible as voters.

b) Registration and self-incrimination

The Commission observed that many prisoners also feared to register as voters because they feared revealing their 'true' identity and also feared that the biometric registration system would be linked to the Directorate of Criminal Intelligence (DCI) database for criminal records.

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[229] Section 27(8)

It was revealed that some prisoners who were arrested without any identification documents would use other names to hide their identity.

c) Registration period

The Commission observed that IEBC had set a very short time which was not sufficient to allow the prisoners to organize themselves and be ready for the registration given their peculiar circumstances. The prisoners were given one (1) week to register. This was inadequate for the prisoners to signal their relatives and friends to facilitate and bring their ID card to the prison for voter registration. The prison management together with the prisoners expressed that they had expected the Office of the Registrar of Persons to be more facilitative to the prisoners in assisting them acquire or collect their ID cards in good time.

Further, this registration period also meant that prisoners who were being processed for transfer to other prisons were locked out of the registration process in their current location and in the prison of transfer due to other competing prison priorities like security and transport. The Commission held discussions with the KPS together with other non state actors to ensure that no prisoners were transferred unnecessarily as this would disenfranchise those already registered.

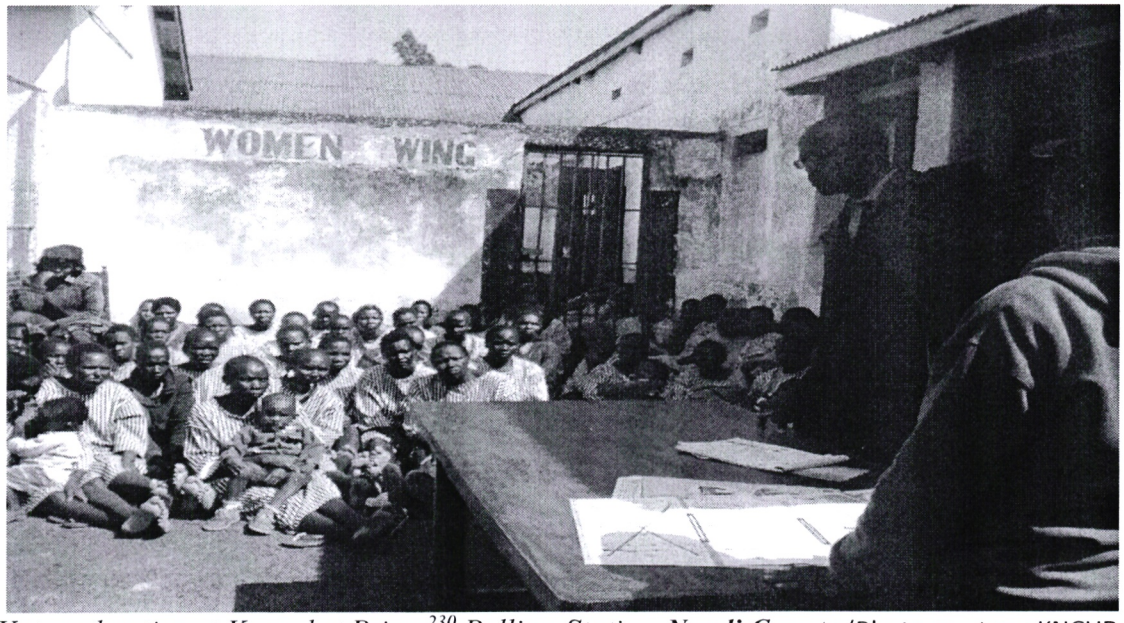
d) Voter Education and Dignity

The IEBC together with other stakeholders in the Prisons Reform Working Group (PRWG) which comprises of mainly non-state actors and the Commission, made considerable efforts to ensure that prisoners were sensitized on elections, prior to the General Election. However, through the Commission's routine prison visits, many prisoners expressed the fear that they needed more sensitization in respect to both the registration and voting process.

Voter education for the prisoners was very limited and poorly coordinated by IEBC and many registered voters felt left out and inadequately prepared on how to vote. The Commission observed that many prisoners participated in the voting process, with many unanswered concerns including; why they were not allowed to vote for all the six elective positions, why they were not allowed to engage with campaigns, why they were not allowed to receive

campaign materials including party manifestos, what would happen to their fingerprint data, among other general concerns.

The prisoners who finally managed to vote felt dignified that their pleas to participate in matters of national importance had been heard. They felt that by exercising their right to vote, they had now begun the rehabilitation process and could now see themselves contributing positively for the development of the nation.



Voter education at Kapsabet Prison[230] *Polling Station,* ***Nandi County*** (Photo courtesy: KNCHR 2017)

It is important to note again that, the Commission together with the Prisons Reform Working Group (PRWG) have agitated for substantive prison reforms within the correctional facilities to facilitate rehabilitation, reintegration and observance of human rights. The participation of prisoners in the Tuesday 8th August 2017 elections was an indelible milestone in the realization of the rights and freedoms of prisoners not only in Kenya but also in Africa and the rest of the world. The Officers in Charge (OIC) in the various prisons expressed their delight and impact on the reforms in the prisons and country as a whole. They stated that the right to vote for prisoners was a positive move which was aimed at appreciating the prisoners as human beings and who are part of the Republic. They noted that this participation of prisoners would impact

[230] Constituency Code No. 292 Code No. 1451, Polling Centre Code No. 066 Registered voters 95

positively in the long ran in the welfare of the state. While echoing similar sentiments, the Commissioner General of Prisoners, Mr. Isaiah Osugo intimated that no prisoner had been coerced or persuaded to vote for a particular candidate.

4.6.2 Monitoring the Polling Process in Prisons

Unlike in the general public where Polling Centres had several of Polling Stations, it was observed that there was only one polling station per prison in all the stations monitored by KNCHR. The poll opening process was the similar to the polling stations serving the general public, except for a few differences due to the prevailing environment in prisons. The Commission took note of the following issues:

i. Security and the Environment

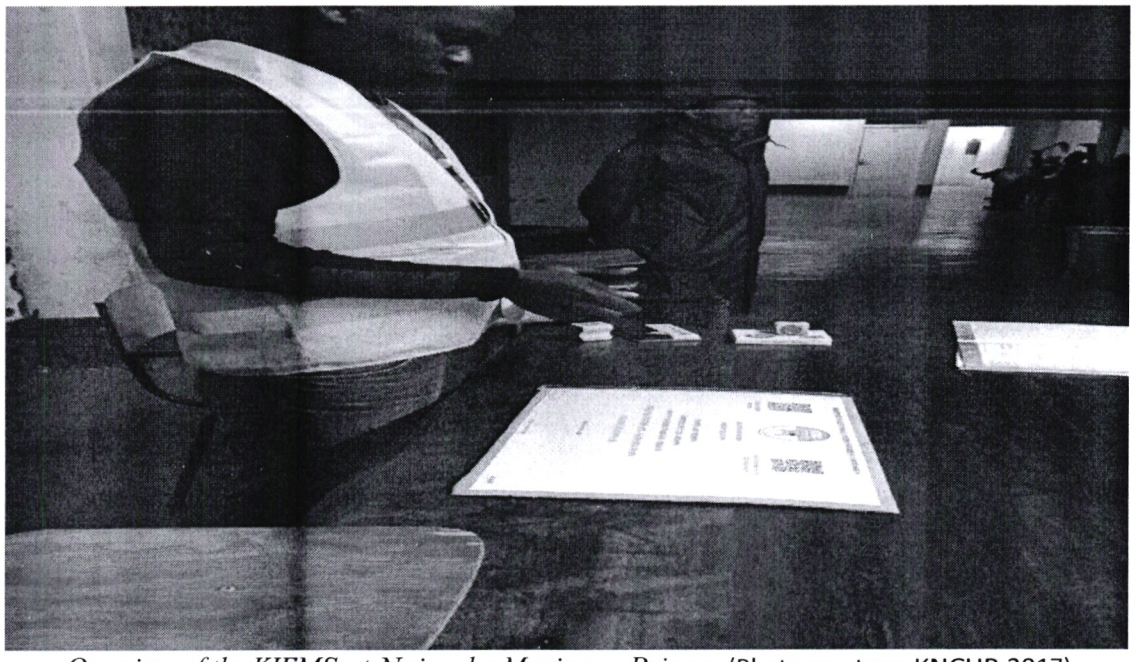
All prison and remand facilities are security installations by their own nature. The therefore did not require extra security other than the security provided by the Kenya Prison Service officers. However, the requirement of electoral security for purposes of securing the voting process and equipment including the ballot papers, polling booths and other necessities for the voting process was provided. In all the Polling Stations, the Commission observed that IEBC officials made the necessary arrangements to secure the vote that included the provision of Security Officers at the Polling Station for the period of the voting, counting and the transportation of the ballot boxes to the Constituency Tallying Centre.

The Prison Officers involved in the electoral process had received special accreditation as IEBC to provide security. These officers coordinated prisoners based on their security profiles and blocks with the assistance of the Welfare Officers who were the custodians of all the IDs that were to be used by each voter when their time came.

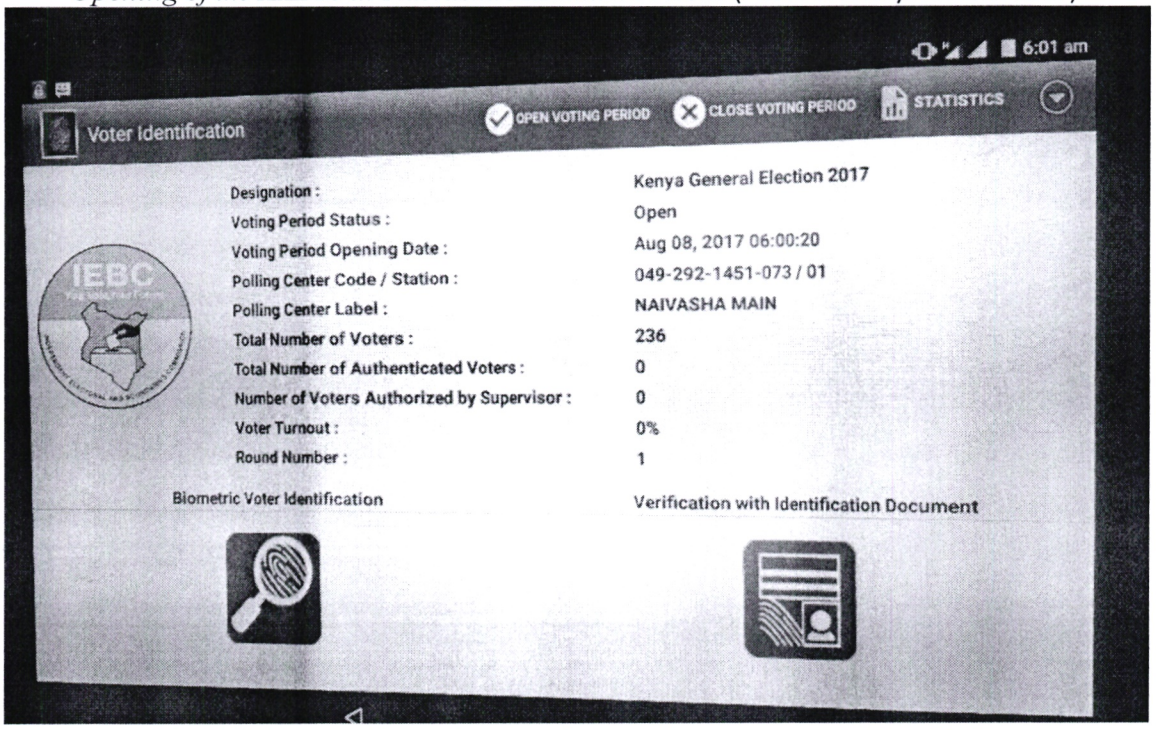
ii. Opening of the Polling Stations

The Commission lauds the IEBC for ensuring that all the materials were dispatched and delivered in good time in the prisons. IEBC opened the Polling Station at 6a.m., however, the prison regulations and routine demand that prisons are opened between 8.00am and 9.30am after the head count. This was an issue that the Officers in Charge or their representatives had communicated with the POs because these operational procedures were fundamental to the running of prisons and therefore could not be flaunted, despite the importance of the voting

exercise. The POs had no option but to conform to the Prison Regulations and wait for the prisoners to be released and escorted to their specific Polling Station.

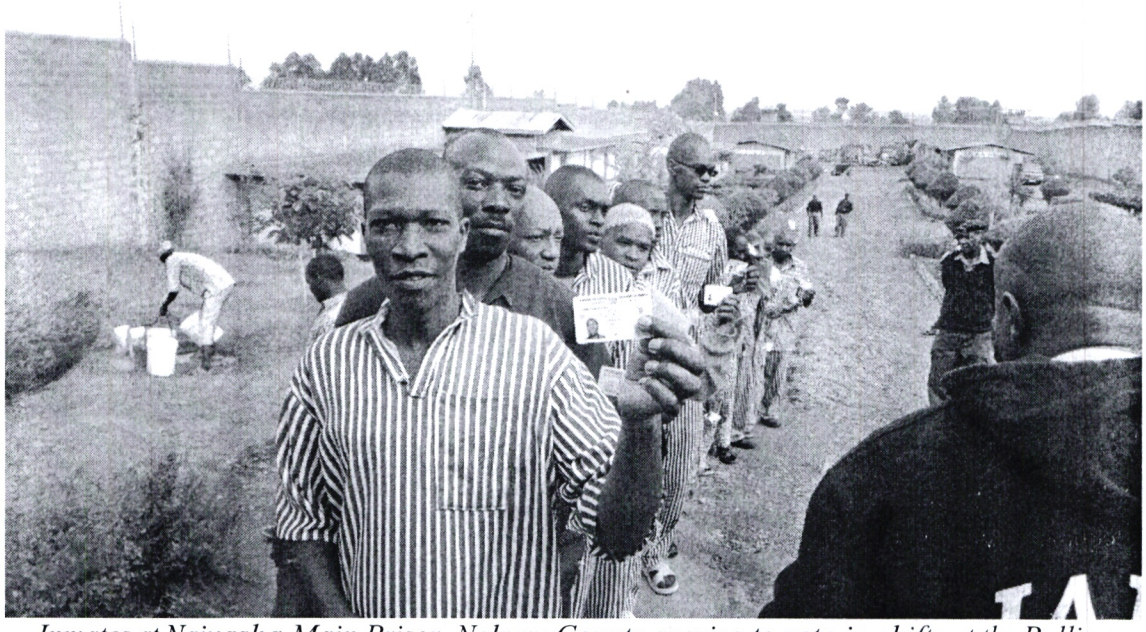


Opening of the KIEMS at Naivasha Maximum Prison. (Photo courtesy: KNCHR 2017)



The KIEMS kit at Naivasha Main Prison. (Photo courtesy: KNCHR 2017)

The voting exercise finally kicked off with the Welfare Officer together with the wardens on duty escorting the voters in bunches to ensure security. This process went on smoothly due to the fact that despite the strict security procedures the numbers were few in each Polling Station. Inmates who had registered in the prisons but had since been released were allowed to come back inside the prisons to vote.



Inmates at Naivasha Main Prison, Nakuru County queuing to vote in shifts at the Polling Station. [231](Photo courtesy: KNCHR 2017)

The Commission commends the Commissioner General of Prisons who had issued instructions to all Officers in Charge to oversee the exercise and ensure that all registered voters in prison voted according to the IEBC requirements. It was also noted that the Welfare Officers played a critical role in preparing both the voter with information on how the process was to take place on 8th August and also in keeping safely the voters ID card which they were given just before they moved out of the prison block to vote.

[231] Constituency Code No. 292 Code No. 1451, Polling Centre Code No. 073 Registered voters 1236



A prisoner casting her ballot at Naivasha Women's prison. (Photo courtesy: KNCHR 2017)

The Commission and other observers including the media were given unlimited access into the Polling Station, interaction with the prisoners who were voting and also with the IEBC officers conducting the polls. The IEBC officials were also accorded a secure space, facilities and an adequate environment to conduct the process.

However, the Commission noted with concern that in the prisons there were no party agents available. Some of the IEBC procedures were very specific and required the presence of party agents and their absence made for awkward situations for the POs to undertake and resolve. However, they were innovative and they relied on the available observers to ensure that there was integrity in the process and they could move on. This was especially so in the opening, application of Form 32A, closing counting and transmission of results. Therefore, though the POs proceed according to the law and regulations, confirmation of the ballot boxes and sealing before voting and other process were done but not signed for by the party agents. In many Polling Stations, there were neither observers nor agents.



A Prison Officer assists to mark a voter's small finger with the indelible ink after voting on 8th August 2017 at Nakuru Women's Prison Polling Station, Nakuru County.[232]
(Photo courtesy: KNCHR 2017)

The Commission observed that there were prisoners who had registered as voters but had since been transferred to another prison. KPS had not made any prior arrangements to have these prisoners transported back to vote in their respective Polling Stations which lead to a number of prisoners feeling aggrieved for being disenfranchised. However, in Nakuru Main[233] Prison Polling Station, **Nakuru County**, after discussions between the PO, Officer in Charge and the prisoners, KPS allowed the prisoners to be transported to Naivasha Main[234] Prison Polling Station Nakuru County to exercise their right to vote. However, due to logistical challenges, those who were in Naivasha Prisons and were supposed to vote in Nakuru Main Prison Polling Station did not make it on time as they found the Polling Station closed and they were turned away.

[232] Constituency Code No. 292 Code No. 1451, Polling Centre Code No. 077 Registered voters 19

[233] Constituency Code No. 292 Code No. 1451, Polling Centre Code No. 076 Registered voters 66

[234] Constituency Code No. 292 Code No. 1451, Polling Centre Code No. 073 Registered voters 236



A former prisoner casting her vote at Naivasha women's prison. (Photo courtesy: KNCHR 2017)



A prisoner casts his vote at Nyeri Main Prison, Polling Station, Nyeri County[235] *(Photo courtesy: KNCHR 2017)*

[235] Constituency Code No. 292 Code No. 1451, Polling Centre Code No. 043 Registered voters 177

At Kamiti Main Prison[236] Polling Station, **Nairobi City County,** they received prisoners who had been transferred to other prisons and they were allowed to vote before being taken back to their respective prisons.

iii. Closing the Polling Station, Counting and Announcement of Final Results

The Commission noted that the voters in prison finished very early due to their few numbers but the PO had to wait until 5pm when the Polling Station was closed. The ballots were counted and the final results processed accordingly without any problem. However, it is not clear how these results were treated, whether on their own as Prison Code No. 049 or within their respective counties once transmitted to the National Tallying Centre. This has continued to cause confusion because these results are hardly mentioned unlike Diaspora Code No. 048 nor form part of the record in Form 34C which was used to declare the Presidential winner.

4.6.3 Issues arising out of Prisons Polling Stations

The Commission observed a number of issues of concerns;

(a) Civilians voting along with prisoners

The Polling Stations Gazetted were to be used only by the prisoners as voters. These prisoners were to be only prisoners or remandees. This position had been carefully deliberated and arrived at due to the various security concerns of mingling civilians and prisoners especially in respect to the high risk of prisoners escaping.

However, the Commission noted that in some prisons, civilians were allowed to vote together with the prisoners. At *Nakuru Women*[237] *Prison, Polling Station, in* ***Nakuru County****, where three (3) Prison Warders voted, and at Kingorani Prison (B)*[238] ***Mombasa County,*** the prisoners and the general public were all allowed to vote within the same polling station. The registration of civilians in these two Polling Stations was in clear contravention of the law and regulations.

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[236] Constituency Code No. 292 Code No. 1451, Polling Centre Code No. 113 Registered voters 1653

[237] Constituency Code No. 292 Code No. 1451, Polling Centre Code No. 077 Registered voters 9

[238] Constituency Code No. 292 Code No. 1451, Polling Centre Code No. 005 Registered voters 31

(b) Transition from Prisoner to Voter

The Commission observed that though the Polling Station opened at 6.00 a.m, the prisoners were slow to be released to vote due to the strict prison processes of access and headcount. The head count is undertaken daily and at certain intervals in the day, which returns must be submitted daily to the Prisons Headquarters which caused further delay. However, once these processes began the same was laced with minimal interruptions.

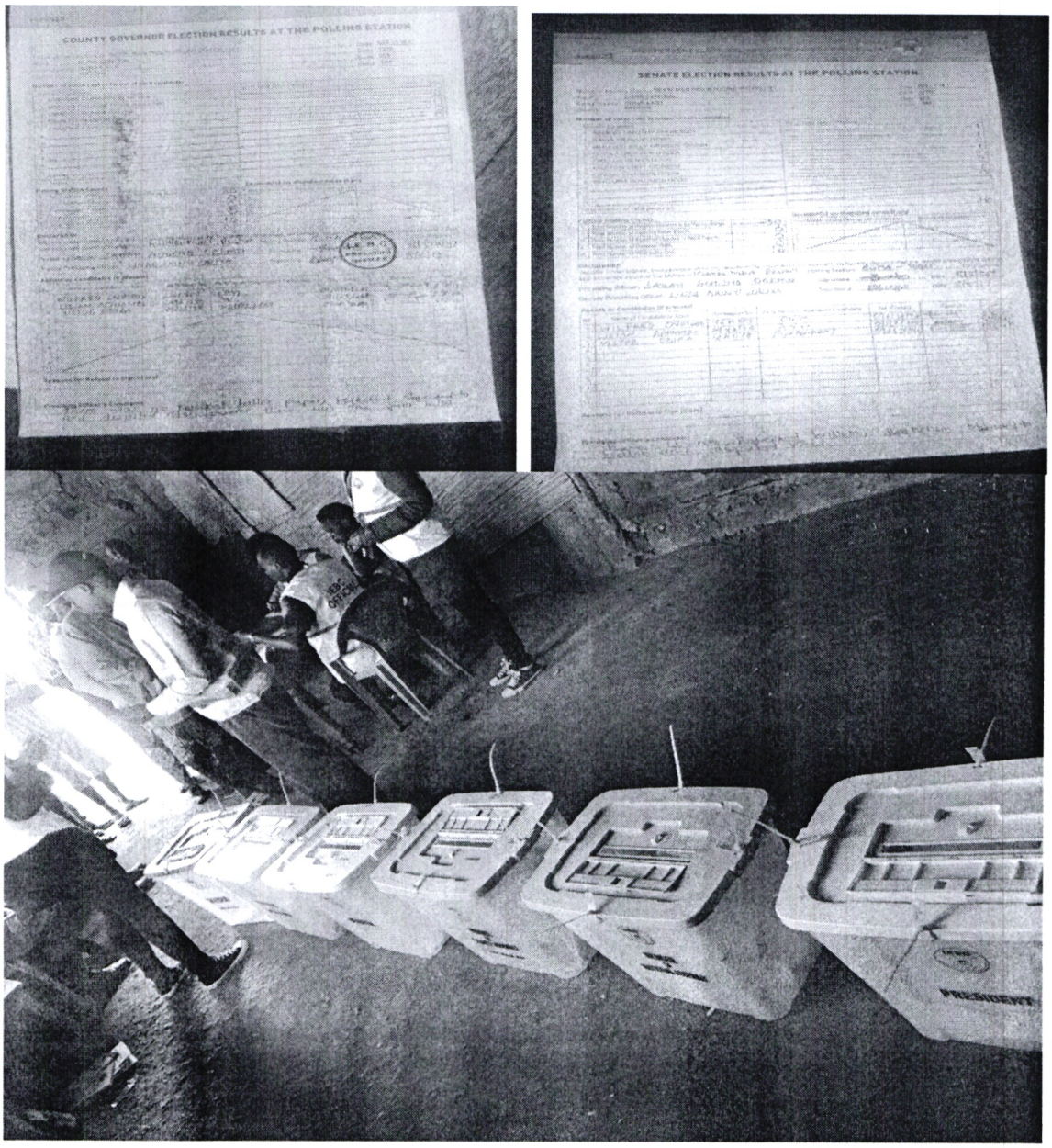


Prisoners at Naivasha Medium prison having an interactive session with KNCHR Commissioner Jedidah Waruhiu. (Photo courtesy: KNCHR 2017)

Immediately the prisoners voted, they were immediately returned to their blocks and their ID cards taken by the Welfare Officer for safe keeping. However, in *Naivasha Medium Prison,* ***Nakuru County****, the warders allowed the prisoners to have an interactive session with the Commission, where they inquired on; what was the role of the observer, why were they not allowed to vote for all candidates especially the governor, how they can be assisted to all register as voters so that next time they could vote, among others. It was clear that the prisoners also regarding the voting time to be an 'outing' which they took full advantage of.*

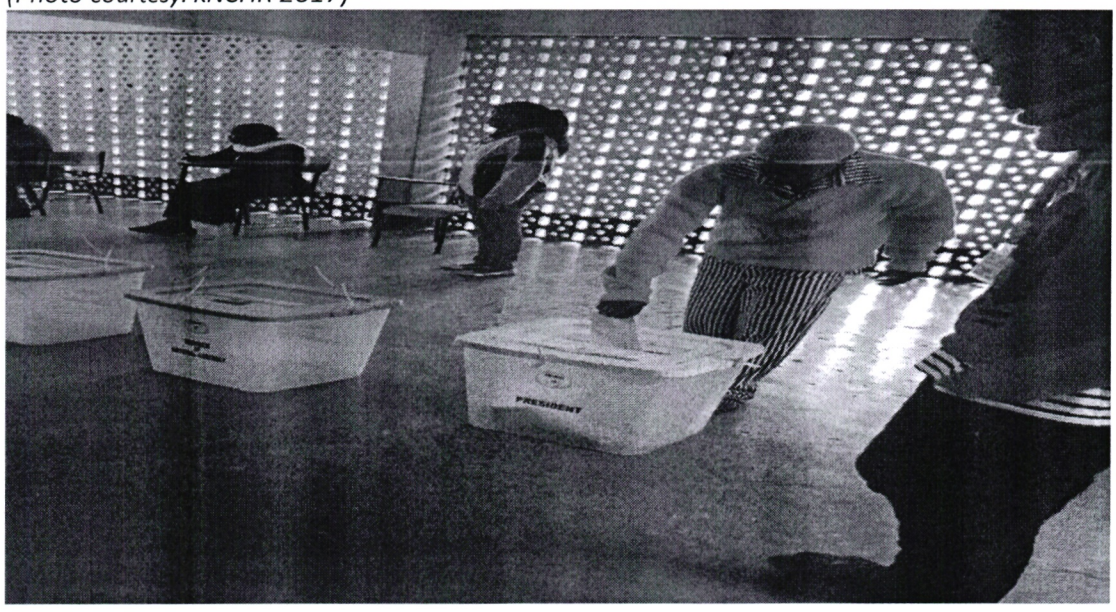
(c) Voting for all candidates

The IEBC Gazette notice, provided that prisoners who registered would only vote for the Presidential candidate. However, the Commission observed that at *Migori Prison (B)*[239] *Polling Station,* ***Migori County****, the prisoners were allowed to vote for all the six (6) electoral positions.*



[239] Constituency Code No. 292 Code No. 1451, Polling Centre Code No. 104 Registered voters 50

Migori Prison (B)[240] *Polling Station,* ***Migori County****, where prisoners were allowed to vote for all the six (6) electoral positions.*
(Photo courtesy: KNCHR 2017)



A prisoner at Naivasha Main prison casting his ballot. *(Photo courtesy: KNCHR 2017)*

This was unlike in *Naivasha Main Prison,* ***Nakuru County*** *where all the six ballot boxes were displayed, sealed and 5 of them closed because the prisoners were only going to vote for the Presidential candidate only. When the PO was asked why he had displayed and sealed the ballot boxes, he indicated that he had been supplied with all boxes and therefore he had to use them accordingly. Further he noted that he did not have any ballot papers for the other 5 positions and therefore there would be no ballots.*

In Conclusion, the Commission noted that despite the few challenges, the voting by prisoners was transparent and it was worth the investment by the various stakeholders. It is an opportunity that needs to be expanded to all prisoners and more elaborate mechanisms developed to ensure that prisoners vote whether they are transferred or released from prison.

It is interesting to note that in the United States of America (USA), Belgium, Germany and Iceland have disenfranchisement laws which vary based on specific factors, such as the felon's state of residence or the type of crime committed. It should be observed that the state laws, not federal laws, govern felon voting in the USA. These varied applications of prisoner's right to

[240] Constituency Code No. 292 Code No. 1451, Polling Centre Code No. 104 Registered voters 50

vote has necessitated the listing of these forty-five (45) countries into four categories to show the global trends. It is therefore clear that Kenya is the pace setter in Africa and also in other jurisdictions.

CHAPTER 5: POST-ELECTION FINDINGS

Introduction

Kenya's chequered history of post-election violence makes the announcement of the Presidential results a critical moment in the electoral cycle. The announcement of the Presidential results has always been marked by controversy and heightened tension in the country. With reference to the 2017 General Election, this Chapter focuses on the period between 9th and 15th August 2017 during which KNCHR documented incidences of unrest, protests, loss of lives, assault and destruction of property in some parts of the country that were directly related to the election.

Notably, KNCHR was cognisant of the possible scenarios after the 8th August General Election based on past experience and the hotspots it had mapped. In response, it took proactive measures by engaging with relevant stakeholders that play a vital role towards the realisation of the right to vote and be voted for.

The 2017 General Election generated intense interest and high stakes from various political actors who contested the various elective positions. It is against this background that as early as the time of vote tallying at the constituency level, KNCHR noted that there was heightened tensions in; Nairobi, Kisumu, Siaya, Homabay and Migori Counties in anticipation of the outcome especially of the Presidential results.

KNCHR received numerous observations and complaints on alleged human rights violations from its two hundred and fifty nine (259) monitors and members of public arising out of the electoral process. Pursuant to its Constitutional and Statutory mandate stipulated under Article 59(2) of the Constitution and Section 8 (b) (d) & (f) of the KNCHR Act, the Commission proceeded to conduct investigations with an aim of taking appropriate steps to address these violations. Notably, the Commission further invoked its investigative powers under Section 12 of the Prevention of Torture Act 2017 that specifically stipulates the Commission's mandate with regard to investigating cases of torture, cruel, inhuman and degrading treatment.

In this regard, it was inherent and imperative upon the Commission to document and maintain an accurate record of the violations that occurred during the post-election period as a basis for securing accountability and seeking redress for the violations perpetrated. The Commission documented incidences of civil unrest and protests, arbitrary arrests, excessive use of force by

police, civilian and police killings in several parts of the country including Mathare,Dandora,Kibera, Baba Dogo, Kawangware in Nairobi county, Nyalenda, Kondele, Obunga and Manyatta in Kisumu county and Migori, Homabay,Siaya,Garissa, Tana River and Elgeyo Marakwet counties.

5.1 Strategy and Methodology

The KNCHR enhanced its Elections Monitoring System (EMS) and developed specific tools that were tailor-made to respond to the post-election scenarios to facilitate accurate and verifiable data collection, as well as timely response to the reports received.

KNCHR deployed rapid response teams to the affected areas who interviewed and recorded statements from victims and key witnesses. These teams also conducted site visits to key places such as morgues, hospitals, police stations and scenes where the violations had occurred for purposes of gathering and collating evidence. The teams further held interviews with experts including doctors and observed various post-mortems being undertaken and also obtained the requisite documents that included medical and post-mortem reports.

The KNCHR noted that the National Police Service for instance had an elaborate election security strategy with a plan to deploy approximately 180,000 officers to provide security during the election period. The personnel was to be drawn from other security agencies including Kenya Wildlife Service, Kenya Forest Service, Kenya Prison Service and the National Youth Service among others.

In the foregoing, KNCHR was concerned that many of the officers from other agencies are not ordinarily specialised in crowd management control and civilian protests . As part of its advisory role, KNCHR held 10 regional training workshops, where 450 senior security actors were empowered on how to uphold human rights and specifically the right to assembly and crowd management. KNCHR further developed and disseminated an educational video and IEC materials for sensitization of both the public and the security actors on the role and obligations when exercising the right to assembly and undertaking public order management. This was compounded by an advisory issued to the Inspector General and the Cabinet Secretary Ministry of Interior and Coordination of National Government.

In addition, the Commission further synergized and worked closely with representatives, key partners from various agencies, human rights defenders (HRDs) and the media to augment its interventions in the post-poll period.

5.2 Right to Life

The Constitution of Kenya 2010 guarantees all citizens the right to life under Article 26; which further enumerates that the same shall not be deprived of an individual intentionally. The perpetration of offences against this right can be from state, civilians or external aggression.

Elections in Kenya have increasingly been marked with periods of tension that often lead to polarization along ethnic and political lines, the 2017 polls not being an exception. While the polls are an opportunity for citizens to exercise their constitutionally guaranteed right to vote and be voted for, there have been trends that threaten the tenets of democracy, democratic practices and the respect for the rule of law.

These trends exist besides continuous efforts that target strengthening laws and policies that govern the conduct of key election actors top among them being the Independent Electoral Boundaries Commission (IEBC), political parties, candidates, National Police Service (NPS), other security agencies and other auxiliary stakeholders.

A majority of electoral reviews entrenched in recent times were informed by borrowed lessons especially from the 2007/2008 post - election violence which marked the darkest and worst post-colonial moments in Kenya. The key highlight of the violence was the massive loss of life that was witnessed when violence broke out after the announcement of the presidential results.

Since then, security in all its facets has remained one of the focal areas of the Country's election cycle in a bid to safeguard the right to life which is now entrenched in the Bill of Rights under Chapter 4 of the Constitution of Kenya.

It is with this background that the Kenya National Commission on Human Rights through its 2017 monitoring teams undertook to document the post-election demonstrations in parts of the country which led to the unfortunate loss of life.

A majority of the fatalities were as a result of excessive use of force by security agents while only two were recorded to have been as a result of civilian aggression. These documented cases only tabulate those who died between 9th and 15th August 2017.

The thirty-seven (37) deaths documented in this report were victims who were killed in Kawangware, Mathare, Kibra, Lucky Summer, Baba Ndogo and Huruma all in Nairobi City County. Kondele, Manyatta, Nyamasaria, Nyalenda in Kisumu County. Siaya town and Ugunja in Siaya County and Rangwe in Homa Bay County.

Sadly, seven of the victims were minors; three girls and four boys. The youngest was a 6-months-old baby who succumbed to injuries in hospital after being clobbered at home while

under the care of her mother. The other minors all aged between seven and eighteen years died from gunshot wounds.

The other 30 victims were youths and middle-aged persons between the ages of 20 and 45 years; 28 of whom were male and two females. Except for two cases caused by civilians, the rest were allegedly because of excessive use of force by police.[241]

While the Commission was not able to determine whether the action to use force by security agents was predetermined and targeted, it is clear from our analysis that majority of the victims were from one ethnic community and from informal settlements.[242]

There may be more fatalities which the Commission may not have received information at the time of writing this report. Some victims may have succumbed to their injuries while in hospital. KNCHR will continue to receive and document complaints as they shall be reported to it.

KNCHR aims at instituting conclusive investigations that would lead to accountability of perpetrators through legally provided avenues, key among them being filing a public interest litigation case as empowered by the Constitution under Article 22.

	LOCATION OF INCIDENT	ALLEGED PERPETRATOR	COMPLAINT
NAIROBI CITY COUNTY			
1.	Dandora Phase IV	Police	On 11th August 2017, a police officer popularly known by the area residents as "Rasta" allegedly shot a middle-aged male civilian. The victim was taken to Kenyatta National Hospital where he died at the ICU where he was recuperating after an operation. The postmortem on the deceased revealed that he died from excessive bleeding following a bullet wound on the left side of the abdomen which exited from the right buttock.
2.	Dandora Phase IV	Police	On 12th August 2017 at about 9 p.m. a youth aged 23 years old, was shot by

[241] Sixth Schedule [Section 61(2)]- National Police Service Act No. 11A of 2011

[242] Informal settlements can be defined (United Nations, 2015; UN-Habitat, 2015b) as residential areas where: 1) inhabitants have no security of tenure vis-à-vis the land or dwellings they inhabit, with modalities ranging from squatting to informal rental housing, 2) the neighbourhoods usually lack, or are cut off from, basic services and formal city infrastructure and 3) the housing may not comply with current planning and building regulations, is often situated in geographically and environmentally hazardous areas, and may lack a municipal permit.

			the police shortly after the announcement of the Presidential results. He suffered a gunshot wound in the abdomen. He was rushed to hospital where he died. The body was moved to the Kenyatta National Hospital Mortuary by Medicines Sans Frontiers (MSF). KNCHR witnessed the post-mortem carried out on the deceased.
3.	Kasabuni, Baba Dogo	Police	On 11th August 2017, at round 10.00pm, police officers who had been deployed to control protests in Baba Dogo shot a male civilian, aged 19 years as he was coming from work. They shot him three times in the stomach, chest and arm. His body was taken to City Mortuary.
4.	Kasabuni, Baba Dogo	Police	On 11th August 2017, police officers shot a 17-year old Form 3 student from Baba Dogo High School. The police officers who had been deployed in the area following protests shot the victim while on his way to assist his mother at her grocery store in Kasabuni. He was in the company of his friend who was also shot dead. Their bodies were taken to the City Mortuary
5.	Kasabuni, Baba Dogo	Police	On 11th August 2017, the police shot a 16-year old Form 2 student from Usenge High School who had accompanied his friend to their grocery store. They were stopped by police officers deployed in the area to quell protests at the time. Their bodies were taken to the City Mortuary
6.	Kawangware	Police	On 9th August 2017, a male civilian adult aged 45 year old was carrying on with his ordinary duties at Kawangware Stage 2 when police officers lobbed a teargas canister

			which hit the deceased and exploded. The teargas affected him and he was rushed to KNH where he died on 16th August 2017. No post-mortem was done.
7.	Kawangware	Police	On 10th August 2017 at 9 p.m., a 30-year-old male civilian was in the company of his friend at Kawangware Stage 2 when the police lobbed tear gas canisters to disperse the crowd that had gathered in the area. The deceased was reported to have had a history of respiratory problems and was affected by the tear gas. He was rushed to KNH where he later died. No post-mortem was carried out.
8.	Kawangware	Police	On 10th August 2017 at about 5.30 p.m. a 43-year-old female civilian was on her way home from work in the company of her son when they were accosted by police officers engaging protestors at Stage 56. The police lobbed teargas canisters and used water cannons to spray the protesters with water. The deceased was hit by one of the canisters which then exploded. The deceased developed breathing complications and died while on the way to hospital. No post-mortem was carried out. She was buried in Langata cemetery on 17th August 2017.
9.	Kawangware	Police	On the evening of 11th August 2017, a male civilian aged 34 years old was hit by a bullet that had penetrated through the iron sheet wall of his house. It is suspected that the bullet was aimed at another male civilian who was found outside the deceased's house writhing in pain with a gunshot wound. The victim succumbed to his injuries while undergoing treatment in

			the ICU at KNH. The other victim was admitted and was recuperating in hospital. The matter was reported to Muthangari Police Station.
10.	Kawangware	Police	On 11th August 2017 at about 6.30 p.m. a male civilian aged 27 years old from Kawangware No. 56 informed his brother-in-law that he was leaving to buy groceries. The deceased was accosted by police officers who were firing shots to disperse a crowd that had gathered outside. His brother-in-law heard the shots being fired and went outside to find the deceased had been shot at the back of his head. He was rushed to KNH where he was admitted at the ICU until 23rd August 2017 when he succumbed to his injuries. A post-mortem was carried out but KNH had not released the report to the family at the time of writing this report.
11.	Kawangware	Police	On 11th August 2017, at around 6p.m. a female civilian aged 30 years old had gone to the market in Kangemi to buy food. On her way back, at Stage 56, she was accosted by a contingent of police engaging youths in running battles. Police lobbed teargas and started shooting indiscriminately. The deceased was shot and died. Her husband went to the scene but the police denied him access to the body. He traced her body at KNH the following day.
12.	Kibra	Police	On 10th August, 2017 a male civilian, aged 34 years old was accosted by police officers as he headed to his house from his work place and shot. He died instantly and his body was moved to Kenyatta National Hospital

			mortuary. No post mortem was carried out on the deceased.
13.	Kibra	Police	On 11th August, 2017 a middle-aged male civilian was shot outside his house. The family and neighbours made no attempt to move the body from the scene as they feared leaving their homes. It is not clear who moved the body and the family was yet to trace the body at the mortuaries.
14.	Kibra, Kianda Area	Police	On 12th August 2017, a male civilian, aged 43 years old was coming from hospital after dressing an old wound when he was accosted by police officers at Bombolulu Area. They inflicted actual body injuries to his ribs and joints. A friend carried him home and his situation worsened. He was rushed to Ushirika Dispensary in Kianda and then transferred to Hospital. He died while undergoing treatment in hospital on 13th August 2017. No post-mortem was carried out.
15.	Mathare 10, Mabatini Ward	Administration police	On 9th August 2017, police officers who were dispersing protesters in Mathare Area 10 shot a middle-aged male civilian. The police lobbed teargas canisters to scare aware the residents and fired live bullets. The body of the deceased was taken to City Mortuary by the police. A post-mortem was conducted and the deceased was buried on 15th August 2017.
16.	Mathare, No 10	Police	On 9th August 2017, a 42-year old male civilian was caught up in protests while on his way home in Mathare No. 10. He was shot by police and died. The Police took his body was taken to City Mortuary.

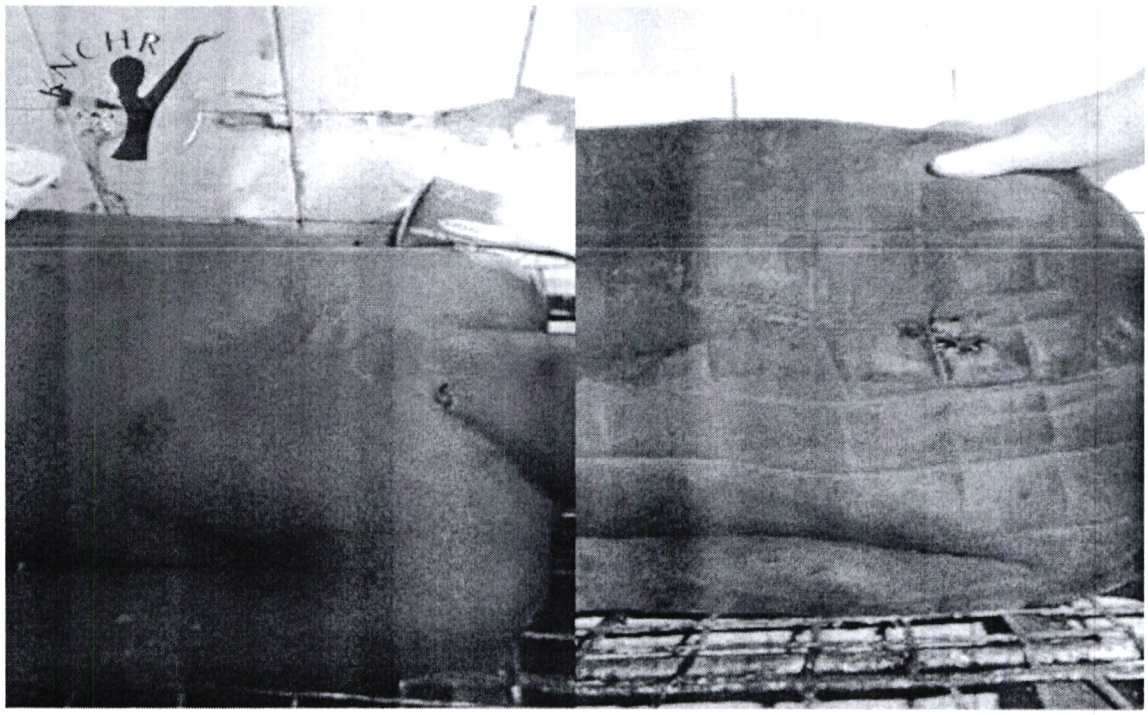
17.	Mathare 4A	Administration Police	On 9th August 2017 as youths from Mathare protested following the Presidential election results announcement, officers from Mathare sub-county Administration Police Camp who had been deployed to quell the situation shot to death a male civilian. The body was then taken away by the same police officers to City Mortuary.
18.	Mathare , Area 4A	Police	On 11th August 2017 at Mathare Area 4A, a 7-year-old boy was killed after being hit by a police bullet while playing on the streets in the evening. The body was collected by the police the following morning. The family of the child eventually managed to trace his body and he was buried at Langata Cemetery.
19.	Mathare North	Police	On the morning of 12th August 2017 in Mathare Area 4, next to Mathare North Primary School/ Social Hall, an 8-year-old child was shot and killed by the police while at the balcony of her parents' house. The body lay at the balcony for some time as the residents refused the OCS to collect the body alleging that the police were not reporting the killings. The residents however relented and the police took the body away.
20.	Mathare 3C, Bondeni	Police	On 12th August 2017, a 28-year-old male civilian was shot by police at his area of residence. This was after an alleged fire break-out. Neighbours moved out screaming and shouting to raise alarm. The police shot live bullets and the deceased was killed in the commotion. No structure was set ablaze and it was believed to have been a ploy to get residents to vacate their houses.

21.	Mathare 3C, Bondeni	Police	On 12th August 2017, a 31-year-old male civilian was shot following a purported report of a fire break-out in his area of residence. The neighbours moved out of their houses screaming and shouting to raise alarm only for the police to shoot live bullets at them. The deceased fell victim to a police bullet which hit him in the neck.
22.	Mathare Area 4A	Police	On 12th August 2017, GSU officers forcefully entered the house and beat up an 18-year old form Four student from Boarding High School in Alego, Siaya County. The deceased was first rushed to Blue House Hospital and later admitted at Kenyatta National Hospital. He died on 13th August 2017, while in the ICU. A post-mortem was carried out on the deceased.
23.	Mathare North	Administration Police	On 12th August 2017 during the protests that followed the announcement of the Presidential election results, an Administration Police Officer allegedly from Mathare North Chiefs Camp shot a 23-year-old male civilian on the right leg and stomach, killing him instantly.
24.	Mathare	Civilian	On 13th August 2017, a 25-year-old male civilian was hacked to death when NASA supporters allegedly clashed with their political opponents. He had earlier been taken to Kenyatta National Hospital by police from Muthaiga Police Station. Unfortunately, he succumbed to his injuries. His body was taken to City Mortuary and traced by next of kin. A post-mortem was carried out on the deceased in the presence of an independent pathologist.

25.	Mathare North Area 4A	Police	On 13th August 2017, GSU officers shot a male civilian aged 32 years on the neck, killing him instantly. This was after Raila Odinga's visit to Mathare.
26.	Mathare/Bondeni	Police	On 13th August 2017, following the announcement of the Presidential election results, police officers forcefully entered into the house of a male civilian and assaulted him. He sustained injuries and he was taken to Kenyatta National Hospital where he later died.
27.	Ngomongo, Korogocho	Police	On 12th August 2017, police officers who had gone to quell protests at Ngomongo in Korogocho shot and killed an adult male civilian as he was trying to put out a fire that had engulfed his sister's kiosk.
KISUMU COUNTY			
28.	Dago Market, Nyahera, Kisumu West	Police	On 11th August 2017, the police shot and killed an adult male civilian who was also an election observer from the Elections Observation Group. He died on the spot and his body was taken to Masaba Hospital Mortuary.
29.	Nyalenda	Police	On 12th August 2017, police officers forcefully entered the residence of the parents of a six-month old infant where they proceeded to beat the mother and hit the baby on the head. She was rushed to Oasis Hospital near Nyalenda and the doctors immediately referred the family to Aga-Khan Hospital where the baby was admitted in the ICU. Unfortunately, she succumbed to the injuries on 15th August 2017.
SIAYA COUNTY			

30.	Siaya- Bondo Road	Police	On 11th August 2017 immediately after the announcement of the Presidential election results, police shot an adult male civilian on the chest, killing him instantly. The body was taken to Siaya Referral Hospital.
31.	Ugunja Town	Police	On 12th August 2017, police officers while dispersing a crowd of youths, who were demonstrating within Ugunja Town, beat up a male adult civilian and left him for dead. Well-wishers came to his aid and tried to resuscitate him to no avail. His body was taken to Sega Mission Hospital Mortuary.
HOMABAY COUNTY			
32.	Rangwe	Police	On 13th August 2017, police officers who were trying to manage the post-election protests at Rangwe Trading Center shot an adult male civilian. The bullet hit the deceased on the left side of the chest and exited from the back. Police collected the body and took it to Homabay County Referral Hospital.
TANA RIVER COUNTY			
33.	Hola Secondary School	Civilian	On 9th August 2017, one adult male civilian was stabbed and died following an invasion by five armed men who disrupted the counting of votes at Hola Secondary School which was the Constituency tallying center in Galole Constituency, Tana-River County. The attackers invaded the tallying center following the difference in votes counted for the two gubernatorial aspirants.

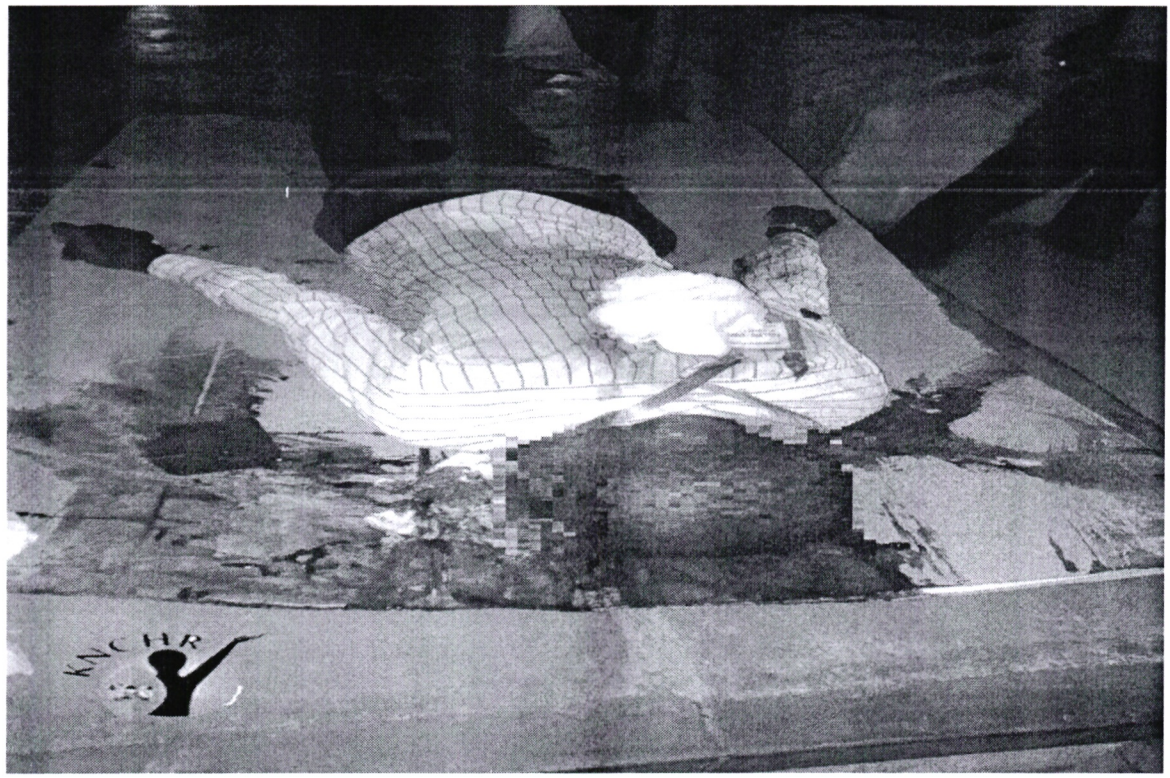
34.	Hola Secondary School, Galole Constituency	Police	On 9th August 2017, five armed men invaded Hola Secondary School, which was a tallying centre in Galole Constituency. Two men out of the five were killed by police officers while the others managed to escape. The attack disrupted the counting of votes as the IEBC officials fled the scene.
ELGEYO MARAKWET COUNTY			
35.	Chesoi Tallying Center, Marakwet East	Police	On 9th August 2017, police officers while dispersing a crowd that had gathered, expressing their displeasure at the delay in announcing the election results, shot and killed a 15-year old girl.
UNKNOWN			
36.	Usoma Beach, Lake Victoria, Kisumu County	Unknown	On 23rd August 2017, a male body was found in a body bag, in Usoma Beach with two bullet holes on the chest. The deceased is believed to be a victim of the protests in the county following the announcement of the Presidential election results. The body was moved by the police to Jaramogi Oginga Odinga Teaching and Referral Hospital Mortuary.



Body of a victim shot and killed by police officers during protests at Rangwe Trading Center, Homa Bay Town on 13th August 2017.(Photo courtesy: KNCHR 2017)



Body of a victim killed at Hola Secondary School, Galole Constituency- Tana-River County during the attack on 9th August 2017.(Photo courtesy: KNCHR 2017)



Body of a victim killed at Hola Secondary School, Galole Constituency, Tana-River County during the attack on 9th August 2017. (Photo courtesy: KNCHR 2017)



15-year-old girl killed by police at Chesoi Tallying Center, Marakwet East, Elgeyo Marakwet County on 9th August 2017. (Photo courtesy: KNCHR 2017)

5.3 Freedom from Torture, Degrading, Cruel and Inhuman Treatment

Prior to the announcement of the Presidential election results, there was heavy presence of security agents and apparatus deployed in opposition strongholds, probably in anticipation of the ripple effect of the results announcement. Immediately the declaration was made that the incumbent President had retained his seat, many sporadic cases of insecurity begun to erupt in opposition strongholds.

Article 29 of the Constitution guarantees each Kenyan the right to freedom and security of the person. This is non-derogable right that cannot be limited or taken away in whatever circumstances. It includes the right not to be subjected to:

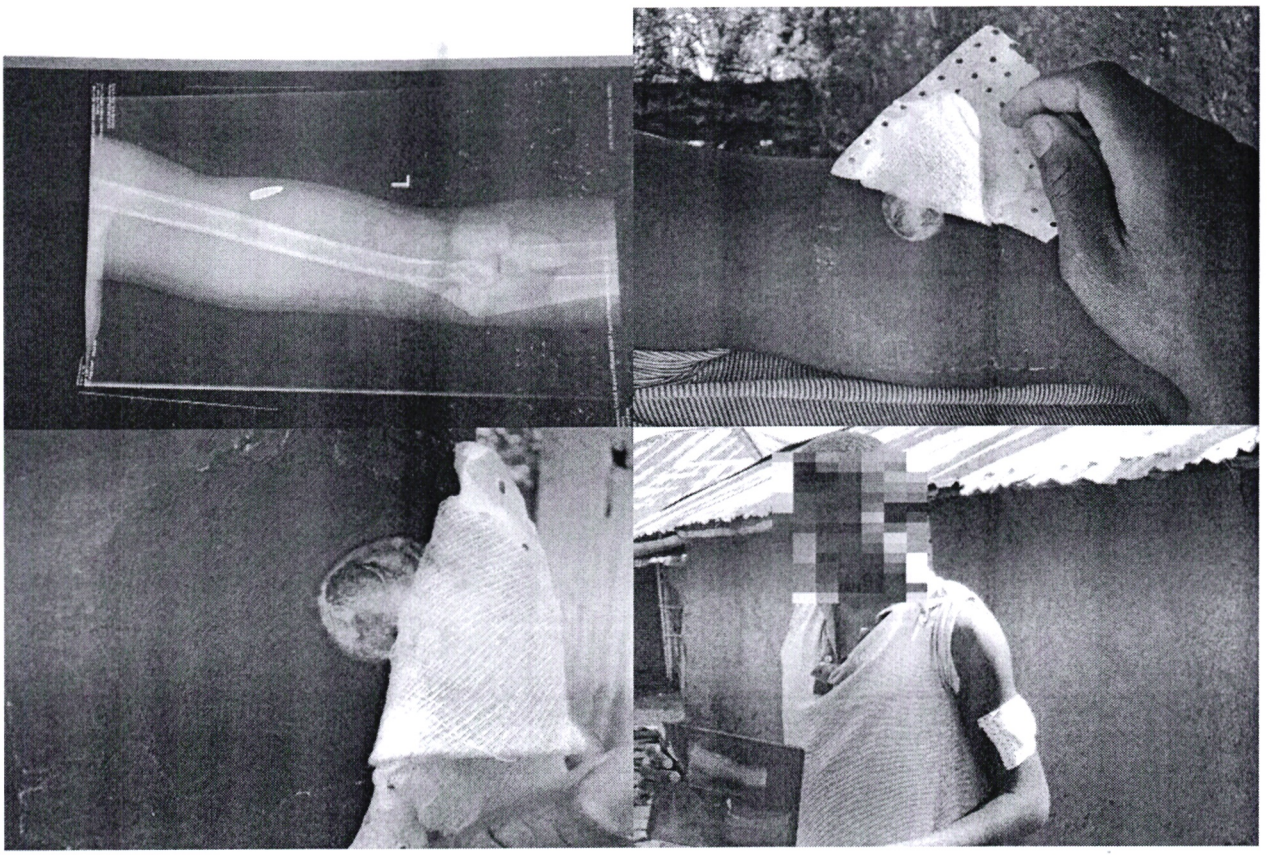
i. Any form of violence from either public or private sources;
ii. Torture in any manner, whether physical or psychological and
iii. Treatment that is cruel, inhuman or degrading.

Further, Article 37 of the Constitution provides for the right to peaceful assembly that must be carried out within the confines of the law. The law enforcement agencies are required to provide the necessary environment and should not act as a hindrance to the provision of this Article.

The KNCHR field reports point to a worrying trend of violations that were meted to the general populace by police officers while they engaged in demonstrations or through forceful entry into their homes. The violations highlighted under this section include the grave and minor injuries that were sustained by the members of the public. Other violations were sexual and gender based violence (SGBV). All these human rights violations were as result of police excesses.



Spent cartridges forwarded to KNCHR by residents of Obunga slums in Kisumu County. (Photo courtesy: KNCHR 2017)



On 11th August 2017, a boy aged 17 years old from Homabay county sustained gun shots to the arm while police were dispersing demonstrators.(Photo courtesy: KNCHR 2017)

The grave injuries include gunshot wounds to the chest, broken ribs caused by blunt objects, shootings directed at the chests, shootings on the thighs, arms and even legs as a form of incapacitating the victims.

The grave injuries point to the use of excessive force that did not comply with the principles of necessity and proportionality as per the Sixth Schedule of the National Police Service Act. Out of the 126 documented cases, only three (3) constituted cases of civilian-to-civilian confrontation. A majority of the reported cases were as a result of police aggression towards civilians. Further, there were six (6) reported cases of sexual violence against women and girls including rape which were perpetrated by civilians and police. Cases of physical injuries were also meted on the elderly, youth and children. Thirty-one (31) cases of physical injuries involved females and 95 involved males.



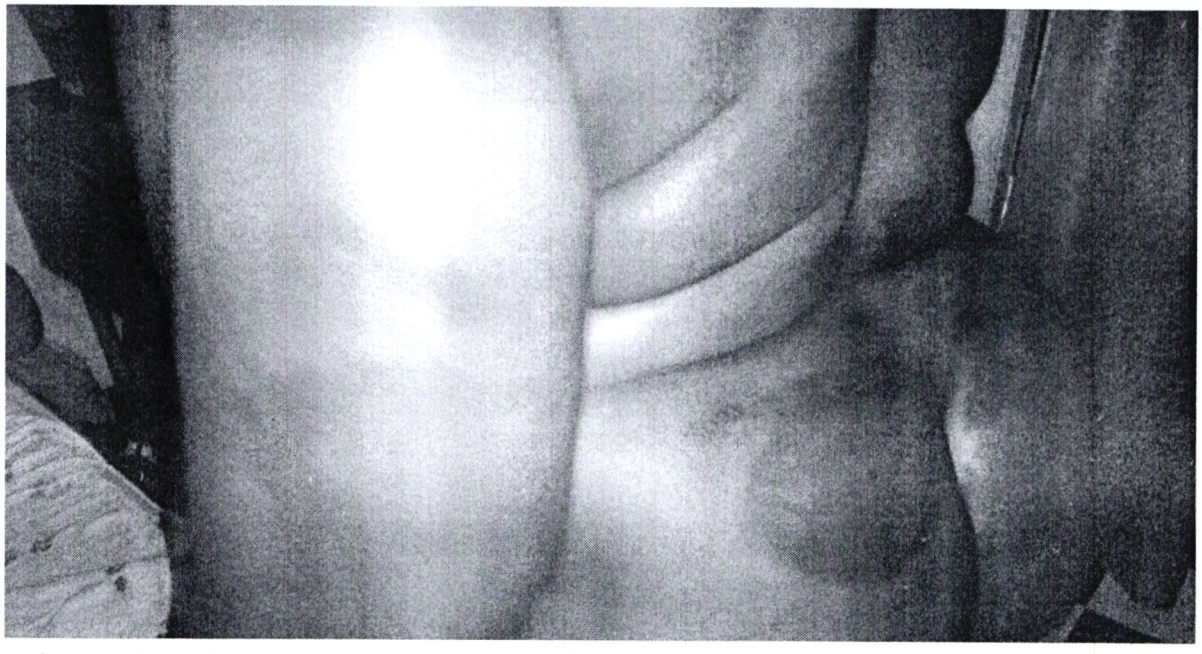
A man from Kajulu, Kisumu County who sustained injuries during the crackdown by police. (Photo courtesy: KNCHR 2017)



A thirteen-year-old child from Nyalenda assaulted by police officers on the 11th of August 2017 at around 11.00 p.m. He was at home with his parents at the time of the assault. He reported that police officers stormed into their house and started beating everyone in the house. (Photo courtesy: KNCHR 2017)



A male victim shot in the neck by police officers on 11th August 2017 in Ogango as he was heading home from his brother's house at 11pm. (Photo courtesy: KNCHR 2017)



*A female victim from Dandora area Nairobi City County with injuries sustained after Police brutality on 12th August 2017. She was caught up in a confrontation between police and demonstrators. (*Photo courtesy: KNCHR 2017)

	LOCATION OF INCIDENT	ALLEGED PERPETRATOR	COMPLAINT
NAIROBI CITY			
1.	Kiambiu	Military officer	On 11th August 2017, a male civilian was shot by Moi Air Base military officer from a watchtower. He was on his way home from watching a football game. He was injured on the buttocks and another bullet lodged itself in his right thigh. He was hospitalized at Kenyatta National Hospital (KNH).
2.	Mathare Area 4A	Police	On 9th August 2017, a male civilian was shot and injured on the palm by police officers who were dispersing demonstrators. He was treated and discharged at Kenyatta National Hospital.
3.	Mathare Area 4A	Police	On 12th August, 2017 police forcefully entered into a house of a female civilian aged 29 years old and assaulted her using truncheons and guns. Her husband and their two children aged 4 and 10 years old witnessed the assault. The husband was also assaulted and suffered injuries to the shoulders, knees and elbow. He also suffered joints dislocations and had to seek medical attention.
4.	Mathare Area 4A	Police	On 12th August 2017, the General Service Unit (GSU) officers forcefully entered into a house of a male civilian aged 25 years old. The officers assaulted the victim and his friend.
5.	Mathare Area 4A	Police	On 12th August 2017, a female civilian, aged 50 years old was beaten by police officers for

			offering shelter to male civilian demonstrators who sought refuge in her house.
6.	Mathare Area 4	Police	On 12th August 2017, at around 5pm, regular police officers accompanied by the GSU personnel assaulted a female civilian using truncheons while she was out of her house buying charcoal. The police hit her at the backside, injuring her legs. The officers hit her repeatedly and she was left unconscious. The Kenya Red Cross team gave her first aid before she sought further treatment.
7.	Mradi, Mathare 4A	Police	On 12th August 2017, a police officer in civilian outfit shot a minor aged 12-year-old. He was injured on the thighs by the bullet. He was later hospitalized at Kenyatta National Hospital.
8.	Dandora Phase 4	Police	On 12th August 2017, the police forcefully entered into a house of a male civilian. The officer assaulted him before taking him and others to Wendo area. The victims were later released upon the arrival of the area Officer Commanding Station (OCS). The victims went to hospital for treatment.
9.	Dandora Phase 4 near Kinyago primary school	Police	On 12th August 2017, the police broke into a compound of a male civilian and assaulted him, his wife and children. The Kenya Red Cross administered first aid to the victims.
10.	Dandora Phase 4	Police	On 12th August 2017, the police forcefully entered into a residential plot, harassed and assaulted tenants. The police forcefully removed about 30 men from their houses. They were assaulted, loaded in trucks and driven away. The area Member of County Assembly (MCA) and Dandora Officer Commanding

			Station (OCS) intervened and they were later released. The victims were treated at KNH.
11.	Kawangware	Police	On 10th August 2017, at around 7am, the GSU officers broke into a house of a male civilian aged 45 years. The officers assaulted him using truncheons, injuring his head, arm and ribs.
12.	Kawangware Stage 2 towards 56 & Muslim Katina	Police	On 12th August 2017, the police officers forcefully entered into a house of a male civilian. The officers shot him on the chest and assaulted his son.
13.	Kangemi	Police	On 12th August 2017, a male civilian was hit by a bullet discharged from a police gun. The police were engaging protesters in running battles around Mau Mau area. The victim was rushed to Eagles Nursing Home, where he received first aid before being transferred to Kenyatta National Hospital (KNH) for specialized treatment.
14.	Kibra	Police	On 11th August 2017, at around 2a.m, a male civilian was hit by a rubber bullet fired by the police as they were dispersing demonstrators. He suffered soft tissue injury and was treated at Wanga Hospital in Langata and later referred to KNH for specialized treatment.
15.	Kibra	Police	On 12th August 2017, police officers who were dispersing demonstrators using tear gas and live bullets shot a male civilian on the hand as he ran away from them. He was treated at Kenyatta National Hospital.
16.	Kibra	Police	On 12th August 2017, a male civilian was shot in the chest by the police while opening his shop. His son aged between 28 years was called to rescue his father and upon arrival he was confronted and assaulted by the police. The Kenya Red Cross team rushed the two victims to Nairobi Women hospital. The son was later

			transferred to Alliance Hospital for specialized treatment.
17.	Kibra	Police	On 12th August 2017, a young man was shot by police on his thigh while alighting from a motorbike. The Kenya Red Cross team took him to Nairobi Women Hospital for treatment.
18.	Kibra	Police	On 12th August 2017, at around 3am, four police officers accosted a male civilian aged 20 year old, beat him using truncheons and he sustained a fractured arm. He received first aid from the Kenya Red Cross. He sought treatment at the Kenyatta National Hospital.
19.	Kibra	Police	On 12th August 2017 a male civilian was at a hotel when police officers came in and started assaulting him. They broke his arm. He was treated at Ushirika Clinic and later referred to Kenyatta National Hospital for specialized treatment.
20.	Kibra	Police	On 12th August 2017, police officers assaulted a male civilian. He suffered actual body injuries to his back and ribs.
21.	Kibra	Police	On 12th August 2017, at around 11am, police officers shot a female civilian with a rubber bullet, injuring the right side of her chest.
22.	Kibra	Police	On 12th August 2017, at around 10am, four police officers forcefully entered into a house of a male civilian, assaulted him resulting in a fractured arm. He received first aid from the Kenya Red Cross who later took him to Kenyatta Hospital for treatment.
KISUMU COUNTY			
23.	Nyalenda	Civilian	On 11th August 2017, in the evening hours a female civilian was assaulted by her neighbours because her husband is from the Kikuyu tribe. Her house was set ablaze. By the time of

			recording her statement, she had not sought medical attention.
24.	Nyalenda	Police	On 11th August 2017, the police officers forcefully entered into a house of a male civilian. They assaulted him, his parents and other siblings. One of his sons sustained three deep cuts on the head. He was treated at Jaramogi Oginga Odinga Teaching and Referral Hospital.
25.	Nyalenda	Police	On 11th August 2017 police officers forcefully entered into a house of a male civilian and assaulted him. He suffered actual body injuries. By the time of recording his statement, he had not sought medical attention.
26.	Nyalenda	Police	On 11th August 2017, police officers forcefully entered into a house of a 35-year-old male civilian, assaulted him and stole his phone. By the time of recording his statement, he had not sought medical attention.
27.	Nyalenda	Police	On 11th August 2017 police officers forcefully entered into the house of a male civilian, assaulted him and destroyed his motorbike. By the time of recording his statement, he had not sought medical attention.
28.	Nyalenda	Police	On 12 August 2017, at around 10am, an estimated eight (8) Administrative Police Officers forcefully entered into a house of a male civilian aged 37 years old, assaulted him using truncheons. He was injured on both legs and treated at an undisclosed local hospital. The Administrative Police Officers also stole his Samsung phone and Ksh 5,000.
29.	Nyalenda	Police	On 12 August 2017, at around 11am, a group of police officers forcefully entered into a house of

			a male civilian aged 27 years old and assaulted him using truncheons. He sustained injuries on both hands and left leg. He was later taken to Jaramogi Oginga Odinga Teaching and Referral Hospital by Kenya Red Cross officers. The police officers also destroyed the windows of his landlady's house, who is disabled.
30.	Nyalenda	Police	On 12th August 2017, close to 20 Police Officers in civilian attire at the Western Junction in Nyalenda forced a male civilian aged 35-year-old and others to remove stones used by demonstrators to barricade the road. The officers assaulted the male civilian using truncheons.
31.	Nyalenda	Police	On 12th August 2017, a young man was forcefully taken away by the police officers, and returned later with his leg injured from the police assault. At around 8pm the same day, the Kenya Red Cross officers took the victim to Jaramogi Oginga Odinga Teaching and Referral Hospital where he was hospitalized for a day.
32.	Nyalenda	Police	On 12th August 2017, at around noon, six administration police officers assaulted a female civilian, aged 40 years old at Oboch Market. She sustained actual body injuries. By the time of recording the statement, she had not sought medical attention.
33.	Nyalenda	Police	On 12th August 2017 at around 11am police officers forcefully entered into the house of a 30-year-old female civilian, assaulted her and forced the husband to give them Kshs. 100 or be taken to police custody. Red Cross officials took them to Jaramogi Oginga Odinga Teaching and Referral Hospital.

34.	Nyalenda B	Police	On 12th August 2017 at 8pm a 40-year-old female civilian was on her way home from her business when she met policemen. They asked her where she was from and then assaulted her. She sustained actual body injuries to her teeth, head and mouth.
35.	Nyalenda	Police	On 12th August 2017 at 10pm a 38-year-old male civilian was having dinner at a hotel, three police officers walked in, and two of them assaulted him and other diners with truncheons and guns. They also lobbed teargas canisters at them and left. The victim was hit on the chest and head. By the time of recording his statement, he had not sought medical attention.
36.	Nyalenda	Police	On 12th August 2017, a 23-year-old male civilian was beaten by police officers when they forcefully entered into his house. They took his *Infinix* phone and wallet containing Kshs 4,800. Kenya Red Cross officers came the following day and took him to Jaramogi Oginga OdingaTeaching and Referral Hospital.
37.	Nyalenda	Police	On 12th August 2017, a 42-year-old male *boda boda* rider met seven (7) police officers at Obunga Junction. The police officers took his passenger's phone away and destroyed his motorbike. The rider and his pillion passenger received first-aid administered by Kenya Red Cross officers.
38.	Nyalenda	Police	On 12th August at 11a.m. police officers forcefully entered into a house of a male civilian and assaulted him His ankle and elbows were injured. They also stole his phone. He received medical attention at Jaramogi Oginga Odinga Teaching and Referral Hospital.

39.	Nyalenda	Police	On 12th August 2017 police officers forcefully entered into the house of a male civilian and assaulted him. By the time of recording the statement, he had not sought medical attention.
40.	Nyalenda	Police	On 12th August 2017, police officers forcefully entered into a house of a male civilian and assaulted him. They also stole Kshs 3,800 and his Huawei phone. By the time of recording the statement, he had not sought medical attention.
41.	Nyalenda	Police	On 12th August 2017 at around 9am, police officers forcefully entered the house of a female civilian and assaulted her. They stole her phone. By the time of recording the statement, she had not sought medical attention.
42.	Nyalenda	Police	On 12th August 2017, the police officers forcefully entered into the house of a 32-year-old male civilian and assaulted him. In the process, they also stole Kshs. 25,650 from him. By the time of recording the statement, he had not sought medical attention.
43.	Nyalenda	Police	On 12th August 2017, the police officers forcefully entered into the house of a 28-year-old male civilian and assaulted him. By the time of recording the statement, he had not sought medical attention.
44.	Nyalenda	Police	On 12th August 2017 at around 10:30 am a 35-year-old male civilian was in a hotel when three (3) police officers entered the hotel and started assaulting him and other diners with truncheons. They also lobbed teargas canisters inside the hotel and left. He sustained actual bodily injuries. By the time of recording the statement, he had not sought medical attention.

45.	Nyalenda	Police	On 12th August 2017, a 40-year-old male civilian was assaulted by police officers. He sustained actual body injuries to the elbows, legs and head. He received treatment at Jaramogi Oginga Odinga Teaching and Referral Hospital.
46.	Nyalenda	Police	On 12th August 2017 police officers forcefully entered into a house of a 24-year-old male civilian assaulted him causing actual serious body injuries to his hands, ribs, legs and thighs. He was attended to by the Kenya Red Cross officers.
47.	Nyalenda B	Police	Police were chasing unknown people who had looted a supermarket. They sought refuge at a compound of a female civilian aged 64 years old. Police lobbed teargas canisters to eject them with resultant negative effects to the diabetic old lady. By the time of recording the statement, she had not sought medical attention.
48.	Nyalenda B		On 12th August 2017, the police forcefully entered into a house of a male civilian aged 65 years old and started assaulting his son. When he sought to know what was happening to his son he was also assaulted by the police officers which left him with actual body injuries on his left hand. He reported the matter to the police. By the time of recording the statement, he had not sought medical attention
49.	Nyalenda	Police	On 12th August 2017, Administration Police officers forcefully entered into a house of a female civilian. The officers assaulted her and forcefully took away her phone. The officers took her inside her bedroom and raped her.

			They also stole Ksh 2,500, three packets of milk and her phone. By the time of recording the statement, she had not sought medical attention
50.	Obunga	Police	On 9th August 2017, police officers forcefully entered into house of a male civilian aged 28 years old and assaulted him. He sustained actual body injuries on his hands and elbow. By the time of recording the statement, he had not sought medical attention
51.	Obunga	Police	On 11th August 2017, a security officer, aged 37 years old encountered police officers who lobbed tear-gas canisters at demonstrators and shot in the air. Police pursued him to his house and assaulted him using truncheons. He sustained actual body injuries. He didn't seek medical attention due to the heavy presence of security officers within the area. By the time of recording the statement, he had not sought medical attention.
52.	Obunga	Police	On 11th August 2017, a female civilian was assaulted by administration police officers who forcefully entered into her house. The police officers destroyed her television set and radio. By the time of recording the statement, she had not sought medical attention.
53.	Obunga	Police	On 11th August 2017 at around 1 am, police officers forcefully entered into the house of a 56-year-old female civilian and assaulted her. Police officers stole two cartons of fish worth Kshs. 2,700 and Ksh 8,270 in cash. She suffered actual body injuries to her leg. By the time of recording the statement, she had not sought medical attention.
54.	Obunga	Police	On 12th August 2017, at around 3am, a group of Administration Police officers and National

			Youth Service officers forcefully entered into a house of a male civilian aged 28 years old. They assaulted him causing actual body harm to his chest, joints and neck. They left him bleeding. The Kenya Red Cross officers took him to Jaramogi Oginga Odinga Teaching and Referral Hospital where he was admitted. During the incident, the police also destroyed his motorbike.
55.	Obunga	Police	On 12th August 2017, police officers forcefully entered into a house of a male civilian aged 23 years old, assaulted him leaving him with actual body injuries to the head, hands and knees. By the time of recording the statement, he had not sought medical attention
56.	Obunga	Police	On 12th August 2017, at around 9.45 p.m, a male civilian, aged 37 years old broke his arm when the police officers forced themselves into a hall in Dago Market where he and others were assaulted. By the time of recording the statement, he had not sought medical attention due to lack of money.
57.	Obunga	Police	On 12th August 2017, at around 3 am, about 5 Administration Police officers forcefully entered into a house of a male civilian. They assaulted him using truncheons. The victim was treated at Jaramogi Oginga Odinga Teaching and Referral Hospital.
58.	Obunga	Police	On 12th August 2017, a female civilian, aged 34 years old, while on her way home was accosted by Administration Police officers who lobbed a tear gas canister at her and assaulted her using truncheons. She lost her bag and phone and received actual body injuries to her thigh and leg. She was taken to Jaramogi Oginga Odinga

			Teaching and Referral Hospital for medical attention by Kenya Red Cross officers.
59.	Obunga	Police	On 12th August 2017, a male civilian was assaulted by Administration Police officers while taking his friend to the hospital. He sustained actual body injuries to the arms, legs and waist. By the time of recording the statement, he had not sought medical attention.
60.	Obunga	Police	On 12th August 2017, a female civilian, aged 45 years old was assaulted by the police officers at a shop where she had sort refuge. Police caused actual body harm to her leg. By the time of recording the statement, she had not sought medical attention.
61.	Obunga	Civilian	On 12th August 2017, unknown people forcefully entered into the shop of a 23-year-old male civilian assaulted him and stole everything. The matter was reported to Obunga police post. By the time of recording the statement, he had not sought medical attention.
62.	Obunga	Police	On 12th August 2017 police officers forcefully entered into the house of a 23-year-old male civilian and assaulted his friend and stole Kshs. 7,200 and two packets of milk. By the time of recording the statement, he had not sought medical attention.
63.	Obunga	Police	On 12th August 2017 a male civilian was assaulted by police officers at around 8:30pm. He sought medical attention at the district hospital. The matter was reported at Obunga Police Post.

64.	Obunga	Police	On 12th August 2017, police forcefully entered into the house of 50-year-old widow and started asking her to bring out those people who were throwing stones and then lobbed teargas canister at her affecting her eyes and chest. In the process she sustained back injuries. She received medical assistance from Kenya Red Cross officers.
65.	Obunga	Police	On 12th August 2017, police officers forcefully entered into a house of a female civilian aged 60 years while reportedly searching for demonstrators. In the process, they lobbed tear gas canister in her house and she developed chest complications from the gas inhalation. She reported the matter to the police station. By the time of recording the statement, she had not sought medical attention.
66.	Obunga	Police	On 12th August 2017, the police officers forcefully entered into a house of a female civilian. The officers assaulted her using truncheons. She sustained back injuries. By the time of recording the statement, she had not sought medical attention.
67.	Obunga	Police	On 12th August 2017, police officers forcefully entered into a house of a female civilian. They lobbed teargas canister inside her house. The inhalation of the teargas affected her. She reported the matter to the police. By the time of recording the statement, she had not sought medical attention.
68.	Obunga	Police	The police forcefully entered into the house of a female civilian aged 35 years old and ordered her husband to remove his clothes. She screamed and the officers assaulted her. She sustained actual body injury to her neck. She reported the incident to the police. By the time

			of recording the statement, she had not sought medical attention.
69.	Manyatta	Police	On 9th August 2017, a 28-year-old male civilian was accosted by police officers who assaulted him and also shot his leg. He received treatment at Jaramogi Oginga Odinga Teaching and Referral Hospital.
70.	Manyatta	Police	On 10th August 2017, a 24-year-old male civilian was assaulted by seven (7) police officers on his way home. He sustained actual body injuries to his head and legs. He was treated at a clinic in Manyatta area.
71.	Manyatta	Police	On 11th August 2017 at about 9pm a 21-year-old male civilian was shot at his waist by police officers pursuing demonstrators. The Kenya Red Cross officers took him to Jaramogi Oginga Odinga Teaching and Referral Hospital.
72.	Manyatta	Police	On 11th August 2017 police officers accosted a 35-year-old male by the road side at night and assaulted him causing actual body harm to his hips. He received treatment at Jaramogi Oginga Odinga Teaching and Referral Hospital.
73.	Manyatta	Police	On 12th August 2017, a group of Administration Police officers forcefully entered into a house in Manyatta area and assaulted a minor, aged 14 years old causing actual body injury to his laps. By the time of recording the statement, he had not sought medical attention.
74.	Manyatta	Police	On 15th August 2017, at around 9pm, about 4 Administration Police officers forced themselves into a house of 34 years old female civilian and assaulted her using truncheons and also stole her phone, Ksh 4,000 in cash, television set, woofer, plates, bed sheet and gas

			cylinder. By the time of recording the statement, she had not sought medical attention. She reported the incident at Kondele Police Station.
75.	Manyatta	Police	On 12th August 2017, the police officers shot a female civilian in the pelvic. The bullet lodged in her body and she was hospitalized at Jaramogi Oginga Odinga Teaching and Referral Hospital. The matter was reported at Kondele Police Station
76.	Mowlem	Police	On 10th August 2017, a female civilian, aged 19 years old was accosted by Administration Police officers who were dispersing protesters. One of the officers assaulted her by hitting her on the face using his boots. By the time of recording the statement, she had not sought medical attention.
77.	Mowlem	Police	On 12th August 20117, police officers forcefully entered into a house of a male civilian and assaulted him. He suffered a dislocation on his left hand. The officers abducted him and later dumped him at Rabuor. By the time of recording the statement, he had not sought medical attention.
78.	Kondele	Civilian	On 16th August 2017, at around 8pm, a male civilian, aged 35 years old was assaulted by a man well known to him for having not supported their preferred Presidential candidate-Raila Odinga. He caused him actual body injury to the cheek and ear. He sought medical attention at the Kisumu District Hospital. He reported the incident at Kondele Police station.
79.	Otonglo	Police	On 9th August 2017, police officers forcefully entered into the house of a female civilian and assaulted her causing actual body injuries to her

			ribs. They also stole Kshs 500 and a phone battery from her. By the time of recording the statement, she had not sought medical attention.
80.	Otonglo	Police	On 12th August 2017, at around 11.am, the Administration Police officers assaulted a female civilian, aged 34 years old causing actual body injury to her and also stole Ksh 700 from her.
81.	Otonglo	Police	On 12th August 2017, at 2.30pm, about five (5) Administration Police officers forcefully entered into a house of a female civilian aged 25 years old and assaulted her using truncheons causing actual body harm to her legs. They also stole her phone battery and Ksh 500. By the time of recording the statement, she had not sought medical attention.
82.	Nyamasaria	Police	On 11th August 2017, police officers forcefully entered into the compound of a male civilian and assaulted tenants and the landlord. The latter suffered a cut on his head. He was treated at Kisumu District Hospital.
83.	Nyamasaria	Police	On 11th August 2017, police officers accosted a male civilian riding his bike resulting in a fall by the roadside bonfire and consequently burnt his hands. He was treated at Mama Moraa Dispensary.
84.	Nyamasaria	Police	On 11th August 2017 at around 10 pm the brother to a 31-year-old male civilian was shot in the neck by police officers. Kenya Red Cross officers took him to Jaramogi Oginga Odinga Teaching and Referral Hospital.
85.	Nyamasaria	Police	On 12th August 2017, a 28-year-old female civilian was assaulted by police while washing

			her dishes. By the time of recording the statement, she had not sought medical attention.
86.	Nyamasaria	Police	On 12th August 2017, the police officers forcefully entered into the house of a male civilian and assaulted him. By the time of recording the statement, he had not sought medical attention.
87.	Nyamasaria	Police	On 12th August 2017 at around noon, police officers forcefully entered the house of a male civilian and assaulted him causing actual body injuries to his head, knee and arms. By the time of recording the statement, he had not sought medical attention.
88.	Nyamasaria	Police	On 12th August 2017, a 26-year-old male civilian was assaulted by police officers causing actual body injuries to his hands and the back. He was treated at St. Georges Hospital.
89.	Nyamasaria	Police	On 12th August 2017 police officers forcefully entered into the house of a 36-year-old male civilian and assaulted him. By the time of recording the statement, he had not sought medical attention.
90.	Nyamasaria	Police	On 12th August 2017 at about 10am, the police officers forcefully entered the house of a male civilian and assaulted him causing actual body injuries to his shoulders, ribs and hands. By the time of recording the statement, he had not sought medical attention.
91.	Nyamasaria	Police	On 15th August 2017, a 41-year-old male civilian was assaulted by police officers causing actual body injuries to his left arm and chest. By the time of recording the statement, he had not sought medical attention.

92.	Railways	Police	On 9th August 2017, a 30-year-old male civilian reported that a young man was assaulted by police. He was taken to Jaramogi Oginga Odinga Teaching and Referral Hospital for treatment and reported the matter to the Police Station.
93.	Railways	Police	On 11th August 2017, police officers assaulted and injured a minor on his head following confrontations with demonstrators. By the time of recording the statement, he had not sought medical attention.
94.	Mamboleo	Police	On 11th August 2017 a 28-year-old male civilian was accosted by five (5) police officers on the way home assaulted sustaining actual body injuries to his legs and stomach. He received treated at Consolata Hospital.
95.	Mamboleo	Police	On 12th August 2017 at around 3p.m. a 32-year-old male civilian fell off a motorbike while being chased by police officers. He broke his hand and was treated at Jaramogi Oginga Odinga Teaching and Referral Hospital.
96.	Migosi	Police	On 12th August 2017, a male civilian, aged 42 years old was accosted by estimated eight (8) police officers at Obunga junction. He was assaulted with truncheons causing actual body injury to his left leg and spinal cord. By the time of recording the statement, he had not sought medical attention.
97.	Migosi	Police	On 12th August 2017, a 20-year-old asthmatic male civilian suffered the effects of teargas lobbed by the police officers. He was hospitalized at Avenue Hospital. The matter was reported to the police.

98.	Kotetni	Police	On 9th August 2017, a male civilian, aged 35 years old was assaulted by police officers who forcefully entered into his house and lobbed teargas canister in the presence of his children. He was assaulted and sustained actual body injury to his ribs legs and head. He was treated at Jaramogi Oginga Odinga Teaching and Referral Hospital Hospital.
99.	Kotetni	Police	On 9th August 2017, police officers forcefully entered the house of a male civilian. They lobbed teargas canister at his children and caused actual body injury to his hands. He also suffered injuries on the legs and head from the police assault. By the time of recording the statement, he had not sought medical attention.
100.	Riat	Police	On 10th August 2017, a male civilian, aged 31 years old was accosted by four Administration Police Officers dispersing protesters, during which he was assaulted by the officers causing actual body injury to his face and mouth losing a tooth. He was treated at undisclosed hospital in Kiboswa. By the time of recording the statement, he had not sought medical attention. The officers also stole his *Tecno* L2 phone and Ksh 4,500 in his possession.
101.	Tom Mboya	Police	On 11th August 2017, a male civilian, aged 34 years old was accosted by police officers dispersing demonstrators at Ogango bridge. He was shot by the police in the shoulder and the bullet went through the neck. The police took his wallet containing money of unknown amount. He was hospitalized at Jaramogi Oginga Odinga Teaching and Referral Hospital.
102.	Kibos	Police	On 11th August 2017, a 42-year-old male civilian was assaulted by prison officers from Kibos GK prison on patrol using truncheons

			causing actual body injury to his arms and shoulder. He fell unconscious and woke up in a structure under construction. He later went home and received medical assistance from a medical practitioner.
103.	Katuoro	Police	On 12th August 2017 a male civilian was assaulted by police officers who had forcefully entered into his house. He sustained actual body harm to his lips, knee and leg. By the time of recording the statement, he had not sought medical attention.
104.	Oyugis	Police	On 12th August 2017 at around 10a.m. the brother to a 27 years old male civilian was shot on the knee by police and as a result the leg was amputated.
105.	Buoye	Police	On 12th August 2017 police officers forcefully entered into the house of a 29-year-old male civilian and assaulted him and his family members. By the time of recording the statement, they had not sought medical attention.
106.	Kanyamedha	Police	On 12th August 2017, the police officers assaulted a male civilian, during a confrontation with demonstrators. The victim suffered chest injuries from the police assault. By the time of recording the statement he had not sought medical attention.
107.	Nyalenda	Police	On the night of 11th August 2017, police officers forcefully entered the house of 24-year-old male civilian and assaulted him. He sustained actual body injury to his back and arm, and treated at Jaramogi Oginga Odinga Teaching and Referral Hospital. His 4-year-old son was also injured during the assault. He reported the incident, but

			the police refused to record the incident. The police also confiscated his phone.
108.	Nyalenda	Police	On 12th August 2017, at around 11.30 am, six police officers forcefully entered into the house of a 20-year-old male civilian and assaulted him leading to actual body injury to his knee, head and shoulder. He sought medical treatment at Jaramogi Oginga Odinga Teaching and Referral Hospital. The police also stole money from him.
109.	Nyalenda	Police	On 12th August 2017 at around 11a.m. police officers forcefully entered into the house of a 30-year-old male civilian and assaulted causing actual body injuries to his hands and legs. He was attended to at Jaramogi Oginga Odinga Teaching and Referral Hospital.
110.	Nyalenda	Police	On 12th August 2017 police officers forcefully entered into the house of a 37-year-old male civilian and assaulted him. He sustained actual body injuries to his legs and shoulders. By the time of recording the statement, he had not sought medical attention.
111.	Kondele	Police	On 9th August 2017, at around 7 pm, a male civilian aged 32-year-old, was accosted by police officers who assaulted him causing actual body injuries to his knees and elbows. He sought treatment at a clinic at *Car Wash* and reported the matter to the police.
112.	Kondele	Police	On 12th August 2017, at about 11am, Administration Police officers forcefully entered into a house of a female civilian. They assaulted her by stripping her naked and one officer raped her. The police officers also stole from her Ksh 1,000. By the time of recording the statement, she had not sought medical attention.

113.	Kondele	Police	On 12th August 2017, between 5-6 p.m, GSU officers descended on a 30-year-old deaf and dumb male civilian as he was walking to his home. He sustained actual body injuries to his legs, eyes, back and right hand. He was treated at Jaramogi Oginga Odinga Teaching and Referral Hospital. The matter was reported to the police.
HOMABAY COUNTY			
114.	Homabay Town	Police	On 11th August 20117, at around 11pm, about five police officers while dispersing demonstrators shot and injured a male civilian aged 17. The victim sustained actual body injury to the left arm. He was taken to St. Paul's Mission Hospital and was later referred to Homabay county referral hospital for specialized treatment and removal of the bullet.
115.	Homabay Town	Police	On 12th August 2017, a male civilian operating as a *boda boda* rider was accosted and assaulted by police officers. He sustained actual body injury to his left arm and right leg. By the time of recording the statement, he had not sought medical attention.
MIGORI COUNTY			
116.	Migori		On 12th August 2017, police officers shot and injured a female civilian on her upper left thigh. She underwent surgery at Akidiva Hospital to remove the bullet.
117.	Onyalo Primary School	Civilian	On 10th August 2017, a group of people assaulted a male civilian with machetes. The victim ran and hid inside a classroom in a nearby school. The assailants tried breaking into the classroom but the police who were called in intervened by dispersing the crowd. They also confiscated the weapons that were in the possession of the assailants. Several assailants

			were arrested and their crude weapons confiscated. By the time of recording the statement, the victim had not sought medical attention.
SIAYA COUNTY			
118.	Siaya	Police	On 12th August 2017, the police forcefully entered into a house of a male civilian in search of demonstrators. They assaulted him and a group of three women. By the time of recording the statement, the victim had not sought medical attention.
119.	Siaya	Police	On 12th August 2017, police officers assaulted a male civilian using truncheons, destroying a motorbike lent to him by a friend. By the time of recording the statement, he had not sought medical attention.
120.	Siaya	Police	On 12th August 2017, the police officers broke into a house of a male civilian in Ugunja town following confrontations between the police and demonstrators. By the time of recording the statement he had not sought medical attention.
121.	Siaya	Police	On 12th August at around 7.30am, a police officer forcefully entered the house of a male civilian aged 70 years old and ordered him to get outside to a place where close to 20 police officers were standing next to burning tyres. The officers ordered him to put it out and when he declined, five officers returned to his house with him, assaulted him and injured his private parts. The officers also assaulted his grandchild. He was treated at Yala Hospital, then referred for specialized treatment at a private hospital where he was admitted for two days. Upon his discharge, he reported the matter to the police station, but the police officers at the front desk refused give him P3 form.

SEXUAL AND GENDER BASED VIOLENCE			
KISUMU COUNTY			
122.	Nyalenda	Police	On 12th August 2017, three Administration Police officers forcefully entered into a house of a 30-year-old female civilian. They assaulted her by slapping her and demanded money and her phone. She was dragged into her bedroom and raped by one of the officers. The officers also stole Ksh 2,500 three packets of milk and her phone. By the time of recording the statement, she had not sought medical attention.
123.	Mowlem	Police	On 12th August 2017 about five (5) police officers forcefully entered into the house of two sisters. They asked if there were men within and they confirmed there were none. The police slapped and ordered one of them out of the house. They also forced her to give one of them "*one shot*" (literal meaning of having sexual intercourse) upon which she refused. One of the officers dragged her outside and ordered her to crawl on the road and while doing so one of police officer ordered her to roll in the mud. As she was rolling they assaulted her by kicking and hitting her. The second sister was also assaulted and dragged outside while being beaten. She was ordered to collect stones that were on the road. While doing so, she was being assaulted repeatedly. One officer asked her if her buttocks were real. She was too distressed to talk, she was ordered to start singing and dancing which she

			could not and as a result they repeatedly beat her in the buttocks. The victims felt greatly harassed and threatened by the police. By the time of recording the statement, they had not sought medical attention.
NAIROBI CITY COUNTY			
124.	Dandora	Civilian	On 11th August 2017, two unknown assailants forcefully entered into a house of a female civilian. They demanded, her to direct them to house of *"Wanjiru"*. One of the assailants left for *Wanjiru's* house, while the other remained behind, assaulted her and eventually raped her. She took a shower, and then went to the hospital for check-up on the likely infections resulting from the rape incident. She did not report the incident to the police because she couldn't identify the assailants.
125.	Dandora	Civilian	After the announcement of the Presidential election results on 11th August 2017, two men forcefully entered into a house of a female civilian. They assaulted her and one of the assailants raped her. She went to the hospital to take PEP and did not report the matter to the police.
126.	Dandora	Police	On 12th August 2017 at around 10.30am a female civilian who was buying charcoal was caught up in a confrontation between police and demonstrators. The female lay down as she

			couldn't run away and was then singled out by a male police officer who dragged her towards other police officers who were armed with truncheons. Her pleadings to the officers that she wasn't part of demonstrators were unheeded. She was brutally beaten by the police officers. She sought medical attention at Aga Khan hospital.

5.3 Disruption of Access to Essential Goods and Services

Immediately after the voting process, some business entities and shops within the areas monitored remained closed as Kenyans awaited the announcement of the Presidential election results. During the period preceding the elections, some Kenyans had begun to stock up food stuff and other amenities of sustenance due to a perceived impending shortage of commodities that was related to the election. This was accentuated by a perceived or actual tension, unrest, protests or violence. This was, however, not the case for some families from informal settlement who rely on their daily wages from their casual labour for their daily sustenance.

KNCHR noted that residents living in informal settlements in the counties of Mombasa, Siaya, Kakamega, Samburu and Migori, were not able to access basic goods and services due to the prevailing circumstances occasioned by the violent protests and security operations in these areas.

Whereas Article 43 of the Constitution guarantees the basic needs of all persons which include the right to food, water, shelter, healthcare and education, the Commission noted that the crackdown on demonstrators also targeted innocent people who were going on with their daily activities. There were reports of shops being broken into and goods stolen by both civilian and security agents. Other incidences that were reported included police officers forcefully entering into people's homes and destroying property including stock meant for businesses.

In Mumias, Bungoma County, for instance, there was a shortage of fuel as the major suppliers had closed. Supermarkets and retail markets remained closed and those that were opened lacked basic commodities as there were no supplies to meet the demand. Same challenges were reported in other counties with many residents suffering from the effects of the demonstrations and subsequent police crackdown.

The proprietors of the transport companies that normally operate the Kakamega – Nairobi route via Kisumu avoided passing through the lakeside city for fear of attacks.

5.4 Violation of the Right to Property

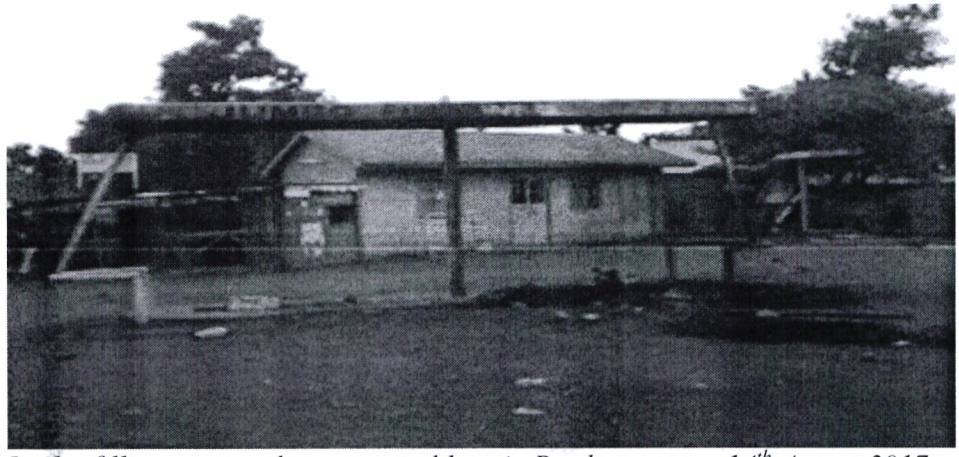
During diverse dates of August 10th to August 20th, 2017 KNCHR documented five (5) cases relating to unlawful destruction of private and public property by civilians in various counties after the announcement of the Presidential election results. These cases describe instances in which civilians attacked homes, fuel stations and looted business premises. They include:

1. *On 10th August 2017 at around 11.00 am after the Garissa County gubernatorial results were announced, supporters of the former Governor Nadhif Jamah and Farah Maalim staged violent riots and torched down the Suuq Mugdi market in Garissa town which is an economic hub for the people of Garissa especially for women. About 3000 stalls were torched occasioning destruction of goods, accessories and properties worth millions of shillings.*



A section of the Suuq Mugdi market, Garissa town destroyed by violent protesters on 10th August 2017. (Photo courtesy: KNCHR 2017)

2. *On 14th August 2017 at around 1:00 am in Bondo town, three (3) petrol stations- Galana filling station, Tawakal filling Station and Jumbo Filling Station and one (1) supermarket named Kim Matt belonging to a businessman of Somali origin were destroyed and burnt down. The residents took to the streets to protest against the Presidential results and targeted properties belonging to business people of Somali origin.*



Jumbo filling station that was set ablaze in Bondo town on 14th August 2017.
(Photo courtesy: KNCHR 2017)

3. *On 11th August 2017, in Kariadudu village in Babadogo ward Mathare constituency, Nairobi, a total of 28 kiosks and 3 structures that housed more than 12 families were destroyed by violent protesters and some, by police officers. The Commission recorded a statement from a witness who revealed that police officers deployed to quell the protests destroyed some kiosks so as to have a clear view of the area of operation in dispersing crowds.*



Some of the kiosks burnt down in Babadogo, Mathare Constituency in Nairobi.
(Photo courtesy: KNCHR 2017)



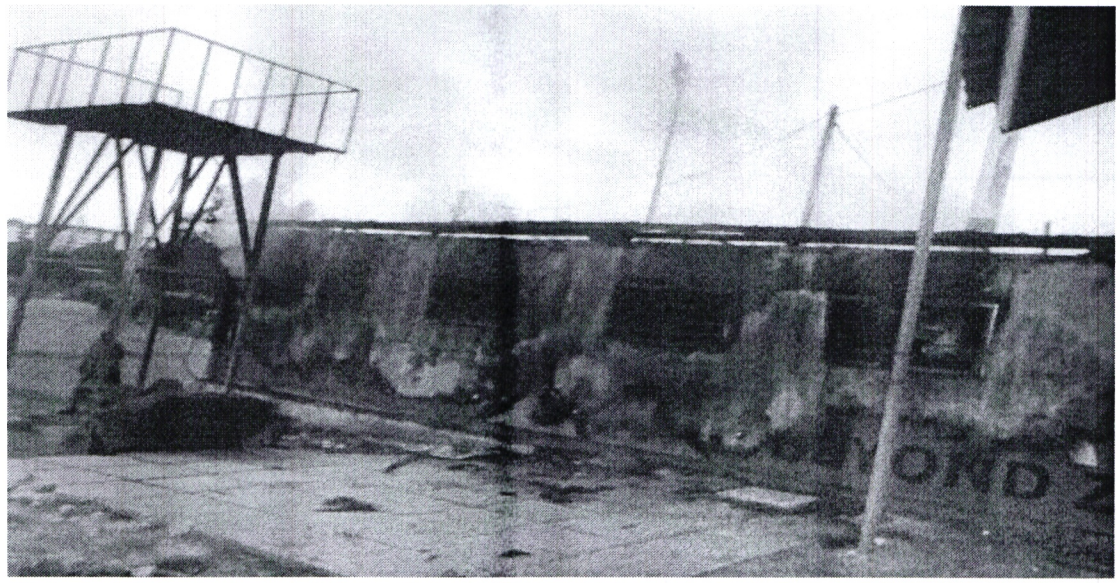
Part of 28 structures destroyed in Baba Dogo. (Photo courtesy: KNCHR 2017)

4. *On 11th August 2017, at around 11.00pm, Mrs. Florence Okwany's house in Nyalenda was razed down by people believed to be her neighbours. This was immediately after the release of the Presidential results. In the process, the house and household goods estimated at Kshs. 2 million were destroyed. Reports indicate that the family was targeted on the basis that her husband belongs to the Kikuyu community. The attackers wanted to lynch her and her husband but luckily, they were rescued by other members of the public. She reported the incident at Nyamasaria Police station vide OB No. 4/12/8/2017 and relocated to her brother's home together with her family for safety reasons. At the time of the interview, no arrests had been recorded.*



The remains of the house belonging to a resident in Nyalenda which was set ablaze on 11th August 2017. (Photo courtesy: KNCHR 2017)

5. *On 12th August 2017, in Kibra Constituency in Nairobi, violent protesters burnt down a clinic established under the Beyond Zero programme after the announcement of the Presidential election results. Police officers lobbed teargas canisters to disperse the protesters.*



The remains of a Beyond Zero clinic in Kibra which was torched on 12th August 2017. (Photo courtesy: KNCHR 2017)

5.5 Harassment and Arbitrary Arrests

The National Police Service is expected to strive for the highest standards of professionalism and discipline, competence and integrity among its members and also to comply with constitutional standards of human rights and fundamental freedoms according to Article 244 of the Constitution. In promotion of democratic policing, officers of the service are to maintain law and order while fostering and promoting relationships with the broader society.

In the deployment of officers to manage public order and crowd control during protests, the police officers are to adhere to the regulations on the use of force and firearms and are expected to exercise restraint in the management of protesting crowds.

It is imperative that the dignity of the individual and the right to privacy should be upheld at all times. Police officers within the service are, therefore, required not to engage with persons that are within their places of abode or to invade homes and assault persons that were not part of the protests.

Further, the Constitution guarantees Kenyans the security of all persons and protects them against arbitrary arrest and detention. No person is to be deprived of their liberty without following the due process as prescribed under Article 29 of the Constitution and other legislations. It is expected that anyone who is arrested is supposed to be informed of the reason for his or her arrest and also be informed of any charges that are being levelled against them and anyone detained on any criminal charge, is expected to be brought before a court and charged accordingly within a period of 24 hours. Failure to which, they will be entitled to enforce a right to compensation.

KNCHR documented cases of harassment, assault and arbitrary arrests of residents following the deployment of police officers in Nairobi specifically Dandora Phase 4, Kisumu (Nyalenda, Ahero, Awasi) and Mombasa at Bokole in Changamwe. From the documented cases KNCHR noted that majority of these arbitrary arrests were from informal settlements and all the victims were male who were collectively rounded up by the police. In a majority of the cases documented, the KNCHR noted a trend of police officers forcefully entering into people's houses and specifically looking out for youths who they took away.

5.5.1 Arbitrary Arrest Log

County	Area of incident	Complaint
Nairobi City		
1.	Dandora Phase 4	Police entered Kamoke A and B plot and took 32 men within these plots and loaded them into lorries. In the same area, the police forcefully entered into residents houses and beat up women, men and children. Police entered the compound by breaking windows and smashing doors. The police assaulted all the men they came across and made them lie down saying "*Wanatunasa*!" and threatened them that they will be executed. They were badly beaten before being taken to Wendo Area. They were released upon the arrival of the OCS. Officers from Kenya Red Cross later came and offered treatment to those that were injured.
Kisumu		
1.	Nyalenda	Two gentlemen and a lady were taken away by police officers from their house next to Tosha Petrol Station on the way to Rabuor. They were severely assaulted before the lady was released but the men were not released. One of the police officers told them that they had instructions to finish the people of Kisumu. The young men reported that they were released after being beaten up and received medical care
2.	Between Ahero & Awasi	Police officers were moving door to door taking away men. They took at least 5 people, one of them being a 15-year-old. The men

		were released after being forced to clear the debris that was left on the roads in the aftermath of the protests.
3.	Ombeyi	On 11th August 2017, a boy was arrested by Ahero police officers and was later charged with damage of property after he was arraigned at Nyando Law Courts and later remanded at Kodiaga Prison.
4.	Buonye (Morlem)	On Saturday 12th August 2017 at about 3pm at Buonye, the Police forcefully entered a house and ordered the dwellers to get out. They started assaulting them using truncheons. One of the complainant reported that he was hit until his left hand dislocated. They were then ordered to get into the police vehicle as the police deliberated whether to take them to Ahero police station or Nairobi. On reaching Rabuor, the men were released.
Mombasa		
1.	Bokole-Changamwe	Police officers came in a Land Cruiser vehicle and arrested seven (7) youths who were seated in *vibandas* (Wooden stalls) along the road. The police arrested them and told them that they were not supposed to be sitting in crowds. The young men were taken to Changamwe Police station. The HRD who intervened by communicating with the current MP and through their intervention the young men were released within the same day.

5.7 Civil Society Repression

The Kenyan Constitution under article 36 (Freedom of association) gives Kenyans the right to freedom of association, which includes the right to form, join or participate in the activities of an association of any kind. Article 36 (3a & 3b) of the Constitution provides for the protection of Associations in that: *The registration of an Association of any kind may not be withheld or*

withdrawn unreasonably; and if such a move is to be done, there shall be a right to have a fair hearing before a registration is cancelled[243].

The civil society organizations in Kenya play a critical role in ensuring that the Kenyan democratic space is expanded through constant vigilance on the rule of law and good governance. This has been maintained through a robust strategy of emboldening the citizens through civic education and facilitation for active participation in governance programmes.

Many stakeholders including local and international observers had a keen interest in Kenya's 2017 General election. The majority of the local observers were mainly drawn from the civil society groups which have in the past endeared themselves with the promotion and protection of democracy in Kenya.

Many civil society organizations within the country had, prior to the General Election, been actively involved in sensitizing the citizens on the tenets of democracy, the rights and responsibilities in the electoral process. This was capped by the preparations and actual monitoring of the electoral process pre, during and the post polling process. Some of the active institutions observed the process either as independent institutions or as coalitions[244].

The Kenya National Commission on Human Rights worked and strategically consulted with many civil society actors during the 2017 General Election monitoring project. During the party primaries and throughout the campaigns, KNCHR didn't receive complaints from the civil society groups on interference or harassment. However, after the polling process, KNCHR recorded several cases whereby two (2) main civil society groups, the Kenya Human Rights Commission (KHRC) and the African Center for Open Governance (AfriCOG) had their operations almost grinding to a halt through directives from the NGO Coordination Board.

The Kenya Human Rights Commission (KHRC) through a letter dated 14th August 2107, 4 days after the announcement of the Presidential results which the affected CSO's had strongly questioned, Fazul Mohamed, the CEO of the National NGO Coordination Board ordered their de-registration.[245] The allegations levelled against KHRC, one of the leading human rights

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[243] *Constitution of Kenya Article 36 (1), (2) (a, b)*

[244] *These included Kura Yang Sauti Yangu, ELOG and UWIANO Platform*

[245] *http://www.nation.co.ke/news/kenya-Human-Rights-Commission-deregistered-/1056-4057174-10291od/index.html. Accessed on 29th August 2017.*

bodies in Kenya was tax evasion, operation of illegal bank accounts and irregular recruitment of expatriates.

KHRC and other stakeholders accused the NGO Coordination Board CEO of attention seeking and maintained that the accusations were mere allegations and witch-hunt.[246] While this was happening, the NGO Coordination on 15th August 2017 wrote to the Directorate of Criminal Investigations (DCI) to investigate AfriCOG for operating without valid registration. It however, later emerged that AfriCOG is registered under the Companies Act as a company limited by guarantee and as a NGO. Consequently, the NGO Coordination Board had no direct mandate to regulate its operations. However, officials from the Kenya Revenue Authority (KRA) raided the AfriCOG offices and attempted to cart away various equipment and documents before they were blocked by human rights defenders.

Overwhelmingly, the civil society groups, religious institutions and the international community condemned the actions and cited the link between the past activities by the two bodies which heavily critiqued the electoral process. These included various protests and media activities organized by CSOs. The Kenya National Commission on Human Rights added its voice in the matter through a press conference on 16th August 2017[247].

On 16th August 2017, ostensibly overwhelmed by the local and international pressure, the Acting Cabinet Secretary in charge of Internal Security directed the Permanent Secretary, Ministry of Internal Security and Coordination of National Government to form an exclusive and representative committee to work with the NGO coordination Board and review compliance. Actions against the KHRC and AfriCOG was suspended for three months. The conclusion of the directive from the Cabinet Secretary read thus;

> *In the meantime, I direct that while this is happening, you suspend an action on these organizations for up to 90 days to enable the Principal Secretary's Committee work with these organizations to meet the regulatory and compliance needs of the NGO's Coordination Board to avert any distraction of their activities-* **Dr. Fred Matiang'i, Ag. CS, Ministry of Interior and Coordination of National Government**

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[246] *http://www.khrc.or.ke/2015-03-04-10-37-01/press-releases/623-the-kenya-human-rights-commission-denounces-attempt-of-illegal-de-registration-by-the-ngo-coordination-board.html*

[247] *http://www.knchr.org/Newsroom/PressStatements.aspx*

This would ideally last up to mid December 2017 and the Kenya National Commission on Human Rights will continue to monitor the events as they unfold.



KNCHR Officials including the CEO joined civil actors in defence of the Article 47 of the Constitution
(Photo courtesy: KNCHR 2017)

KNCHR deduces from the statement that the acting Cabinet Secretary of the Ministry of Interior and Coordination of National Government while directing the Permanent Security was playing safe for the state since many other international communities including Frontline Defenders[248] and Amnesty International joined voices with the UN High Commissioner for Human Rights and demanded that CSOs be allowed to do their work without interference.[249]

On 20th August 2107, Maina Kiai, the head of InfoAction, a human rights body in Kenya was temporarily denied clearance at the Jomo Kenyatta International Airport in Nairobi. Interestingly, Kiai is not a government official neither was he on government surveillance as confirmed by the director of immigration services, Maj-Gen (Rtd) Gordon Kihalangwa[250]. Based on the assertion made by the immigration department, KNCHR recorded this as a case of harassment which borders on repression of the civil society.

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[248] *https://www.frontlinedefenders.org/fr/file/4055/download?token=L6FyZqTb*

[249] *http://www.nation.co.ke/news/UN-Amnesty-condemn-NGO-board-AfriCOG-KHRC/1056-4058566-8ryftpz/index.html*

[250] *Read more at: https://www.standardmedia.co.ke/article/2001252023/drama-as-rights-activist-kiai-briefly-stopped-at-jkia-over-clearance-to-travel*

KNCHR reiterates that any action against the CSOs should be in line with Article 47 of the Constitution which calls for fair administrative justice. Equally, KNCHR calls upon the state to fast track the implementation of the Public Benefits Organizations (PBO) Act of 2013 to usher in better coordination of non-state institutions in Kenya.

CHAPTER 6: STRATEGIC INTERVENTIONS BY KNCHR, CONCLUSION AND KEY RECOMMENDATIONS

6.1 STRATEGIC INTERVENTIONS

KNCHR as the main organ of protecting and promoting human rights and freedoms in the Republic of Kenya set out to undertake various strategic interventions between May 2016 and August 2017 that had an impact on various aspects in the electoral cycle in preparation for the 2017 General Elections. The Commission drew its mandate from Section 8 of the KNCHR Act to: monitor state and non-state actors, ensure compliance with national, regional and international laws and policies on human rights standards, review legislation and policy proposals, investigate and redress alleged human rights violations and give advisories to the Kenyan government on various issues that impact negatively on the realisation of human rights culture. The implored strategies included;

a) Memoranda on proposed electoral reforms,
b) Evidence based advisories with recommendations to key actors,
c) High level dialogues with strategic stakeholders,
d) Public outreach and campaigns,
e) Media advisories on the status of human rights and freedoms,
f) Rapid response missions,
g) Investigation missions, and
h) Public interest litigation.

The following table shows a sample of some the key interventions and their impact on promoting and protecting human rights in the electioneering process.

1. Protecting the Right to Assembly and Demonstration

The KNCHR has been at the forefront to protect and uphold this fundamental freedom and right under the Constitution, Article 37 that was several times under serious attack by security agencies especially in the clamour for electoral reforms.

DATE	INTERVENTION	CONTEXT AND IMPACT
17th May 2016	Media Advisory on the use of excessive force by the National Police Service in the ongoing anti IEBC protests also known as 'Teargas Mondays'.	KNCHR rapid response teams monitored these demonstrations and investigated human rights violations against demonstrators in several parts of the Country especially in Nairobi City and Kisumu Counties.

		The advisory reminded the National Police Service on its Constitution and international human rights obligations: to protect the security of every person and use of reasonable force. The Commission further pointed out: the need for a clear separation of the powers between the Cabinet Secretary in charge of Interior and Coordination of National Government, individual accountability for the atrocities committed by several police officers and the Office of Inspector General as an independent constitutional entity, and a call to the opposition demonstrators to be peaceful and unarmed.
31st May 2016	Media Advisory on the Right to Assembly under Article 37 of the Constitution	This advisory was necessitated by the government directive through its Spokesperson Mr Erick Kiraithe of cancelling two meetings/rallies citing national security. The Commission reiterated the constitutional provision as related to the right to assembly and an affirmation of the sovereign power of the people in the Constitution, Article 1. The Commission issued key recommendations to the state to desist from issuing such unconstitutional directives and asked the National Police Service to instead avail security to all persons intending to demonstrate. And as a result of this efforts the rallies were able to proceed.
June 2016	Visit and letter to the Inspector General on various cases of police brutality	KNCHR documented and investigated various cases of police brutality while monitoring the political demonstrations and investigations. KNCHR made a courtesy call and wrote to the Inspector General bringing to his attention the brutalities meted out

		on civilians by police especially in Kisumu County on 6th June. Fifty (50) cases of civilians were rushed to various hospitals with severe injuries including gunshot wounds: 22 admitted to the Kisumu County Hospital, and 20 admitted at Jaramogi Oginga Odinga Teaching and Referral Hospital. Six (6) of these victims had bullets still lodged in their bodies while two (2) had been severely cut by *matchetes.* The KNCHR asked the IG to commence immediate investigations and prosecutions of responsible police officers.
August 2016	Draft Memorandum of Understanding between the KNCHR and the National Police Service. Draft guidelines on the Use of Force and Firearms by the Police.	Taking note of the critical role of the National Police Service in protecting human rights and freedoms especially during the electioneering period, KNCHR initiated discussions to strategically partner with the National Police Service. A draft MoU was developed together between senior officers from both entities and forwarded to the Inspector General. Despite the fact that the MoU is yet to be signed and operational, it opened and improved the channel of communication and cooperation with the police. This engagement also culminated the development of guidelines on the use of force and firearms that drew inspiration from the Constitution, National Police Service Act, regional and international human rights instruments and minimum standards. The Draft regulations were forwarded to the Attorney General and some of these provisions have been incorporated in the New Police Service Standing Orders.
24th December 2016	Media Advisory on securing the General Elections	This advisory examined the recent deployments by the National Police Service who in most instance had

		undertaken violent disruption of assemblies and demonstrations. The Commission urged the police service to operate strictly in the confines of the Constitution and the rule of law.
July 2017	Advisory to the Inspector General and the IEBC chair on security preparedness in the 2017 General Election	The advisory highlighted the findings from KNCHR monitoring and investigations and made key recommendations on the necessary measures to be taken before the August elections including: mandatory obligation of the deployed police officers to operate within the strict confines of the law, and for the IG to send a communication to this effect to all his officers.
July 2017	Regional dialogues with security actors on the interplay of security and human rights	The KNCHR embarked on enhancing the understanding of the role of security actors in providing security and undertaking public order management in compliance with the Constitution, regional and international human rights instruments and standards. A total of six (6) regional forums[251] were held targeting 450 police officers who dialogued on human rights tensions and policing. 250 booklets were disseminated to police officers in 6 regions[252] as well as IEBC officers. In the 6 regions trained, there have been no cases of police brutality were reported to the commission.

[251] North Rift-Eldoret, Coast-Kwale, North Eastern-Garissa Western-Bungoma, Eastern Meru, and Nyanza-Kisii

[252]

July 2017	A checklist on peaceful assemblies. Educational video on peaceful assemblies.	The Commission developed and disseminated a checklist booklet and video that highlighted the roles and obligations of police officers and citizens on the promotion and protection of the right to assembly and demonstrations. The video was disseminated through mass media including KTN and NTV stations during the prime time news for 2 days and the radio station infomercials.

2. Mainstreaming human rights in the Electoral Reforms and Processes

The calls for electoral reforms especially in the legislative framework were the highlight of 2016. In line with the various advisories, KNCHR provided the following memorandums to the National Assembly and Senate aimed at strengthening the respect for human rights and freedoms. The Commission further issued various advisories with key recommendations to the Independent Electoral and Boundaries Commission and other institutions that played a critical role in the electioneering cycle.

DATE	INTERVENTION	CONTEXT AND IMPACT
August 2016	Memorandum on election reforms presented to the Joint Parliamentary Select Committee (JPSC).	The key recommendations included; ➢ IEBC to embark on a mass voter registration, rigorous communication on the voter registration process and avail data of the distribution across the country. ➢ The distribution of Biometric Voter Registers (BVR) kits in regions should be proportional to the number of persons with identity cards. ➢ Clear timelines on the compilation of the voter register which should be comprehensive, authoritative, disaggregated with accuracy and verifiable. ➢ IEBC to put in place measures to ensure that prisoners are registered as voters and able to vote on the material day.

		➢ Parliament to enact legislation to facilitate expanded Diaspora voting. ➢ Better resourcing of voter education by the Government to ensure robust and timely voter education and better coordination between IEBC and civil society in the provision of a structured and comprehensive voter education ➢ Amend the Political Parties Act to obligate political parties to have all their members registered and issued with membership cards. The membership list should be deposited with the registrar of political parties and which should be used when conducting nominations. ➢ IEBC in conjunction with stakeholders to conduct the inspection and the pre-testing of all the electronic gadgets so as to guarantee that both the hardware and software of the Voter Identification Kits are functional and appropriate. ➢ Need for capping of voters in a polling station to ensure effective management of the voting process. ➢ Parliament to enact a mechanism to operationalize and implement the two thirds gender principle. ➢ IEBC to put in place measures to ensure voters with disability are adequately facilitated to vote including the provision of braille material. An analysis of the October 2016 amendments to the various Electoral laws indicate that most of the above recommendation were incorporated into the law except the 2/3 gender rule. This culminated in an increase in the promotion of human rights and freedoms.
December 2016	Memorandum on the Elections Laws (Amendment) Bill, (National Assembly Bill No. 3 0f 2015	The Commission undertook to present this memorandum following attempts by one side of the political divide to

		acrimoniously amend the negotiated electoral laws to allow for use of a backup in the failure of technology. The Commission strongly submitted that embracing technology in the electoral management was crucial and critical for the realization of a free, fair and credible 2017 general Elections. The Kriegler Inquiry recommended the use of technology. The need to follow to the latter the Elections Act, Section 44 specifically on the step by step requirements and preparations on testing the devices at least 60 days before the Election.
January 2017	Memorandum to the Independent Electoral and Boundaries Commission	The Commission held high level consultative meeting with the IEBC Chair and Commissioners and shared key concerns and recommendation to be addressed before the polls including the following; ➢ Urgent need to share the records of shared identification number and any anomaly discovered in the voter register ➢ IEBC to address the allegations of infiltration of the IEBC data base by immediately embarking on cleaning the voter register in an open and transparent manner. ➢ Investigation cases of mass voter transfer and voters being in the register without having identity cards. ➢ Immediate reinstatement of the free SMS verification code to allow members of the public to widely participate ➢ IEBC to take stringent action on political actors engaging in electoral malpractices eg. violence, hate speech and incitement as they had the potential to violence. ➢ Develop a communication strategy and recruit a senior officer. IEBC responded to most of these concerns for example in 2017 in Siaya County, IEBC County Returning officer strongly among

		others sanctioned political actors who offender the Election Offences Act and the SMS verification code was finally reinstated albeit late.
June 2017	Advisory on the misuse of children in political campaigns	The advisory was issued to the Cabinet Secretary in the Ministry of Education and the chair, TSC. It brought to their attention the rising misuse of children in political campaigns were in some instances children were being caught up violent disruption of political rallies, disruption of education through children's direct participation in campaigns during school days and the use of school grounds. The Commission strongly condemned this violation of the best interest of the child and advised the Cabinet Secretary and Chair to take stern action against the head teachers who allowed or facilitate such disruptions. The Commission further asked the Cabinet Secretary to issue a circular regarding the conduct of teachers and education officials on: the use of public school property, and the use of students in political campaigns. The Cabinet Secretary issued a directive to all school heads to ensure that students and learning as not disrupted due to their engagement with political campaigns.
June 2017	Memorandum on the Election Offences (Amendment) Bill, 2017	The Commission presented responded to the bill published by the leader of majority at the National Assembly Hon. Duale seeking the deleting of the Elections Offences Act, Section 14 outlawing government from advertising its achievements during an electioneering period. KNCHR submitted that the essence of this provision was to limit the misuse of public resources and officers, and recommended its

		retention in law since it had the potent of interfering with the political campaign. The bill was shelved and not debated in the National Assembly.
July 2017	Advisory Memorandum to IEBC on public participation	This advisory was necessitated by the contention on the procurement processes at the IEBC. The Commission reiterated to the IEBC the importance of public participations in all its process as a critical strategy to win public trust, confidence and enhance transparency. The KNCHR specifically stated that the IEBC had a duty to inform, consult and involve the public in this critical process in order to achieve inclusive which had an impact on the realisation of a credible, free and fair elections.

3. Protecting independent institutions, Civil Society and the Media

The 2017 Electoral Cycle witnessed on the highest attacks on key independent institutions with Constitutional and critical mandates in ensuring a free and fair elections. This included the Independent Electoral and Boundaries Commission (IEBC), the Judiciary, the media and civil society. The attacks documented mostly emanated from the executive, powerful state and political actors which was a clear violation of the rule of law, separation of powers, rights and freedom of association.

DATE	INTERVENTION	CONTEXT AND IMPACT
24th December 2016	Media Advisory on Securing the 2017 General Elections	The presidents and the leader of Majority in the National Assembly Hon. Duale remarks that foreign powers were channelling money to civil society organisations, and specifically IFES was singled out and unceremoniously terminated by the NGO Coordination Board. The Commission denounced these remarks, actions and specific attacks on the judiciary by the Leader of Majority Hon Duale

		specifically targeting Justice Odunga due to his judgements as a violation of the separation of powers. The Commission further raised concern on attach on the freedom of the media and the trend in curtailing the freedom of expression ahead of the General Elections. The Commission called upon the Speaker of the National Assembly Hon. Muturi in the spirit of safeguarding the freedom of the media to restrain in issuing directives contrary to the law such as ordering the switching off of live coverage during the proceeding of the National Assembly.
10th July 2017	Media Advisory on political interference with the Independence of the Judiciary and IEBC	The Commission raised concern on the comments attributed to the president, the vice president and other political actors who threaten the judicial officers due to decisions they considered offensive. The Commission strongly condemned these efforts that undermine the clear separation of powers, Constitutionalism and asked all political actors to desist violating the rule of law.
17th August 2017	High level meetings with the Cabinet Secretary of National Coordination and Government and Civil Society	As a result of the attacks on civil society organisations in August 2017 namely KHRC and AFRICoG, the KNCHR acted as a key mediator and brokered a meeting between the CS Interior Dr. Fred Matiang'i and Civil Society representative to unlock the stalemate and concretize on a way forward especially in respect to the operationalization of the PBO Act and the threatened suspension of the two institutions. At the conclusion of the meeting it was agreed that: the CS would convene a meeting with the governance and human rights CSOs to present a framework for the operationalisation of the PBO Act by 25th August 2017, the Committee set up to investigate the CSOs would be expanded to include a representative from KNCHR, and the CS communicated that it was his intention to

		foster a working relationship with Civil Society based on professionalism, good faith and transparency. The meeting is yet to take place, however, the threat on the two institutions is not apparent yet.

4. Monitoring the status of human rights and freedoms in the Electoral Cycle

The Commission endeavoured throughout the electioneering period to update the nation on the state of human rights and freedoms throughout the electioneering period through bi weekly media briefs which included key recommendations on ongoing concerns or issues. The impact of these media briefs is that it served as both as an advocacy strategy and watchdog by putting all the actors on notice. This was aimed to act as a deterrence to the escalation of human rights violations.

DATE	INTERVENTION	CONTEXT AND IMPACT
13th June 2017	Media update: Political campaigns increasingly leading to human rights violations	The KNCHR updated the nation that through its monitoring activities there was a high increase of human rights violations in the various political campaigns specifically; • Misuse of public resources and officials at both the county and national level, and • Violence and the loss of lives in Turkana and Bungoma Counties.
27th June 2017	Joint media update as Article 59 Commissions and the National Cohesion and Integration Commission (NCIC)	Article 59 as the custodians of Chapter 4 on the Bill of Rights and therefore raised several concerns and provided minimum standards that needed to be addressed before the elections; • Violence targeted especially on women, person with disability and the youth. • Heightened insecurity and tensions especially in the identified hotspot areas across the country. • Inducements and bribery by political actors.

		The relevant actors including IEBC and the National Police Server were advised to put in place measures to address this concerns.
14th July 2017	24 days to the ballot	The KNCHR updated the nation on the status of human rights as the country drew closer to the polls day. A number highlights were shared; • There were secret door to door campaigns that were outside the permitted time. KNCHR called upon the IEBC's to enforce the electoral Code of Conduct through the committee. • Mass movement of voters due to insecurity. KNCHR called upon the IG to heighten security in Lamu, Laikipia, Samburu, West Pokot and Baringo Counties to ensure that no person was disenfranchised. KNCHR further called on IEBC to put in place mobile voting clinics in the affected Polling Stations. • Late recruitment and inadequate training of IEBC officials. KNCHR raised the red flag on this and took note of the critical role that all these officials were expected to play at both the Polling and Constituency levels on 8th August 2017. • KNCHR called for the immediate publication of the voter register to increase transparency. IEBC publicised the register in its public portal on 20th of July 2017.
6th August 2017:	Crunch time: 1 day to the polls	One day to the polls KNCHR issued a media update reiterating the human rights concerned raised in the previous updates. The Commission updated the nation that it was going to monitor on the 8th.

		The Commission shared the toll free line and SMS platform numbers 0800 720 627 and 22359 respectively. It called on all to share these numbers widely and use them to communicate with KNCHR 24/7. The Commission shared the minimum human rights expectations for the polls which included: the police obligation to avail security to all citizens, assistance of the vulnerable groups to effectively participate in the elections, a call to IEBC officials to remain true to their oath of duty, IEBC to share information on the specific Polling Stations that did not have 3G or 4G network, political actors and their supporters to respect rule of law.

5. Empowering the Electorate to demand for their rights

The Commission draws its inspiration of empowering the people by recognising that the Constitution, Article 1 sovereign power belongs to the people of Kenya which may be exercise either directly or through their democratically elected representatives.

During the 2017 electioneering period, the Commission endeavoured to undertake interventions geared towards empowering all members of the community especially the vulnerable, marginalised and in the rural areas through community radio activations and national dialogues. The following is a sample of some of the public outreaches:

DATE	INTERVENTION	CONTEXT AND IMPACT
June 2017	Community raid activations on corruption and human rights.	Taking into consideration the link between corruption and human rights, and the quality of leaders to be elected in the polls, the Commission delved into a spirited campaign of sensitizing and empowering members of the public on how corruption affects the realization of human rights, the offences and penalties under the law, the role of key actors in fighting corruption, and the role of the people specifically to vote wisely by choosing leaders of integrity.
June 2017- August 2017	Radio infomercials on human rights and elections. Activations targeting *Boda Boda* riders Distribution of branded reflective clothing with the Commission's SMS and Toll free number	This activation was carried out in twenty (20) community radio stations approximately reaching out to six million (6m) listeners who were empowered on what are human rights violations, how to lookout for such violations during the electioneering period, where to report or complain and get in touch with the commission. Due to this activation, over 9,500 members of the public were able to contact the Commission directly during this electioneering period.
June 2017 July to August 2017	National leadership forum on elected leaders and economic social and cultural rights Radio and TV appearances in talk shows	The KNCHR entered into partnership with Nation media house and held a national dialogue on elected leaders. This critical discussions including talks on ECOSOC rights and security before a live audience. The dialogues were aimed at empowering Kenyans on the importance of linking human rights to elections, and for people to stand up for their rights. The Commission further engaged eleven (11) radio stations and ten (10) TV channels to further sensitize members of the public on the role and work of KNCHR, voter education and conflict management.

6. Timely Accountability for human rights violations and victim compensation

A key function of the Commission is the power to investigations and seek appropriate and timely redress for all forms of human rights violations. Throughout the electioneering period the KNCHR put in place measures to ensure that members of the public can easily access to the Commission 24/7 to report complaints or concerns, timely investigations including rapid responses were undertaken with the aim of seeking accountability for human rights violations and remedial action.

As a result of this enhanced public outreach, the KNCHR toll free number and sms platform were busy 24/7 and over 9,500 person were able to reach out to the Commission on specific complaints and concerns. The following are the rapid response missions that were key in documenting and offering timely interventions during the electioneering period;

POLITICAL CAMPAIGNS		
Issue	**Area**	**Impact**
Manipulation of Voters/Voter Bribery	Response on alleged violation - manipulation of voters, voter bribery in Morendat Ward in Gilgil, Nakuru County.	KNCHR was able to establish that the complaint on alleged voter bribery and manipulation of voters was misleading. There was no evidence of manipulation of the IEBC voters register. KNCHR was able to meet with the key duty bearers (IEBC & National Police Service) and confirmed that they were aware of the allegations and that they had put in place measures to protect the petitioners' rights to political participation.

6.2 KNCHR Key Recommendations

The Kenya National Commission on Human Rights, based on the findings of the experiences of the 2017 Election Monitoring Project and the evaluation thereof, makes the following recommendations to state and non-state actors with an aim and view so as to expand the realm of human rights within the electioneering framework both in legislation and practice.

1. **The Independent Elections and Boundaries Commission (IEBC)**
   i. Put all the necessary and legally required arrangements for a general election in place at least three months prior to the said election. This is important as it will ensure that the technology to be employed for the voter registration, verification and identification is put in place, tested and approved in advance in compliance with the law.
   ii. Invest in and or ensure that places which are not covered by the required network strength are fully covered by the complementary technology either through procurement and application of satellite phones and other related technology or entering into agreements with service providers to boost the same to the required standards so as to ensure that final transmission of results does not become a point of contention during the final transmission of results from the polling centres. - complimentary
   iii. IEBC must ensure that civic and voter education is a continuous exercise by working together with other state and non-state bodies specialized in civic and voter education. In the 8th August 2017 General Elections, 401,003 rejected votes were beamed in the media portal while the final result by the IEBC was later reduced to 81,685 votes in the final results in the Presidential Elections. We believe that this number could be minimized if civic education efforts in 2017 were scaled-up. IEBC must appreciate the heavy tasks of steering the polling process and where possible, delegate roles like civic and voter education to other state and non-state institution.
   iv. Must ensure that timely recruitment and training of Presiding and Returning Officers is done at least 2 months in advance so as to avoid rushed recruitment and training processes. Sufficient training timelines must also be developed for

Electoral Clerks. IEBC must ensure that they train their officials early enough and ensure that the level of simulations and refresher courses are done in order to ensure that the level of competence and confidence of the Clerks, Presiding Officers and Returning Officers is optimized.

v. Ensure that disciplinary measures taken against errant political parties, aspirants and candidates are timely, uniform and equally enforced. The IEBC Code of Conduct Enforcement Committee must be strengthened in their enforcement mechanisms that stem from their decisions and orders they issue.

vi. Ensure that as per the IEBC Act Section 4 (a), continuous registration of voters is actualized. In the case of the 2017 elections, only two phases (MVR I and II) provided an opportunity for fresh voters to be registered. This might have locked out many youthful voters who acquired their ID cards after the closure of the registration of voters

vii. Ensure that the regulations and procedures on prisoners voting is formulated so as to ensure that registration, voter education and voter verification guarantees the highest level of their participation so that as many qualified prisoners as possible can vote. This should as well guarantee that as many qualified prisoners vote for candidates in all the six positions.

viii. In places with high numbers of registered voters, increase voting booths in the polling stations from two to four to increase the polling pace and reduce the unnecessary queues witnessed in the polling centres. These to include special provision for booths for persons with disability.

ix. Redesign and standardize the minimum requirements for the layout polling centres and polling stations so as to give a logical purpose for the 700 voters cap and avoid overcrowding, long queues and confusing voters.

x. IEBC must reconfigure the number of polling stations in a polling centre especially in social halls and redistribute them to adjacent venues so as to ease congestion.

xi. Rethink the use of form 32A with a view of making it redundant. As per the 2017 General Elections, the different mode of the use amount to misuse in certain circumstances.

xii. Ensure that appropriate materials for the PWDs which include braille, tailor-made audio and visual materials to secure their, privacy and secrecy in special booths are introduced and used. This should tie to un-limiting accessibility of the Polling Centres to facilitate quick and smooth voting for special categories of voters.

xiii. Must ensure that Polling Stations with poor network coverage are gazetted and that the Presiding Officers are facilitated to reach specific points to transmit results to the Constituency and National Tallying Centres.

xiv. As per the legal provisions, ensure that the public portal for the voter register and results transmission are real time and that all the scanned results availed in a simple technology which guarantees public access.

2. The Political Parties

i. Ensure that party primaries are conducted in good time and within the legal timelines so as to avoid last minute rush and way before the General Elections.

ii. Strengthen disciplinary measures for errant candidates and enforce political party discipline and make public reports of cases they handle.

iii. Strengthen party disputes resolution mechanism so as to fast-track complaints handling to ease backlog of cases to the judiciary.

iv. Ensure that internal operations professionalized and that party activities including the running of offices, registration and recruitment is a continuous exercise.

v. Must increase the level of transparency and accountability in all their activities as per the law and ensure that all their members and supporters subscribe to the same ideals. These include: disaggregated membership information, party rules and regulations, compliance records, party finances and audited accounts, manifestos and party structures.

vi. Ensure the rule of law and democratic principles are upheld in all processes so as to ensure that the constitutionally recognized groups including women, youth and PWDs as per legal provisions including the 2/3rd gender provision.

3. **The Office of the Registrar of Political Parties (ORPP)**
    i. Enforce the rule of law during the electioneering cycle adhered to by all political parties and ensure that all political parties adhere to the law and all the procedures.
    ii. Must enforce the code of conduct and prescribed penalties and sanctions, including the withdrawal of funding and deregistration of culpable Parties.
    iii. Ensure that political parties have the prerequisite requirements: registers, offices and all other necessary requirements for operations.
    iv. Increase the level of vigilance to ensure that their monitors and enforcement officers enhance their surveillance on parties for maximum adherence to the rule of law.
    v. Increase visibility through access to information and ensure that members of the public understand their functions so as to have a better engagement.
    vi. Decentralise the services of the office

4. **The Political Parties Disputes Tribunal (PPDT)**
    i. Decentralize services so that aggrieved parties can access them either at the Constituency or County level. Ensure that their operations are continuous so as to ensure that political parties do not to fall below the expected standards regardless of whether it is during an electioneering period or not.
    ii. Educate the public, parties and candidates on mandate of the PPDT for smooth engagement.
    iii. Hold open sessions during the day to enhance public participation that as many people can follow the proceedings.
    iv. Publicize decisions reached so that members of the public would be aware and know how to engage with the respective candidates.

5. **The National Police Service (NPS)**
    i. Senior officers must restrain their junior officers from the unnecessary use of force. All officers must be reminded of the legal principle of individual responsibility for any proven case of misconduct during any operation.

ii. Use of force must only be used as per sixth schedule of the National Police Service Act and should only be commensurate to the threat posed by the protesters. The police and the auxiliary services must respect the right of Kenyans to picket as enshrined in art. 37 of the constitution

iii. Strengthen intelligence and prepare advance reports as to ensure that the police do not use blanket condemnation to attack specific areas. Investigate the perceived role of illegal gangs in the campaigns and post-election phase so as to clearly plan and ensure that they employ the best strategies to deal with the same.

iv. Observe restraint especially when curbing protesters in residential areas so as not to hurt children, the sick, PWDs and the elderly in their houses by use of unnecessary force including use of tear gas, live bullets and other excessive methods used by the police.

v. Investigate at a higher level, the deaths of protesters in places mentioned by KNCHR and other state and non-state agencies.

vi. As required by the law, work with IPOA in cases reported deaths and serious injuries. Ensure that any bodies collected from any scene are properly handed over to the relevant institutions like morgues in accordance with the law and the due process.

vii. Work with the public in ensuring that the relationship is improved so as to end the obvious acrimony and constrained would be cooperation. This can be achieved by having many pronged approaches aimed at bringing the public closer to the police.

viii. Assist persons who report to police stations for assistance and help process the Police P3 (Medical Examination Report) Form so as to fast-track medical assistance for any person injured during political related incidences.

6. The ODPP

i. Enforce the law which prohibits advertisement of government achievements as a campaign tool for both the national and county governments. This gives undue advantage to the incumbent's.

ii. Ensure timely and efficient investigations on cases presented before the office or those taken on own volition.

iii. Ensure that any person whether at a personal level or acting in an official capacity and who participates in electoral offence is prosecuted as per the laid down procedures and written law.

7. The Judiciary

i. Hold any election petition matters in an open and spacious court so as not to lock out interested parties including the public from the proceedings.

ii. Engage the political parties and candidates on the threshold of admissibility for cases related to electoral disputes so as to avoid clogging of courts with unnecessary cases which don't fit the criteria.

8. The Department of Children Services

i. Work closely with the Ministry of Education and specifically with the office of the Cabinet Secretary to ensure that they come up with Gazetted guidelines prohibiting the use/misuse of children in political activities.

ii. With the Teachers Service Commission (TSC), enforce the guidelines which prohibit the misuse of school grounds, property, tools, and equipment and or interfere with the school calendar. Any teacher or education officer who contravenes the same should be held liable and action taken against him/her.

iii. Ensure that children, whether during the school hours or after do not participate in campaigns either to distribute campaign materials or do any other work in support of candidates or political parties.

9. The Parliament

i. Should ensure that all the relevant legislative review relating the elections is done at least six months to the elections and subjected to public participation. This will enable the electorate, the candidates and all the other relevant bodies to be cognizant to the legal provisions way before the campaigns.

ii. Ensure that, in line with the good precedence set during the 2017 General Elections, make the elections day a public holiday through legislation.

iii. Provide the necessary framework for the enforcement of the implementation of the PBO Act (2013) so as to ensure that all organizations registered under the same legislation operate without harassment and where there is need for control, the same be done in line with the law. Reference PBOs which do democracy, governance

iv. Members must respect other arms of government including the Judiciary and the Executive. All intimidations and arm-twisting tactics to coerce any arm of government rightfully discharging its duties should never be allowed to happen.

10. Communications Authority of Kenya (CAK)

i. Reign in on media houses which broadcast biased information, sensitive images and information and or any information which is against the law so as to avoid dividing the nation along ethnic lines.

11. The Ethics and Anti-Corruption Commission of Kenya (EACC)

i. Must ensure that all candidates fronting their names for the various positions for clearance must meet the integrity threshold as prescribed in the constitution and all other written laws.

ii. Should work together with other state and non-state bodies and ensure that the chapter 6 working group is strengthened to include at least 13 other stakeholders as proposed on 22nd March 2017[253].

iii. Must be firm based on the standards of ethics and integrity and based on the constitutional and legal framework to ensure that candidates who fall short of the expectations of chapter 6 on integrity are not allowed to participate in the election.

12. The International and Local Observer Missions

i. Work closely with local stakeholders so as to get a wide viewpoint of the local dynamics such as political alignments and general political mood in the country.

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[253] *https://www.google.com/search?q=chapter+6+working+group+kenya&oq=chapter+6+working+group+kenya&gs_l=psy-ab.3...1295580.1308667.0.1308999.31.30.0.0.0.0.455.3204.2-9j2j1.12.0.dummy_maps_web_fallback...0...1.1.64.psy-ab..19.10.2746...0j0i22i30k1j33i22i29i30k1j33i21k1.0.ywGTIgU0qml*

ii. Give timely and consistent updates on the full electoral cycle. This prepares voters and candidates for the final verdict and avoid unnecessary biased reception of the same.

iii. Consult widely before giving verdicts so as to ensure that they report from a wide array of stakeholders' perspectives from preparations, campaigns and polling process.

13. The Media

i. Based code of conduct for the practice of journalism in Kenya and ethics as per Media Act (2103) ensure fair coverage for the candidates especially the national broadcaster. Privately owned media stations should also ensure integrity, ethics and professionalism in their coverage.

ii. Consider careful selection of political analysts are selected to ensure that opinion especially during the live media shows would be more on issues affecting the electorate rather than focusing on personalities.

14. The General Public

i. Uphold the rule of law throughout the electoral period and the principles of human rights.

ii. Although it's an open constitutional right to join and support political party of choice, the public should carry out an analysis party of choice or independent candidates based on ideologies which are geared towards uplifting their welfare and livelihoods.

iii. Respect the right to own property and freedom of movement anywhere in Kenya and avoid destruction of public and private property.

iv. Cooperate with the law enforcement officers and respect the rule of law in regard to article 37 to peaceably and unarmed participate in the right peaceful assembly.

15. Private Sector

i. Ensure that they conduct their businesses in a manner which does indicate taking of sides and supporting certain parts of the political divide.

ii. Uphold business and trade ethics so as not to support candidates in the hope of gaining national or county government tenders as this will encourage corruption.

16. Humanitarian and Response Missions

i. Ensure that they don't link themselves with support preparations which may publicly be interpreted so as to mean projections of death and destruction of property.

ii. Coordinate with security agencies to ensure smooth facilitation of the injured and those traumatized by electoral violence

iii. Assist in Conflict Early Warning and Early Response Mechanism (CEWARN) mapping and coordination so that relief and emergency services in case of emergencies are not done haphazardly.

6.3 CONCLUSION

The Constitution is clear that the realization of human rights is progressive and this includes the right to vote and complimentary rights that enrich the same. The entrenchment of these rights at varied levels require participation by all and to a larger extent, the citizens.

Electoral processes must not curtail and choke the rights of Kenyans. Citizens must participate freely and exercise the right choose their leaders or offer themselves for the elections. This participation should be boosted by civic education processes that continuously take place at grassroots and national levels.

KNCHR notes that elections have offered a real test for the compliance of human rights standards. This is peculiar to the 2007, 2013 and recently the 2017 General Elections. Each episode has offered valuable lessons which have been captured in this report. As a country, we should use the same to boost the democratic ideals that we desire.

If the trends are anything to go by, no sooner does election end than campaigns begin again, albeit elections being five years away. Such are the bitter - sweet fruits of the much fought for multi-party space. However, without the struggle, the rights many enjoy today may be naught and thus must be jealously guarded within the spirit and letter of the Constitution.

Mirage at Dusk is a reflection of the Kenya electoral process and the opportunities to ensure timely streamlining of all the necessary human rights parameters.

APPENDICES

Annex 1: Form 32A

FORM 32A **(r.69(1)(h)(ii))**

VOTER IDENTIFICATION & VERIFICATION FORM

County: ..... County Code: .....
Constituency: ..... Constituency Code: .....
County Assembly Ward: ..... CAW Code: .....
Polling Centre: ..... Code: .....
Polling Station: .....

This is to confirm that the voter whose particulars are indicated below was not identified by the electronic voter identification device but was identified in the print out of the register of voters in respect of the above Polling Station.

Particulars of Voter

Surname:	
Other Names:	
Gender:	
ID/Passport No.	

Witnesses

No.	*Name of Candidate or Agent*	*ID/Passport No.*	*Party Name/ Independent Candidate*	*Tel. Contact*	*Signature*	*Date*
1.						
2.						
3.						

Name of the Presiding Officer: ..... Name of Voter .....
ID Number: ..... ID No. /Thumbprint .....
Signature: ..... Signature .....
Date: ..... Date .....
Stamp

Annex 2: IEBC Memo



- Rejected ballot stamp used in Embakasi South Constituency in Nairobi. Ballot not invalid as rejected ballot papers are stamped in the front and not the back. The officer involved has been fired.
- Allegations of marked presidential ballot papers: Our staff have confirmed that the allegation of marked ballot papers in Mariakani ward in Kilifi County is not correct. The Sabatia Constituency case was one of indelible ink that had accidentally spilled on the paper.
- We have noted that in isolated cases, clerks are not completing he validation of voters, once identified, using the KIEMS gadgets. We have instructed our returning officers to ensure that this is done and urge agents to confirm that this process is completed.
- Voting in Prisons is going on smoothly and we expect the 5,528 registered voters in prisons across 103 polling stations to finalize voting before 5pm today. However, it is important to note that our fellow citizens in prisons are only voting for their preferred presidential candidate only. Indeed this is a big milestone in the history of electoral management in this country. It is the first time that Prisoners are exercising their democratic right. We believe this is an important part of their rehabilitation process.
- Equally, 4,300 Kenyans who are registered as voters in the diaspora, which includes Tanzania, Uganda, Rwanda, Burundi and South Africa, are enthused and started voting across the 10 polling stations as early as 6am this morning. Voting will close at 5pm today.

Annex 3: IEBC Memo

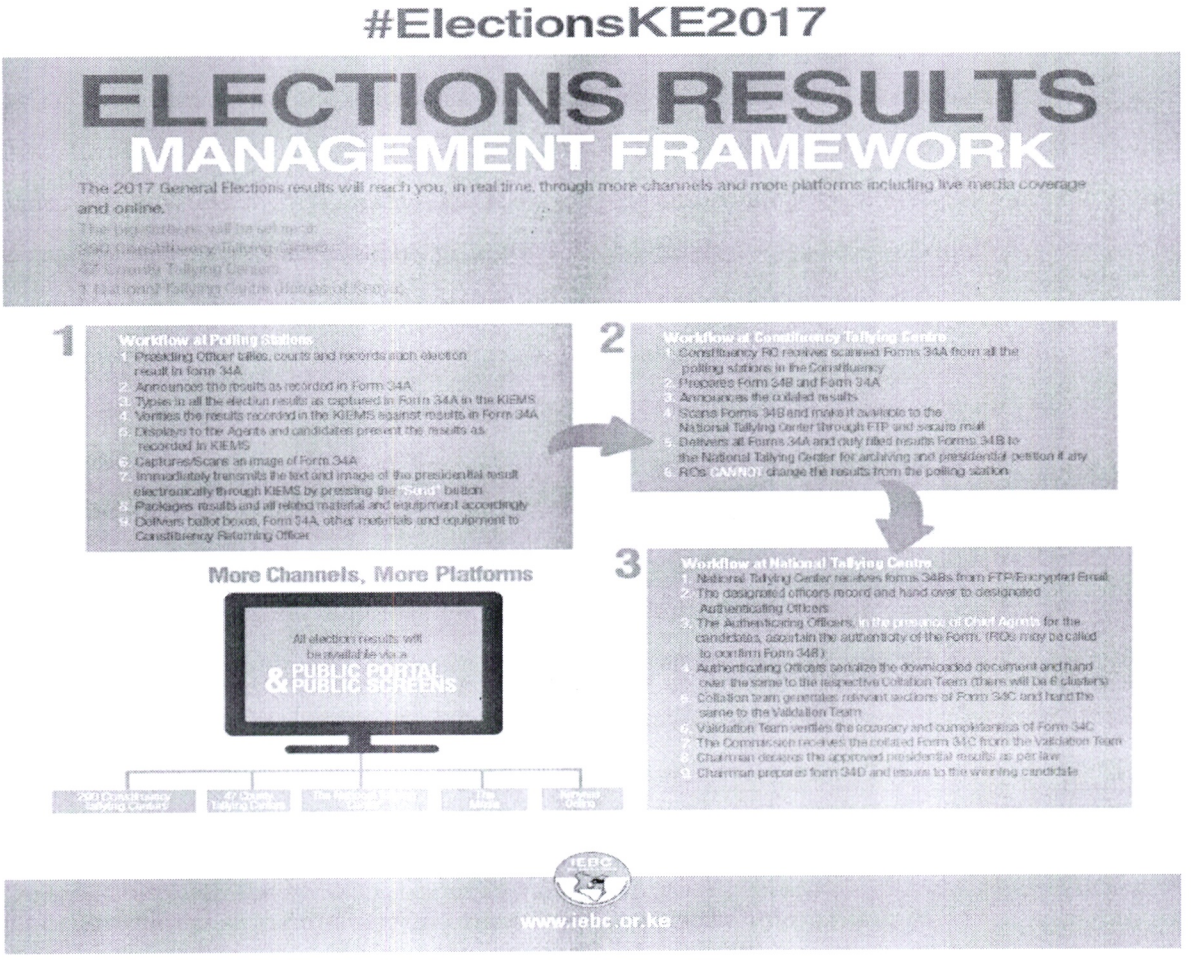
Helpline

We take this opportunity to invite Kenyans to direct questions and seek clarifications from our 24 hour call centre. We have dedicated the following hotlines for any voter 1527, 1537, 1538, and 1539

Conclusion

Finally, ladies and gentlemen, we urge you to be patient and calm as the results start streaming in later in the day. We acknowledge the fact that you want to know if the person you voted for is the winner. However, we would urge you to restrain from speculation and await the final results to be announced. Stay tuned to your news channels as we will be sharing with you regular updates throughout the course of the day.

Annex 4: Elections results management framework as prepared by IEBC (Image: Courtesy: IEBC)



Annex 5: A comparison of 45 countries on the right of prisoners to vote in or outside prison

	No Restriction (Inmates can vote even while in prison)	**Selective Restriction** (some prisoners may be banned from voting while in prison)	**Complete Ban on Voting While in Prison** (prisoners can vote upon release from prison)	**Post Release Restrictions** (prisoners are banned from voting even after release from prison)
	21 Countries	**14 Countries**	**10 Countries**	**4 Countries**
Argentina			X	
Armenia				X
Australia		X		
Austria	X			
Belgium		X		X[254]
Bosnia		X		
Brazil			X	
Bulgaria			X	
Canada	X			
Chile				X
Croatia	X			
Czech Republic	X			
Denmark	X			
Estonia			X	
Finland	X			
France		X		
Germany	X	X[255]		
Greece		X		
Hungary			X	

[254] Belgium bans inmates from voting after release if sentence was over seven years

[255] Germany bans inmates from voting only in rare cases if ordered by the court.

Iceland	**X**	**X**[256]		
India			**X**	
Ireland	**X**			
Israel	**X**			
Italy		**X**		
Latvia	**X**			
Lithuania	**X**			
Luxembourg		**X**		
Macedonia	**X**			
Malta		**X**		
New Zealand				
Norway	**X**			
Poland		**X**		
Portugal		**X**		
Romania		**X**		
Russia			**X**	
San Marino			**X**	
Serbia	**X**			
Slovenia	**X**			
Spain	**X**			
South Africa	**X**			
Sweden	**X**			
Switzerland	**X**			
United States		**X**[257]		**X**[6]
United Kingdom			**X**	
Ukraine	**X**			

[256] Iceland bans from voting those inmates whose prison sentence is at least four years.

[257] The United States bans inmates from voting in some states but not in others. Two states (Maine and Vermont) permit inmates to vote while in prison.

Annex 6: All Prison Polling Centres by Constituency, Name and Code.

CONST. CODE	CONSTITUENCY	CAW CODE	CAW NAME	PRISON CODE	PRISON POLLING STATION
003	KISAUNI	0015	SHANZU	001	SHIMO LA TEWA MAIN
003	KISAUNI	0015	SHANZU	002	SHIMO LA TEWA WOMEN
003	KISAUNI	0015	SHANZU	003	SHIMO LA TEWA MEDIUM
003	KISAUNI	0015	SHANZU	004	SHIMO BORSTAL INSTITUTION
006	MVITA	0015	SHANZU	005	KINGORANI PRISON
009	MATUGA	0039	TSHIMBA GOLINI	006	KWALE MAIN
009	MATUGA	0039	TSHIMBA GOLINI	007	KWALE WOMEN
011	KILIFI NORTH	0052	SOKONI	008	KILIFI PRISON
013	KALOLENI	0063	KALOLENI	009	KALOLENI
017	MAGARINI	0085	SABAKI	010	MALINDI PRISON
017	MAGARINI	0085	SABAKI	011	MALINDI WOMEN
019	GALOLE	0094	CHEWANI	012	HOLA PRISON
021	LAMU WEST	0106	HINDI	013	HINDI PRISON
023	TAVETA	0113	BOMANI	014	TAVETA PRISON
024	WUNDANYI	0116	WUNDANYI/MBALE	015	WUNDANYI
026	VOI	0130	NGOLIA	016	MANYANI
026	VOI	0125	MBOLOLO	017	VOI REMAND PRISON
027	GARISSA TOWNSHIP	0134	IFTIN	018	GARISSA MAIN
027	GARISSA TOWNSHIP	0134	IFTIN	019	GARISSA MEDIUM
034	WAJIR EAST	0168	WAGBERI	020	WAJIR
043	MANDERA EAST	0213	NEBOI	021	MANDERA
045	MOYALE	0225	MOYALE TOWNSHIP	022	MOYALE PRISON
047	SAKU	0235	MARSABIT CENTRAL	023	MARSABIT PRISON
049	ISIOLO NORTH	0241	WABERA	024	ISIOLO PRISON
052	IGEMBE CENTRAL	0260	KANGETA	025	KANGETA PRISON
056	NORTH IMENTI	0276	MUNICIPALITY	026	MERU MAIN
056	NORTH IMENTI	0276	MUNICIPALITY	027	MERU WOMEN
059	SOUTH IMENTI	0295	NKUENE	028	URUKU PRISON
060	MAARA	0298	MWIMBI	029	MĀARA
061	CHUKA/IGAMBANGOMBE	0395	IGAMBANGO'MBE	030	CHUKA
062	THARAKA	0310	MARIMANTI	031	MARIMANTI
063	MANYATTA	0315	KIRIMARI	032	EMBU MAIN
063	MANYATTA	0315	KIRIMARI	033	EMBU WOMEN
069	MWINGI CENTRAL	0345	WAITA	034	MWINGI PRISON
072	KITUI CENTRAL	0355	TOWNSHIP	035	KITUI PRISON
072	KITUI CENTRAL	0355	TOWNSHIP	036	KITUI WOMEN
074	KITUI SOUTH	0355	TOWNSHIP	037	MUTOMO
076	YATTA	0378	KATHIMANI	038	YATTA PRISON
081	MACHAKOS TOWN	0401	MACHAKOS CENTRAL	039	MACHAKOS MAIN
081	MACHAKOS TOWN	0401	MACHAKOS CENTRAL	040	MACHAKOS WOMEN
086	MAKUENI	0424	WOTE	041	MAKUENI PRISON
092	OL JOROK	0458	NYANDURUA	042	NYANDARUA PRISON
099	NYERI TOWN	0492	RWARE	043	NYERI MAIN
099	NYERI TOWN	0492	RWARE	044	NYERI WOMEN
099	NYERI TOWN	0492	RWARE	045	NYERI MEDIUM
100	MWEA	0503	TEBERE	046	MWEA PRISON
103	KIRINYAGA CENTRAL	0514	KERUGOYA	047	KERUGOYA PRISON
106	KIHARU	0525	TOWNSHIP	048	MURANGA PRISON
106	KIHARU	0525	TOWNSHIP	049	MURANGA WOMEN
108	MARAGWA	0535	KAMBITI	050	MURANJAU PRISON
114	THIKA TOWN	0564	TOWNSHIP	051	THIKA MAIN PRISON

114	THIKA TOWN	0564	TOWNSHIP	052	THIKA WOMEN PRISON
115	RUIRU	0569	GITOTHUA	053	RUIRU PRISON
117	KIAMBU	0585	TOWNSHIP	054	KIAMBU PRISON
125	TURKANA CENTRAL	0627	LODWAR TOWNSHIP	055	LODWAR
129	KAPENGURIA	0642	KAPENGURIA	056	KAPENGURIA
133	SAMBURU WEST	0663	MARALAL	057	MARALAL
138	SABOTI	0684	MATISI	058	KITALE MAIN
138	SABOTI	0684	MATISI	059	KITALE MEDIUM
138	SABOTI	0684	MATISI	060	KITALE ANNEX
138	SABOTI	0684	MATISI	061	KITALE WOMEN
144	AINABKOI	0718	KIMUMU	062	ELDORET WOMEN
145	KAPSERET	0724	NGERIA	063	NGERIA FARM
146	KESSES	0718	KIMUMU	064	ELDORET MAIN
149	KEIYO NORTH	0744	TAMBACH	065	TAMBACH PRISON
155	EMGWEN	0722	KAPSABET	066	KAPSABET PRISON
159	BARINGO CENTRAL	0793	KABARNET	067	KABARNET PRISON
162	ELDAMA RAVINE	0805	RAVINE	068	ELDAMA RAVINE PRISON
163	LAIKIPIA WEST	0815	IGWAMITI	069	T/FALL PRISON
163	LAIKIPIA WEST	0815	IGWAMITI	070	T/FALL WOMEN
163	LAIKIPIA WEST	0812	RUMURUTI TOWNSHIP	071	RUMURUTI
164	LAIKIPIA EAST	0819	THINGITHU	072	NANYUKI PRISON
168	NAIVASHA	0843	VIWANDANI	073	NAIVASHA MAIN
168	NAIVASHA	0843	VIWANDANI	074	NAIVASHA MEDIUM
168	NAIVASHA	0843	VIWANDANI	075	NAIVASHA WOMEN
175	NAKURU TOWN WEST	0871	LONDON	076	NAKURU MAIN
175	NAKURU TOWN WEST	0871	LONDON	077	NAKURU WOMEN
179	NAROK NORTH	0893	NAROK NORTH	078	NAROK PRISON
184	KAJIADO CENTRAL	0917	ILDAMAT	079	KAJIADO PRISON
185	KAJIADO EAST	0923	OLOOSIRKON/SHOLINKE	080	ATHI RIVER PRISON
187	KAJIADO SOUTH	0934	ROMBO	081	OLOITOKTOK
190	AINAMOI	0946	KAPKUGERWET	082	KERICHO MAIN
190	AINAMOI	0946	KAPKUGERWET	083	KERICHO WOMEN
190	AINAMOI	094[illegible]	KAPKUGERWET	084	KERICHO ANNEX
194	SOTIK	096	[illegible]HEMAGEL	085	SOTIK PRISON
196	BOMET EAST	0976	[illegible]ERIGI	086	BOMET PRISON
202	LURAMBI	1014	[illegible]HIRERE	087	KAKAMEGA MAIN
202	LURAMBI	1014	SHIRERE	088	KAKAMEGA WOMEN
209	SHINYALU	1041	ISUKHA NORTH	089	SHIKUSA FARM
209	SHINYALU	1041	ISUKHA NORTH	090	SHIKUSA BORSTAL INSTITUTION
211	VIHIGA	1051	LUGAGA-WAMULUMA	091	VIHIGA PRISON
220	KANDUYI	1098	TOWNSHIP	092	BUNGOMA PRISON
226	MATAYOS	1137	BUHAYO WEST	093	BUSIA WOMEN WING
226	MATAYOS	1137	BUHAYO WEST	094	BUSIA PRISON
234	ALEGO USONGA	1166	SIAYA TOWNSHIP	095	SIAYA PRISON
238	KISUMU WEST	1192	CENTRAL KISUMU	096	KISUMU MAIN
239	KISUMU WEST	1193	CENTRAL KISUMU	097	KISUMU WOMEN
239	KISUMU WEST	1194	CENTRAL KISUMU	098	KISUMU MEDIUM
243	MUHORONI	1211	MIWANI	099	KIBOS MAIN
243	MUHORONI	1212	MIWANI	100	KIBOS MEDIUM
247	KARACHUONYO	1231	NORTH KARACHUONYO	101	RACHUONYO
249	HOMA BAY TOWN	1241	HOMABAY CENTRAL	102	HOMA BAY PRISON
255	SUNA EAST	1270	SUNA CENTRAL	103	MIGORI PRISON
255	SUNA EAST	1270	SUNA CENTRAL	104	MIGORI WOMEN
259	KURIA WEST	1300	NYAMBASI WEST	105	KEHANCHA PRISON/KENDEGE
267	NYARIBARI CHACHE	1331	BUBARACHO	106	KISII MAIN

267	NYARIBARI CHACHE	1331	BUBARACHO	107	KISII WOMEN
272	NORTH MUGIRANGO	1360	MAGWAGWA	108	NYAMIRA PRISON
277	LANGATA	1383	MUGUMU-INI	109	NAIROBI WEST
277	LANGATA	1383	MUGUMU-INI	110	LANGATA WOMEN PRISON
278	KIBRA	1389	WOODLEY/KENYATTA GOLF COURSE	111	JAMHURI PRISON
279	ROYSAMBU	1392	KAHAWA WEST	112	KAMITI MEDIUM PRISON
279	ROYSAMBU	1392	KAHAWA WEST	113	KAMITI MAIN PRISON
279	ROYSAMBU	1392	KAHAWA WEST	114	KAMITI YCTC
279	ROYSAMBU	1392	KAHAWA WEST	115	KAMAE GIRLS BI
289	STAREHE	1443	LANDI MAWE	116	NAIROBI REMAND/ALLOCATIO N
289	STAREHE	1443	LANDI MAWE	117	NAIROBI MEDIUM