2013 Elections: Safeguarding Rights

An account of hotspots, elections 2013
VISION
A society that upholds human rights for all

MISSION
To protect, promote and monitor the respect for human rights in Kenya through law, policy and practice

CORE VALUES
The Commission fosters and upholds the following core values: Independence, Integrity, Inclusiveness, Accessibility, and Impartiality

GOAL
Increased respect and enjoyment of human rights by all in Kenya
2013 Elections: Safeguarding Rights

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### Acronyms and Abbreviations

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<th>Acronym</th>
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<tr>
<td>BVR</td>
<td>Biometric Voter Registration</td>
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<tr>
<td>CAJ</td>
<td>Commission on Administration of Justice</td>
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<td>CCK</td>
<td>Communication Commission of Kenya</td>
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<td>CJ</td>
<td>Chief Justice</td>
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<td>CoK</td>
<td>Constitution of Kenya</td>
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<td>CORD</td>
<td>Coalition for Reforms and Democracy</td>
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<tr>
<td>DCIO</td>
<td>Divisional Criminal Investigation Officer</td>
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<td>ELOG</td>
<td>Election Observer Group</td>
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<td>EU</td>
<td>European Union</td>
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<td>EVID</td>
<td>Electronic Voter Identification Device</td>
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<td>ICC</td>
<td>International Criminal Court</td>
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<td>IEBC</td>
<td>Independent Electoral and Boundaries Commission</td>
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<td>IGP</td>
<td>Inspector General of Police</td>
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<td>KNCHR</td>
<td>Kenya National Commission on Human Rights</td>
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<td>MRC</td>
<td>Mombasa Republican Council</td>
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<td>NARC</td>
<td>National Rainbow Coalition</td>
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<td>NARC-K</td>
<td>National Rainbow Coalition- Kenya</td>
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<td>NCIC</td>
<td>National Cohesion and Integration Commission</td>
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<td>NGEC</td>
<td>National Gender and Equality Commission</td>
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<td>NPSC</td>
<td>National Police Service Commission</td>
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<tr>
<td>OCPD</td>
<td>Officer Commanding Police Division</td>
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<td>OCS</td>
<td>Officer Commanding Police Station</td>
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<td>PCIO</td>
<td>Provincial Criminal Investigation Officer</td>
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<td>PEV</td>
<td>Post Election Violence</td>
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<td>PPO</td>
<td>Provincial Police Officer</td>
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<td>RPP</td>
<td>Registrar of Political Parties</td>
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<td>TNA</td>
<td>The National Alliance</td>
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<td>UDF</td>
<td>United Democratic Front</td>
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<td>URP</td>
<td>United Republican Party</td>
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Acknowledgement

The Kenya National Commission on Human Rights (KNCHR) would like to acknowledge and appreciate the efforts of individuals, institutions and groups that contributed to the success of the election observation process.

Special gratitude goes to members of the public for their co-operation and sharing information in a timely manner. This enabled the Commission to make quick interventions by reaching out to various actors.

The Commission commends the various state and non state agencies whose diligence in the execution of their respective mandates during the electioneering period contributed towards a peaceful environment.

KNCHR is grateful to our development partners including GIZ for their continued support and confidence in our work. We are hopeful that these partnerships will extend into the future to enable the Commission fulfill its mandates.

We acknowledge the efforts of all staff and monitors which culminated to the achievement of the goals and objectives of this process.
Executive Summary

The Kenya National Commission on Human Rights (KNCHR) observed the 4th March 2013 General Elections with an aim of monitoring compliance with human rights principles and standards in eight selected hotspots namely; Nairobi, Kisumu, Mombasa, Nakuru, Kilifi, Kwale, Isiolo and Uasin Gishu. These areas had been sampled based on their high potential for human rights violations and the high probability of violence spilling over to other regions.

As part of a yearlong hotspots monitoring project, KNCHR intensified its interventions within the 2013 electioneering period owing to past experiences where violations of human rights have been noted to be on the rise before, during and after voting.

This report is an account of the monitoring exercise that took place between 1st and 6th March 2013. It captures the observations and information gathered by KNCHR staff, monitors, the general public and other institutions including the police and the media.

The first part focuses on the background under which the 2013 elections were held, with special focus on the new legislative and policy frameworks, security and other contributing factors.

The second part introduces KNCHR, the monitoring strategies employed and factors that informed the identification of the target areas for this electioneering process.

The third part outlines the methodology used to collect data by our staff and monitors while the fourth part discusses the election management framework that largely touches on the workings of IEBC.

The fifth part summarizes the key findings which form the main part of this report with selected case scenarios and sampled pictorial evidence.

The sixth and final part highlights key recommendations for various actors, mainly the IEBC, political parties and security agencies.
Part 1: BACKGROUND

The 2013 general election was held in a complex environment which in a number of ways influenced the process. Worth noting is that these elections were conducted under the shadow of the contested 2007 polls whose aftermath it was feared would be replicated in 2013. A number of citizens had threatened not to register as voters and therefore boycott the polls since they were associating the voting process with the violence which rocked the country in 2007.

Prior to the elections, a number of measures were taken aimed at addressing and reversing conditions that may have contributed to the conflict of 2007/8. The Constitution of Kenya (CoK) 2010, which designed a new way of conducting general elections impacted massively on the elections. It provided for implementation of a devolved system of governance whereby voters would for the first time electing Parliamentary Representatives to the Senate and the National Assembly. This expanded the election from three to six ballots with inclusion of the Governor, Senator and Women Representative to National Assembly. The role and title of what initially was the Member of Parliament and Councilor changed to Member of National Assembly and County Representative respectively. The President and Governor were also required to nominate their running mates prior to the elections.

Candidates seeking elective posts had to satisfy a number of constitutional requirements as stipulated in Chapter Six of CoK. These requirements made the contest very competitive by subjecting candidates to a rigorous nomination and election process.

In addition, the revised elections and political parties' laws ushered stringent internal party and coalition management regulations and registrations rules. This was intended to streamline management of political parties in Kenya.

Also, the implementation of the Agenda 4 process brought in its wake, reformed institutions which influenced the 2013 general elections. These include the transformation of the defunct Electoral Commission of Kenya (ECK) to a more credible institution now the Independent Electoral and Boundaries Commission (IEBC), a

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1 http://www.standardmedia.co.ke/?articleID=2000074317&story_title=Kenya-Women-threaten-to-boycott-March-polls
2 Chapter 8 of Constitution of Kenya 2010
3 Agenda Four items were reform items to address injustices and inequalities.
robust Judiciary, the creation of the Office of the Registrar of Political Parties, and a streamlined Police Service. These reformed institutions were aimed at among other things strengthening the integrity of the elections and instilling confidence on the part of the electorate.

The establishment of independent constitutional commissions provided for a stronger oversight role that would ensure different stakeholders adhere to set electoral rules and regulations. These include the National Gender and Equality Commission (NGEC), the Commission on Administration of Justice (CAJ), and the Constitutional Implementation Commission (CIC).

The on-going trial at the International Criminal Court (ICC) of four Kenyans, including the Jubilee presidential candidate and his running mate (Hons. Uhuru Kenyatta and William Ruto), influenced voting blocks and patterns. The electorate seemingly was contesting or supporting the political camps based on ICC stances taken. On the ensuing ICC process, the International Community through their envoys and other International luminaries issued divergent comments on voting for or against the indicted persons. This was interpreted by a section of Kenyans as an attempt to indirectly influence the outcome of the presidential results.

Cross border insecurity threatened full realization of peaceful elections particularly threats of retaliatory attacks by Al Shaabab due to the ongoing war in Somalia. Insecurity was further compounded by local militia such as the Mombasa Republican Council (MRC) who threatened to disrupt the elections at the coastal region. Other proscribed groups that posed a threat to the elections included; the Mungiki in parts of Central and Nairobi regions, Chinese Squad and the American Marine in parts of Nyanza, Siafu in parts of Nairobi among others.

The proliferation of illegal arms fuelled insecurity in almost all parts of the country. These include incidences of cattle rustling, banditry attacks and resource based conflicts which impeded the registration of voters and hindered further participation in elections. The regions mostly affected included; Isiolo, Tana River, Samburu, Baringo and Muhoroni.

4 The other two are Journalist Joshua arap Sang and former head of Civil Service Francis Muthaura (whose charges had been dropped by the time of releasing this report).
Part 2: INTRODUCTION

The Kenya National Commission on Human Rights (KNCHR) is an independent National Human Rights Institution (NHRI). The Commission was first established as a statutory body under the KNCHR Act No. 8 of 2002. It was thereafter entrenched in article 59 of the Constitution of Kenya (2010) and subsequently operationalized under the KNCHR Act No. 14 of 2011. KNCHR is mandated to promote and protect human rights in Kenya, including the right to participate in democratic processes. It is against this backdrop that the KNCHR embarked on an election monitoring project with the aim of auditing private and public institutions to establish the level of compliance with the Constitution and electoral laws.

With its headquarters in Nairobi, the Commission's work is further complemented by three regional offices in Mombasa, Wajir and Kitale.

Since its inception in 2003, KNCHR has successfully monitored the 2007 general election, various by-elections, 2005 & 2010 constitutional referenda, and 2012 mock elections with a view to influence electoral reforms as well as promote transparency and accountability in democratic processes. Recommendations in these reports have informed critical decisions and influenced reforms.

Overall Project Objectives

The 2013 election project focused on eight hotspots, where human rights violations were likely to occur during the electioneering period. These areas were Kwale, Kilifi, Mombasa, Nairobi, Uasin Gishu, Nakuru, Kisumu and Isiolo.

The project, running from January to December 2013, seeks to enhance integrity, transparency and accountability among duty bearers including the political class. In the context of the voter, it sought to achieve the following results:

i. Reduced electoral related violence in 8 hotspot areas
ii. Increased reporting and accountability for human rights – through successful prosecutions and police action - amongst duty bearers including the political class.

As part of the overall project, KNCHR monitored the mapped hotspots during the voting period in order to ensure that players were held accountable for malpractices and human rights abuses. The hotspots were also monitored in order to safeguard the integrity of the vote. The sustained monitoring and timely reporting of incidents would help the Commission trigger timely interventions by relevant actors and prevent violence.

This report covers the period between 1st to 6th March 2013.
KNCHR deployed 50 staff and 47 monitors to the eight hotspots. The monitoring was undertaken in three phases: i) Assessment of the level of preparedness of IEBC and other stakeholders; ii) Monitoring the hotspots during on the election day; iii) Monitoring the outcome of the electoral process. The Commission’s staff and monitors held formal and informal interviews and administered questionnaires to various stakeholders. They also observed the processes and held meetings with stakeholders including the Police, the Provincial Administration officers, and the IEBC County officers to assess the level of preparedness for the elections. The teams also visited various polling stations in the identified hotspots and interviewed presiding officers, clerks, various candidates’ agents and the voters. Finally, the teams collected evidence on elections malpractice.

The following methods were employed;

i. Monitoring checklist
This was used to collect general information from the hotspots for further analysis.

ii. Incidence checklist
This was used to report on actual incidences of violence, incitement and hate speech and any other human right violations reported or observed in the course of elections.

iii. Direct communication through a toll free hotline number 0800721412
This increased the Commission’s reach and members of the public were able to reach the Commission and report any incidences in a timely manner. Its effectiveness was strengthened by the fact that callers did not incur any costs.

iv. Social and mainstream media reviews
The Commission monitored the media coverage of the election process through Facebook, Twitter, television, radio and print media.

v. Observation
The Commission deployed staff and monitors to observe the process in the 8 mapped areas.
Part 4: ELECTIONS MANAGEMENT FRAMEWORK

The management of the 2013 general elections was guided by the Constitutional provisions as provided for in Chapter 7 and supporting legislations including the Political Parties Act, the Election Act and the Independent Electoral and Boundaries Commission Act. The two institutions that were crucial in the preparation and management of the elections were the IEBC and the Office of the Registrar of Political Parties.

4.1 Role and Legal Mandate of IEBC

The Independent Electoral and Boundaries Commission (IEBC) is an independent agency that is established under the Constitution of Kenya and operationalized through the Independent Electoral and Boundaries Commission Act No. 9 of 2011.

The Commission is responsible for conducting and supervising referenda and elections to any elective body or office established by the Constitution, and any other elections as prescribed by an Act of Parliament. Its mandate includes among others; the continuous registration of voters and revision of the voter’s roll, the delimitation of constituencies and wards, the regulation of political parties process, the settlement of electoral disputes, the registration of candidates for elections, voter education, the facilitation of the observation, monitoring and evaluation of elections, the regulation of money spent by a candidate or party in respect of any election, the development of a code of conduct for candidates and parties, the monitoring of compliance with legislation on nomination of candidates by parties.

The 2013 general election was the first under this new constitutional body following the disbandment of the Electoral Commission of Kenya (ECK).

4.2 Role and legal mandate of Registrar of Political Parties

The Office of the Registrar of Political Parties is an independent entity established under the Political Parties Act No. 11 of 2011.

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*Article 88 of the Constitution of Kenya, 2010*
Its functions include among others registration, regulation, monitoring, investigation and supervision of political parties to ensure compliance with the Political Parties Act No.11 of 2011; to maintenance of a register of political parties; and investigation of complaints concerning political parties.

Under the Act, the political parties which contested in the 2013 general election had to adhere to election guidelines and regulations.
Part 5: KEY FINDINGS

The key findings in this report are based on the pre-polling, elections day and post-polling phases. While KNCHR recorded many cases during the period, only a few scenarios have been sampled.

5.1. Pre polling

5.1.1 Recruitment and Training of IEBC Officials

KNCHR noted that the training of electoral officials had either been conducted or was underway in most of the areas less than 48 hours to the election. However, there were concerns raised by the polling officials regarding the adequacy of the training. IEBC officials were not adequately trained and briefed. With some complaining that the training was hurriedly done and therefore they lacked enough capacity to respond to emerging issues. This was noted in polling stations like Don Bosco Secondary School Polling Station in Kiserian, Kajiado South Constituency and KARI tallying center in Kilifi South Constituency where some IEBC officials were complaining about receiving new Electronic Voter Identification Devices (EVID) which they had not been trained on. This posed a technical challenge to the officers.

In Don Bosco Secondary School Polling Station, KNCHR officials also noted that the Presiding Officer (PO) could not respond to issues raised by voters. The same was reported in Ikutha Youth Polytechnic in Kitui County, Rongai Open Air Market in Kajiado County among others. Further, in Joska Trading Center polling station in Mavoko Constituency the P.O was clearly overwhelmed by the charged voters and the voting had to be halted severally as he appeared to lack the requisite skills to guide the process. In many cases, the election officials lacked the basic reference manuals which could have helped them respond to emerging issues.

In a number of polling stations, KNCHR noted that the presiding officers had not been properly sensitized on the role of election observers. This resulted in unnecessary arguments which could have been misinterpreted as an attempt to conceal irregularities. In Juja constituency, the Returning Officer in her brief to the Presiding Officers and their juniors dismissed observers as idlers who should not be allowed to interfere with their work. At Raila Educational Center polling station in Kibra, Thawabu
Primary School in Embakasi Constituency and some polling stations in Thika Constituency such as Kuraiga Primary School, accredited observers including KNCHR officers were denied entry to the polling stations and had to go back to the office to get introduction letters. This was also noted in Lanet Primary School Polling Station, Nakuru County and Thawabu Primary School in Kayole, Embakasi Constituency where a Catholic Justice and peace Commission (CJPC) observer was not allowed into the polling station for more than an hour.

The Commission received reports from IEBC polling clerks and presiding officers in Kiserian, Kikuyu, Laisamis, Kilifi South and Githunguri of the cancellation of their contracts three days prior to the voting day. The information was ascertained by IEBC officials who admitted that they had over-employed and did not have the resources to pay some of the officials. In some areas, contract days were shortened from 19 days to 7 days and some of the officials threatened to abscond duty.

KNCHR recorded complaints that officials’ positions were reshuffled a few hours before polling and this greatly affected the morale of those affected. One of these cases was recorded in Githunguri Constituency within Kiambu County.

5.1.2 Polling day

5.1.2.1 Late Opening of Polling Centers

Many centers were reported to have adhered to the stipulated opening time at 6 am. However, KNCHR noted that due to various factors, some polling stations opened late causing much anxiety and restlessness amongst voters. Below is a list of some of the polling stations which delayed the opening time:

i. Bomu Primary School and Changamwe Social Hall in Changamwe which opened at 1130 hours due to insecurity concerns following the murder of security officers the previous night.

ii. Mtopanga in Kilifi County which opened past 0900 hours

iii. Kwoyo Kowe Primary School in Kisumu Rural which opened past 0700 hours over un-explained reasons

iv. City Primary School in Starehe Constituency opened at 7.30am since the gas lamps were not working and the voting could not be conducted in darkness.

v. Chacha Marwa in Migori County, Kuria constituency commenced voting at 9.00 am because there were no materials for county representative position
vi. Kawangware primary school, Nairobi County, where voting began at 7.30 am because the Electronic Voter Identification Devices (EVID) were not available.

vii. Chumani Primary School and Jezazhom Primary school in Kilifi North Constituency never opened at all due to insecurity.

5.1.2.2 Voter Turn out

The Commission noted high voter turnout with voters reaching their stations as early as 3.00 a.m. Some of these stations were St. Peters Clavers Primary in Nairobi and Ruai Girls Secondary. Many perceived the process would have taken long noting there were additional seats to the voting process.

Due to the high turnout, there was confusion amongst voters especially because of the long queues. The mix up in registers with the order of first names and or surnames delayed the opening time. The confusion occasioned buildup of speculation because some polling stations had to devise other methods to handle the crowds. For instance, in Githurai playground polling station, the officials resorted to calling out names of voters. Although this kick started the voting process, it was not the ideal solution.

In some areas, agitated voters caused crowding at the entrances of polling stations almost making it difficult for presiding officers to continue with the process. A critical case was St. Monica Catholic Church polling station, Kitengela in Kajiado County where overcrowding caused a stampede that injured over 20 people.\(^7\)

\(^7\) http://www.standardmedia.co.ke/?articleID=2000078632&story_title=Kenya:%20Voters%20injured%20in%20stampede - Standard Newspaper online - Updated Monday, March 04 2013
In spite of insecurity in Mombasa and Kilifi counties, voters turned out in fairly large numbers to exercise their democratic right.

5.1.2.3 Assisted Voters
In most stations, the elderly, persons with disabilities (PWDs), women voters with children were aided to vote. For instance, in Njoro DEB Primary School in Njoro Constituency, voters got assistance from the Presiding officer and a party agent picked randomly. The ink clerk also assisted voters in putting the ballot papers in the ballot box.

In some areas however, such voters experienced challenges especially due to inaccessibility of the stations. This was observed in Ushirika Secondary School in Embakasi North Constituency where the polling station was located one storey up.

5.1.2.4 Voters register
As had been stipulated, IEBC was to use the EVID machine to ascertain details of each registered voter. However, some voters credentials were found missing from the system as well as the manual register despite voters having the voter registration acknowledgement slips.
In Machakos Teachers College polling station, Machakos County, some voters found their names missing from the register and the appendix while in Machakos Muslim Primary School polling station the manual register had to be reprinted as the printed register had less numbers of registered voters against the number of voters that turned up.

In Open Air Market polling station, Kajiado County, some voters’ names were missing from the manual register. Although the matter was later resolved when election official allowed voters with voter registration acknowledgment slips to vote this delayed voting which began at 12.00 noon. In Noon-Kopir polling station the Commission was shocked to learn that, some voters could still not find their names on the register despite this issue being raised with IEBC in February 2013 during inspection of the voters register. Through KNCHR’s interventions a few voters were allowed to cast their vote.

In another case, a voter in Khadija Polling Station in Kisauni Constituency, was not allowed to vote as the records showed he had voted though his finger was not marked with the indelible ink.
5.1.2.5 Election materials

The election materials which included ballot boxes, ballot papers, BVR kit, EVID machines, manual registers, rubber stamps, indelible ink and gas lamps were supposed to be at the polling station on the eve of the election to allow officials ample time to organize themselves. However, in majority of the places sampled, the materials arrived late in the night and early morning, some as late as 5.30 a.m on polling day.

In Kesses Constituency, Uasin Gishu County, some polling stations had fewer ballot boxes for the seat of Member of National Assembly, forcing the presiding officers to convert excess presidential ballot boxes for use in the elections for that position.
In the same constituency, the white lids for the presidential ballot box were missing and the presiding officer resorted to using other lids to allow voting to start. White paper was stuck on top of the lids to avoid confusion by voters. A similar situation was reported in Kitui where some boxes had no lids and officials had to improvise by covering them with manila paper.

In some polling stations like Manhattan and Carwash in Kisumu County, there were no gas lamps delaying the voting until around 7.00 am.

In some other cases, the presiding officers resorted to using car headlights, phone lights and flash lights to commence voting. For instance, Kikule primary school polling station in Masinga Constituency, due to lack of proper lighting, the officials had to use phone lights as indicated in the photo on next page.
5.1.2.6. Equipment failure

There was a massive failure of the EVID kits provided by IEBC in most areas. Their failure was noted as early as 6.00 a.m., immediately voting begun. This led to delay in voting as most presiding officers had to halt the process before the IEBC issued a statement around noon to authorize the use of the manual register.

KNCHR noted that in some stations, the BVR kits did not start owing to failed passwords while majority went out of power. The spare batteries could not help alleviate the problem as most of them were not charged and most of the polling stations lacked back up power.

The secure mobile phones provided by IEBC to relay results were not in working condition thus the presiding officers resorted to purchasing and using the normal SIM cards.
The phones displayed error messages including “Username or password does not match” or “you have been suspended from the network.” Some of the affected constituencies in this regard include Kesses and Ainabkoi in Uasin Gishu County. Similar reports were received from St. Theresa’s Tallying Centre in Mathare, Nairobi where officers were forced to use their personal phones to relay the information since the secure phones issued to them were not going through. The same situation was reported in Seme, Kisumu County.

When the EVID kits broke down, confusion engulfed the entire exercise in most of the polling stations we visited. IEBC officials had to resort to other methods to speed up the voting exercise. For instance in Kiambu Town Hall polling station in an effort to speed up the polling exercise, polling clerks collected identity cards from voters, counter checked their names on the register and issued ballot papers to the voters. This was alarming as neither voters nor observers witnessed cancellation of voters names from the register. This was an oversight which raises a serious question on the integrity of the 2013 vote.

5.1.2.7. Early closure of polling stations

Early closure of polling stations mainly occurred at the Coast region owing to the spate of insecurity incidents recorded in the area. In Chumani Tallying Center in Kilifi North constituency Kaoyeni Nursery school, Mkunguni Nursery school and Zowerani Polling center closed as early as 11 a.m.

Polling clerks at Kayoeni nursery school in Kilifi north constituency left the polling station at 11.00 am after receiving reports of possible attacks by suspected MRC members. By the time the polling officials were leaving, only 125 voters out of the registered 353 had cast their votes. The station did not reopen.

Stations such as Chumani Primary School, Jezazhom, and Roca Maweni did not open at all indicating that voters were denied their rights to participate in the election. It was hoped that the IEBC would call for elections in the area at a later date.
Polling clerks in Kaayeni Nursery school in Kilifi North constituency leaving the Polling Station at 11.00 am after receiving reports of possible attacks by suspected MRC members. (Photo: KNCHR)

Six other stations around the same areas did not open at all or closed very early. This therefore indicates a serious violation of the voters rights to participate prompting KNCHR to ask for a repeat election in the affected areas.

At around 4.00 p.m. there was commotion at IEBC constituency offices in Kilifi town where many presiding officers had gathered. Many of them had closed their stations before 4.00 p.m. for security purposes as they were informed by their security agents that they could not proceed with voting under the circumstances. It is estimated that officials from about 20 polling stations were at the IEBC offices before the official closing time. The constituency has 66 polling stations.

Despite pleas by the IEBC North Coast Regional Coordinator to the polling officials to return to their polling stations to conclude voting and counting, the officials declined to return until the security issue was addressed. Attempts by local security officers and local aspirants to intervene did not bear fruit. After 5.00 p.m. it was decided that the polling officials together with all party agents would proceed to count and tally the votes that had already been cast at an alternative tallying centre.¹

¹ Video clip available at the KNCHR on request.
5.1.3. Post Polling

5.1.3.1. Vote Counting and Announcement of results at Polling Station

Vote counting in most polling stations went on smoothly despite the delays experienced earlier in the day. It should however be noted that in some polling stations, voting continued past the official closing hour with some stations closing past midnight. Consequently, counting and tallying went on with some stations completing the exercises after three days.

However, in Kilifi North constituency and some polling stations in Kaloleni, vote counting had to be relocated to safer grounds although the IEBC guidelines stipulate that counting must be done at the polling stations. For instance, Mihingoni, Nyalani and Mgamboni polling stations had to be relocated to Kizurini Primary School. The same was witnessed in Kilifi North constituency where counting of votes from polling stations such as Majaoni Primary School, Gede Primary school, Mkanguni Primary School and Mkomanii Primary School took place at Pwani University Hall due to security concerns.
5.1.3.2 Vote Tallying
The tallying process was not as systematic as had been anticipated. This was due to some polling stations closing later than had been expected because of the delays in opening of the polling stations and failure of EVID. This coupled with tension in some areas led to a delay in vote counting and subsequent tallying at the Constituency, County and National Tallying centres.

Some of the Tallying Centres where KNCHR recorded heated debates were in Baringo Central constituency where there were a series of altercations between election officials, candidates and agents due to a misunderstanding on the transmission of vote results.

5.2 Electoral Malpractices

5.2.1 Bribery
Despite warnings of the implications of voter bribery to politicians, KNCHR recorded numerous cases whereby contestants were seen to be continuing with the vice. There were such reported cases in Dandora, Tharaka Nithi and Isiolo.

At Undugu Polling Center, Kibera, a group of individuals claiming to be peace ambassadors were allegedly directing voters to a home in Silanga area for “further peace education” where they would offer bribes for votes in favor of one County Ward Representative whose name was recorded by KNCHR officials. KNCHR was later informed that one of the group members was later arrested and taken to Kilimani Police Station.
In Dandora within Nairobi County, a KNCHR monitor was roughed up, seriously beaten and wounded by an aspirant in the presence of his supporters. The KNCHR monitor was caught attempting to record the aspirant as he was dishing out bribes. His mobile phone was confiscated. The matter is being handled by the police.

In Wajir County, Eldas Constituency, one of the wives of a leading politician in the area was allegedly bribing voters on polling day.

5.2.2 Incitement
Though not on a large scale, KNCHR recorded various incidences of incitement. There were leaflets found in Butler Farm in Nakuru County which were addressed to the Turkana community warning them to vote for a particular candidate or be forced to relocate to their native homes. The same was experienced in Mawanga in Nakuru County.

Incitement leaflets found in Butler farm, Nakuru County (left) and others found in Mawanga in the same County (Photo: KNCHR)
There were also leaflets strewn in some parts of Nairobi such as Mombasa Road, Mbagathi Way, Community and Dagoretti with a peculiar caption, *The Deconstruction of Raila*. The message on the leaflets bordered on hate speech and incitement.

5.3.3 Lack of adherence of electoral laws and guidelines

(i) Dress Code
The election rules outlaw the wearing of attires with colours that resemble certain party colours. In some cases this rule was not followed and IEBC officers were overwhelmed and therefore unable to deal with such cases.
It is unfortunate to note that the bad precedent was set by our top leaders, including the Prime Minister Hon Raila Odinga who went to vote on the 4th March wore a bright Orange tie, Senator elect of Kiambu John Kabogo wore a red hat and red shirt, Hon Peter Kenneth’s son who had a light blue sweater and Hon Martha Karua had a green and red attire.

A KNCHR officer at Twin Birds polling station in Ruai ward of Kasarani constituency notified the presiding officer and voters who had glaring party colors were asked to return home and change their attire. Beside this, some supporters carried campaign materials and displayed them near the same polling station.

(ii) Conduct of politicians and voters at polling stations

KNCHR noted fair conduct of both politicians and voters throughout the process save for isolated cases. In some areas KNCHR noted that some candidates were frequently visiting polling centers and holding discussions with the electorate while voters too were either impatient or engaging in unbecoming behavior. Notable politicians included Mohammed Kuti, Charfano Guyo Mokku, both Isiolo North Senatorial candidates and Abdul Bahari Ali from Isiolo South (gubernatorial candidate).

At Indepe Nursery School polling station within Baringo Central constituency, police
hurled tear gas canisters at the charged crowd that had gathered outside shouting slogans that IEBC were deliberately delaying results in order to manipulate them.

Some voters reported to polling stations drunk, often displaying their ballot papers and loudly announcing whom they wished to elect causing embarrassment and unnecessary nuisance to the polling officers. This was witnessed in Kibera and other parts of Nairobi.

5.4 Security

The KNCHR acknowledges efforts by the police to enhance security through deployment of officers to various hotspots and all the polling stations across the country. In all the polling stations monitored by KNCHR, 85% did not have any incidences of insecurity on polling day.

The commitment by security agents to ensure that Kenyans voted peacefully was displayed in many ways including keeping night vigils at polling stations, tallying centers, streets, residential areas and commercial centers.

However, it is unfortunate and regrettable that 10 officers lost their lives in attacks allegedly planned and orchestrated by MRC members in Mombasa and Kilifi counties.
There were isolated incidences on insecurity in Kaloleni Constituency in Kilifi County where market stalls were burnt in an attempt to intimidate non-native voters on the eve of the voting day but the security personnel were in control.

Violence was also reported in Wajir, Garissa and Mandera when during vote tallying there were grenade attacks. In Mandera, the attack led to loss of three lives and massive destruction of property.

There was also a bomb scare reported in Isiolo forcing one aspirant, Hon Mohammed Kuti, to postpone his final campaign rally on 2nd March, 2013. In the period between vote tallying and official announcement of results, some incidences were reported in Marsabit, where discontented aspirants and their supporters turned rowdy and took to the streets but were contained by security agents.

Despite these unlawful acts by some citizens, the police were undeterred and continued to provide security thus enabling Kenyans to exercise their constitutional right to vote in most areas.

5.5 Civilian arming and disorder

On the last day of campaigns, prior concerns by KNCHR of civilians arming themselves in readiness to cause chaos during elections were confirmed. Our teams witnessed members of the public transporting machetes to rallies in Mombasa and Awasi, Kisumu and reported the cases to relevant authorities for investigation.

In the Mombasa incident, a KNCHR Official noticed a vehicle carrying machetes branded with the name of a gubernatorial aspirant on its way to a rally in Tononoka grounds while in the Kisumu incident, a civilian vehicle was noted ferrying crude weapons to an unknown destination. Despite these reports, no attacks were reported in the said venues and the arming seemed to have been a contingency plan incase violence erupts.

In Dandora Phase 1, there were claims that over 50 Machetes had been bought at a local Supermarket. KNCHR reported the incident to the area OCPD for further action.
5.6 Media

5.6.1 Mainstream media
KNCHR commends the print and electronic media for employing responsible journalism which went along way in ensuring peace in the country while still informing the citizenry of the happenings in all the regions.

Unlike in 2007, the media exercised restrain during the 2013 general election by not broadcasting live press conferences by politicians in order to avoid inflaming passion and heightening tension. The intense peace campaigns especially on electronic media went a long way in ensuring voters' anxiety was quelled and the Commission did not receive any complaint of incitement of the public against any media house.

5.6.2. Social media
The Commission noted with concern that social media became an avenue for propagating hate messages. Special reference is given to the link below which ran hate messages on tribal lines. A well known yet controversial webpage was also noted to put communication that leaned towards hate speech.

The above case was referred to the Inspector General, Communications Commission of Kenya, National Cohesion and Integration Commission and the Media Council of Kenya respectively for action.

The Media Council indicated that one of the challenges in dealing with hate-speech perpetrated via social media was that most were registered in the United States in which case Kenya cannot prosecute directly unless with full and proper co-operation from their governments. This was an avenue being explored and KNCHR will follow up with the council on this matter.

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9 - https://m.facebook.com/profile.php?id=255613137906935&refid=13&ref=stream
5.7 Domestic and international observers

As had been mentioned previously through the media, IEBC had accredited a number of local and international observers. Some of these included the US Embassy, British High Commission, Centre for Multi Party Democracy, Election Observation Group (ELOG) and National Council of Churches in Kenya (NCCK) as well local and international media fraternity.

It was not clear whether IEBC had briefed its officers well on the presence and role of local and international observers as some accredited observers faced challenges in particular polling stations. For instance in Kibera, at the Raila Educational Centre, the presiding officer denied a KNCHR observer entry to the polling station asking for a letter of reference from the institution, when the same was availed she gained her entry.
Part 6: A SUMMARY OF KEY KNCHR RAPID RESPONSE INTERVENTIONS

1. KNCHR received over 500 calls through the hotline (0800 721 410) from the members of the public within the reporting period. Over 80 per cent of the concerns were responded to immediately or forwarded to relevant authorities.

2. KNCHR held 3 press conferences; the first two on polling day, one in the morning and the other in the afternoon to catch the attention of duty bearers on pertinent issues.

3. KNCHR sent three letters touching on hate speech on social media to NCIC, CCK and IG’s offices on 2nd March. Further follow up was done via telephone and email communication with the Media Council of Kenya.

4. KNCHR was in constant touch with IEBC officials and mainly their contact centre over various issues.

5. KNCHR helped complainants and witnesses to record statements, and over 20 serious cases were directly reported to the police, mainly the PCIOs, DCIOs, OCSs, OCPDs and the IG. This helped avert a number of possible negative scenarios like violent attacks.

6. KNCHR managed to mobilize various state and non-state actors to respond to a number of issues and therefore became a pivot in coordination of many activities.
Part 7: RECOMMENDATIONS

TO THE IEBC

On the Voters Register
The failure by IEBC to establish a final harmonized voters register became a major challenge during the elections.

There were various registers – the electronic register, the manual register and the green book. There was therefore no clarity about what constituted the official and final register. This situation thus created room for manipulation of the system which may have had implications on the right to vote and the integrity of the vote.

KNCHR recommends that the IEBC revisits the process of voter registration to ensure the availability of a complete register of voters which is finalized early enough. Such register should not be subject to changes after finalization.

Further, KNCHR recommends that the IEBC ensures that the process of voter registration and inspection of the voters register is concluded early enough to reduce incidences of tampering with the register.

On Logistics and Election Materials
This report has established that logistics presented a challenge to the IEBC during the electoral period. These challenges ranged from equipment failure to inadequately trained staff. Further, KNCHR observed that the long hours taken during polling affected election officials who complained about fatigue and exhaustion. KNCHR recommends that the IEBC ensures adequate logistical preparations to ensure continuous vigilance throughout the entire process.

Specifically, KNCHR recommends that the IEBC invests in adequate and comprehensive training of polling officials to ensure proper management of elections. Additionally, KNCHR recommends that IEBC empowers polling officials at the grassroots level to ensure smooth management of elections. This could be done through reduction of bureaucracies and decentralization of key functions such as communication.
Further, KNCHR recommends that in future pretesting of all election equipment and materials be undertaken early in advance and on a wider scale to ensure their functional capacity.

KNCHR recommends that IEBC revisits the colour codes for the ballot papers and ballot box lids as in some cases (Presidential – white and County Representative – pale beige) they were not easy to differentiate and therefore confused the electorate. The confusion could have contributed to the high number of spoilt votes. Alternatively the IEBC could consider using symbols for the different electoral positions.

**On Voter Education**

The challenges faced by voters during the electoral period are attributable to inadequate voter education. Voter education commenced late and did not reach a wider segment of the population due to the medium used – which was mainly television and radio. KNCHR recommends that the IEBC puts in place a continuous and comprehensive civic and voter education exercise that will ameliorate the challenges that were witnessed during the electoral process.

**On the Number of Voters per Polling Stations**

Though the IEBC had committed to reduce the number of voters per polling station to a maximum of 500, this report has established that this was not the case in most polling stations across the country. KNCHR therefore recommends that the IEBC considers this position and allocates a maximum of 500 voters per polling station. This will drastically reduce the long queues and time taken to vote in the election.

**On Stakeholder Participation**

This report established that IEBC was not very responsive to stakeholders and failed to take into consideration concerns and recommendations made with regard to possible disruption of the election. The KNCHR for instance predicted violence at the Coast and missing voters' details but these were not taken into account. This would have averted regrettable scenarios.

**On Accountability**

IEBC should prepare a detailed and comprehensive account explaining the circumstances that led to the failure of the EVID and electronic transmission of results. Those found culpable must be held accountable through appropriate legal and administrative action.
TO PARLIAMENT AND POLITICAL ACTORS

Parliament and political parties should cease interfering with the political processes laws and regulations especially on short notice before the polls. Electoral laws, regulations and procedures relating to elections should be finalized early enough to avoid confusion and uncertainty witnessed in 2013. This will allow IEBC ample time to effectively implement those laws and policies.
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