ACKNOWLEDGEMENTS

We wish to acknowledge the contribution of staff and Commissioners of the Kenya National Commission on Human Rights (KNCHR), the contribution of staff of the Kenya Human Rights Commission (KHRC) and all the volunteers whose invaluable work made the production of this report possible. We further acknowledge the support of the Canadian International Development Agency (CIDA), the European Union (EU) and the Trocaire East African Regional Office. KNCHR is also indebted to the Electoral Commission of Kenya for its support.

We are also grateful to the various media houses and journalists who helped provide evidence that we were unsure of, and allowed us the use of their material for the purposes of this report. To this end, we must specifically mention the Nation Media Group and the Standard/Baraza Group for their kind assistance.

Most of all, we would like to extend our immense gratitude to the millions of Kenyans, who validated the Right to Vote by their conduct and belief in it, as well as those Kenyans who volunteered information, advice and encouragement to us, especially when the pressure against this project intensified.

September 2006
SQUATTERS OCCUPYING THE LATE J.M KARIUKI'S LAND SHOULD NOT VACATE NOTWITHSTANDING A COURTS ORDER TO THE CONTRARY!!

KIMUNYA

OL KALAU
This report highlights the findings of the Kenya National Commission on Human Rights (KNCHR) in the course of its joint program with the Kenya Human Rights Commission in monitoring the referendum campaign rallies between September and the constitutional plebiscite of November 21st 2005. Both the monitoring of the referendum campaigns and this report constitute a joint project. As an independent national human rights institution, the mandate of KNCHR is about protecting and promoting human rights by, inter alia, challenging the culture of impunity, checking against waste of public resources that could rather be used for providing economic rights to the citizens, and inducing accountability of the political class to the voters.

The referendum observation project was motivated mainly by the objective of seeking to begin ensuring accountability of politicians at the early stage of campaigning, on the basis that if our political class gets used to being held accountable during the campaigning period, they will accept it better if and when they assume office. If this happens, then the culture of impunity in Kenya, which is the reason for existence of various human rights violations, including grand corruption, will begin to erode.

The National Commission was disappointed that the referendum was about a new constitutional dispensation only in name. Rather, it was a moment to settle various political scores, up-end different political players, and assert political superiority. And in this zero-sum game between politicians, ethnicity, patronage and incitement became the preferred tools of the trade, with the people of the country bearing the brunt of their antics.

There were some amazing contradictions around the referendum, outside some of the issues covered in this report. Importantly was the conspicuous use of resources and money - by both sides - in campaigning for their respective view. It was a “carnival atmosphere” for some, with frequent use of helicopters, hired musicians and artists, and more. Immediately after the referendum, the government appealed for international assistance to deal with the starving millions from the famine that crept up on us as we were engulfed in the campaigns! It is clear that tax-payer resources were used especially by the YES side in the referendum, but until a full and proper audit is done we can not tell if those resources could have been better used by the state to deal with the effects of the famine.

Clearly, accounting - from both sides - of the resources spent will help this country in achieving accountability and ending impunity. And this is the role of bodies such as the Kenya National Audit Office, and we are recommending that Parliament request an audit by the Kenya National Audit Office of both sides to not only find out if tax-payer resources were used, but also to let us know, as Kenyans, how much each side spent, and where the money came from. Without full and proper audit, the suspicion that many of the resources, were either provided by the state or proceeds of past and present corruption, will not end.

This audit is something that the Kenya Anti-Corruption Commission could also take up in fulfillment of its mandate, and especially given the generous resources at its disposal. Even more so because, as the former Minister of Justice unequivocally declared, part of the rationale for grand corruption - such as Goldenberg and Anglo Leasing - is to finance political activity. For these
reasons, it is paramount that KACC get to the bottom of the mystery of financing of the referendum campaigns as a first step towards promoting transparency in the funding of political activity and as a way to protect dwindling public resources in the run-up to the electoral contest next year.

Another troubling aspect from our findings is the apparent unwillingness or inability of the Attorney General to perform his constitutional duty to uphold the rule of law. Politicians in this country continue to incite the public and to engage in subversion by promoting ethnic animosity with impunity. These constitute serious offences under Section 96 and 77 of the Penal Code. But in spite of the National Commission furnishing the Attorney General with detailed evidence of wrongdoing by individual politicians; not only has he chosen to do nothing, he has actively prevented accountability by using the power of nolle prosequi to frustrate the efforts of those who seek to vindicate the law.

We would also like to point out the difficulties we faced in gathering routine information held by Government Departments. It is ironic for a Government elected on a platform of democratic credentials and openness to frustrate requests for information. For instance, the Registrar of Motor Vehicles refused to furnish particulars for certain registration numbers on the grounds that the numbers in question were classified and not available for public consumption. Nevertheless, this office continues to be funded by the tax payer.

We hope that this report will be part of a process that will promote more transparency and accountability within the political class, that it will help consolidate our emerging democracy and that it will result in a more accountable State bureaucracy.

Finally, in this highly charged environment, it is easy for those subjected to scrutiny to read partisanship or malice, and many on both sides - publicly and privately - made these accusations against us. Let me reiterate that in this and other work, the National Commission is not motivated by malice, ill will or other ulterior motive. Indeed we strive to vigorously pursue the mandate provided by the Kenya National Commission on Human Rights Act, loyal to it and the people of Kenya.

Maina Kiai
Mwambi Mwasaru
MACAMA, MAO! SAO
MACAMA, KAZA SANGE KISIEE
KIZINGI NI HRRA IN MAKASIA
TWO GA WKOKOKI! HAWAMASELU KUNPA
KWA KU WATU! KULIUMBA MA-
AUKA WAKAMBA SA TUYU! TUKONGA.
The Kenya National Commission on Human Rights (KNCHR), an independent national human rights institution, teamed up with the Kenya Human Rights Commission (KHRC), a non-governmental organization and with the support of the Electoral Commission of Kenya (ECK), undertook to monitor the constitutional referendum campaigns preceding the vote on November 21st 2005.

KNCHR enlisted the support of KHRC to observe the referendum campaigns to ensure observance of the rule of law. The vote for or against the proposed constitution was the first to be conducted with the Public Officer Ethics Act, 2003 and the Anti-corruption and Economic Crimes Act 2003 in place. In addition to the Penal Code and the Presidential and National Assembly Elections Act, these laws were meant to eradicate the participation of civil servants in political processes, set new ethical standards, ensure a level playing field for all sides involved and protect public wealth from public servants inclined to abuse of office or theft of public resources.

At its core, the search for a new constitution was and continues to be a reflection of the desire of Kenyans for fundamental change: Not only in terms of a new legal order but also in terms of a new culture of doing things that ultimately results in a better life for all. It was ironic therefore that the referendum process itself reflected a contradictory emphasis on maintaining “business as usual”1; and it would have been remiss for the KNCHR to sit by the sidelines as events unfolded.

One of the main objectives of the project was enhancement of transparency and accountability in the public sphere by working to strengthen democratic governance. One way of achieving this outcome was to observe fundraising efforts and expenditure patterns by political players and thereafter calling for a more open way of financing political campaigns. The observation also intended to expose statements and or speeches by political “leaders” which amounted to incitement, or calls for ethnic nationalism and hatred of external ethnic groups.

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1 By “business as usual”, we refer to the manner in which political participation has been organized and how the conduct of political campaigns has been carried out in Kenya. The process has traditionally been opaque and not open to scrutiny or challenge by the voters. Further, political participation in Kenya has become cleaved along ethnic lines into competing chains of patronage by the various tribes for a share of resources.
The other objectives of the project were:

- To strengthen the fight against corruption by exposing the abuse of public office and the misuse of public resources during the referendum campaigns;
- To enhance the fight against impunity through holding individual politicians and senior public officials accountable to the rule of law;
- To monitor incitement and use of hate speech along ethnic lines in the Campaigns and/or “Civic Education;”
- To name and shame political leaders, public officials and media agencies guilty of using hate speech and other exhortations to ethnicity as a means of gaining support for their position on the referendum;
- To reduce campaign violence by exposing and holding to account politicians and public officials guilty of violating the public trust; and
- To encourage Kenyan women and men to participate in exposing abuse of public office and waste of resources by exercising their rights to take part in the conduct of the public affairs in their country.

SUCCESSES AND IMPACT

Some of the objectives above were met before the conclusion of the project. As the observation of the referendum campaigns continued, The KNCHR and KHRC:

Released to the press “Lists of Shame” depicting political leaders and public officials who had used inflammatory statements in their campaign. The press conferences releasing the lists on utterances attributed to politicians in campaign rallies across the country dramatically reduced inflammatory and incendiary speeches.2

Hand in hand with the release of the ‘lists of shame’, KNCHR conducted a highly visible campaign against the misuse of Government vehicles for non-official business.3 The exposure of such misuse prompted some Government Ministers, probably in attempts to avoid detection and mask the official status of their vehicles, to disguise them as privately owned vehicles.

It is the view of KNCHR that such disguise of motor vehicle particulars is regrettable because these are the same tactics employed by vehicle hijackers to avoid detection by disguising the identity of stolen vehicles with different registration plates. If these acts were not in response to our campaign, nevertheless they are a negative and unintended consequence of the monitoring project by exposing what could be official government policy for Ministers and Assistant Ministers to be ferried in official vehicles bearing registration plates for different vehicles.

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2 We received many calls from prominent politicians asking whether they had used inflammatory language after holding rallies in support of their positions across the country. Further, in rallies in Western Province (Busia, Teso and Bungoma Districts in October 2005, the political leaders of the NO vote were especially careful to watch their language during rallies where KNCHR Commissioner Catherine Mumma prominently sat with the leaders and cautioned them that she was monitoring their utterances. No instances of incitement or hate speech were recorded at these rallies).

3 See page 67 of the Report which is a summary of use of official vehicles for non-official purposes.
In what we have reason to believe was a response to this campaign, our observation teams found out that a number of ministers went to great lengths to disguise the registration particulars of their official vehicles by using registration plates for different vehicles:

**Hon. Andrew Ligale:** The former Assistant Minister attended a NO rally held at Bomano playground in Mumias on 5th November 2005 aboard a grey Toyota Prado registration number KAS 503D. But according to records held by the Registrar of Motor Vehicles, this registration is for a red/maroon/pink Massey Ferguson Tractor which is owned by Hon. Ligale himself.

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4 Indeed one may ask how we came to the inference that these were government vehicles. Section 20 of the Traffic Act requires a motor vehicle to display in the prescribed manner an insurance sticker and a road license sticker. Where a privately registered vehicle had only one sticker or non at all (some vehicles only bore parliamentary stickers) then we had reason to believe that such a vehicle was probably a government vehicle as these are exempt from the provisions of Section 20 of the Act. In all the instances we have recorded, we have in our possession sworn depositions from the field monitors citing the date, time and place when the vehicles were used and in several instances photographs of the vehicles.
Hon. John Michuki: On 11th October 2005 at a YES rally held in Mwingi Town, the Minister for Internal Security was collected from the landing site and ferried to the rally venue by a green Land Rover registration number KAT 428M. Upon perusal of records held by the Registrar of Motor Vehicles, this is the registration number for a grey Toyota Saloon which as of 1st November 2005 was owned by Linus Muriithi Labanson of P.O. Box 89305 Mombasa.
Hon. Kiraitu Murungi: The then Minister for Justice and Constitutional Affairs attended a YES rally held at Maua Stadium on 8th October 2005, where he used a blue Mercedes Benz E 240 registration number KAS 989X. Records show that this registration number is allocated to a white/cream Toyota Saloon which as of 27th October 2005 was registered in the name of Stockman Rozen Kenya Ltd of P.O. Box 2029 Naivasha.

Hon Kiraitu Murungi: On 16th October 2005 at another YES rally held at Kahuruko Stadium in Muranga Town, Hon. Kiraitu was ferried in a grey Land Rover registration number KAP 938N. Records show that this registration number is for a white/cream Suzuki Van or Pick Up which as at 16th November 2005, was owned by Kenrub Ltd of P.O. Box 45919 Nairobi.
Hon. Joshua Toro: The Assistant Minister for Roads at a YES rally held at Kamukunji Grounds in Nairobi on 30th October 2005 used a grey Nissan Patrol registration number KAC 780U. Records indicate that this registration number is for a blue/turquoise Honda motor cycle manufactured in 1977 which as of 11th November 2005, was registered under the name of Fred Oseko of P.O. Box 84 Kericho.
**Hon. David Mwiraria:** On 8th October 2005, the then Minister for Finance was ferried to and from a YES rally held in Maua Stadium in a Nissan Patrol registration number KAL 578Q. Records show that this registration number is for a green Nissan/Datsun Station Wagon which as of 1st November 2005 was registered under the name of Meru Central Cooperative Union with the address of P.O. Box 6 Embu. Also in the then Minister’s entourage was another Nissan Patrol registration number KAC 780U — the same vehicle that was later used by Hon. Joshua Toro at the YES rally in Nairobi’s Kamukunji grounds. As earlier stated, the records at Times Towers show that this registration is for a blue Honda motorcycle.
Apart from monitoring and reporting on the misuse of state resources, KNCHR recorded instances where politicians incited the public contrary to Section 96 of the Penal Code and/or used inflammatory language likely to arouse ethnic or racial hatred between the different communities contrary to section 77 of the Penal Code. This information with detailed evidence was sent to the Attorney-General for investigation, and if necessary, prosecution of the perpetrators;

Overall, the monitoring led to certain politicians being unusually open in an attempt to appear accountable, an openness hitherto unknown on the Kenyan political scene;7

As the violations of law continued and due to the disinclination of the Attorney General to take action, the KNCHR commenced private prosecutions in the face of the failure and/or refusal of the State Law Office to hold accountable politicians and public officials violating the law during the referendum campaigns.8

The task undertaken by KNCHR was a very deliberate but delicate one. In the course of executing it, the two organizations wish to acknowledge that mistakes were indeed made. In an unprecedented exercise of this nature and magnitude, it is inevitable that some mistakes occurred at the beginning of the monitoring and we did make some errors as we struggled to get the project off the ground.

For instance, in a press release issued on 10th November 2005, we reported that legislators Koigi wa Wamwere and G.G. Kariuki had used a local authority and government vehicle respectively to attend a YES campaign rally. The two politicians challenged the accuracy of the information through written complaints and upon verification it emerged that the report in so far as it related to the two was inaccurate, and we apologized to the two privately and publicly.9

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5 Section 96 of the Penal code reads, "Any person who ... utters, prints or publishes any words, or does any act or thing, indicating or implying that it is or might be desirable to do... any act... which is calculated-

- a) to bring death or physical injury to any person or to any class, community or body of persons; or
- b) to lead to the damage or destruction of any property
- c) 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, is guilty of an offence and is liable to imprisonment for a term not exceeding three years"

6 Section 77 (3) (e) makes it subversion to utter any words "intended or calculated to promote feelings of hatred or enmity between different races or communities in Kenya"

7 For instance cabinet ministers Njenga Karume, Simeon Nyachae, Jospeh Munyao, Amos Kimunya and the chief whip Norman Nyagah were at pains to explain to the crowd in Gucha on 9th October that they had hired and paid for the police helicopter that ferried them to the YES rally, at the prescribed rates. However, no proof of payment was furnished.

8 The Commission's initial proceedings were against an Assistant Minister who incited the public and a senior public official for contravening the Public Officer Ethics Act.

9 A public correction and apology was published in both the Daily Nation and East African Standard.
SUMMARY OF KEY RECOMMENDATIONS

1) That the persons mentioned in pages 30-34 and 39-41 of the report for incitement and hate speech be forthwith prosecuted for violation of the law.

2) That Parliament should enact as a matter of national urgency, hate speech legislation to bolster the existing law on subversion to outlaw all forms of speech that demean and dehumanize Kenyans on the basis of race, ethnicity, religion and other forms of discrimination.

3) That the persons mentioned in pages 46-62 of the report render a public apology to Kenyans for use of unsavoury and derogatory language unbecoming of leaders on a public platform.

4) That former and serving Ministers, Assistant Ministers and Local Authority Heads mentioned in Tables 6 and 8 for misuse of official vehicles for non-official purposes be surcharged by the Commissions responsible for enforcing the Code of Conduct and Ethics for the illegal and/or irregular use thereof.

5) That Ministers and Assistant Ministers adhere to Section 20 and other provisions of the Traffic Act when using privately registered vehicles.

6) That former and serving Ministers and MPs mentioned in Table 9 for non-payment for the private hire of the Kenya Pipeline Company Ltd helicopter to attend referendum campaigns be compelled to pay for the same or failing to do so be surcharged for the costs incurred.

7) That the Public Service Commission takes disciplinary action against the persons named in Tables 6 and 8 and that further, the Public Service Commission recommend their prosecution under Section 38 of the Public Officer Ethics for breach of the code of conduct and ethics and more particularly Section 15 of the Public Officer Ethics Act on misappropriation of public property entrusted to the care of public officers.

8) That the Auditor and Controller General audits the accounts of the University of Nairobi for the last quarter of 2005 to determine whether alleged payment from the YES Secretariat for use of the Dental School premises to coordinate campaigns for the proposed constitution was actually received.

9) That the Auditor and Controller General performs an audit on the hire of police aircraft for political activity.

10) That Parliament should enact as a matter of priority, a freedom of information law (an access to information law) to enable citizens’ and the media access information held by Government and which does not infringe on the rights of others or compromise national security.

11) That the Kenya Anti-Corruption Commission (KACC) conducts a thorough investigation into the funding of electoral campaigns, especially the referendum campaigns covered under this report. The investigations should establish the amounts and sources of the funds expended by the various Campaign Secretariats in order to establish the bona fides of all financial transactions related to the Referendum Campaigns. KACC should then make appropriate recommendations to the Attorney General as prescribed by the Anti-Corruption and Economic Crimes Act of 2003.

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10 The International Commission of Jurists (ICJ) Kenya Section has developed a model access to information law and has been lobbying for its enactment for a long time now. We see no reason why Parliament should not adopt this model law which has been the subject of wide consensus among the key stakeholders including the National Commission.
REFERENDUM REPORT

METHODOLOGY AND DATA COLLECTION
The Kenya National Commission on Human Rights developed a comprehensive framework under which to observe the campaign rallies. The framework consisted of researchers, a renowned media monitoring company, and whistleblowers from both the public and government. For the field researchers, a variety of monitoring tools were used to document misuse of state resources, incitement, use of hate speech, bribery, violence during the campaigns period and election malpractices on voting day.\(^\text{11}\)

KNCHR invited applications from young and dynamic university graduates interested to work as volunteers in monitoring the various referendum rallies that were held across the country. Twenty five volunteers\(^\text{12}\) representing the national spectrum of the country were selected to bolster current staff at the Commission and were thereafter trained on the parameters to observe during these rallies and more specifically to identify and document instances of incitement, use of inflammatory language and the misuse of public property.\(^\text{13}\)

The KNCHR and KHRC established 24-hour hotlines to receive information from the public, including any civil servants who may be bold enough to whistle-blow on these critical aspects.\(^\text{14}\) The KNCHR and KHRC also actively encouraged whistle blowing by public servants, and in particular encouraged those who were asked to support either campaign or to divert votes (finances) under their portfolios to the campaigns. Finally, the Steadman Group was hired to monitor and document broadcasts by television stations and secular and ethnic FM Radio for instances of hate speech, and stereotypical attributions by politicians against communities deemed to have divergent political views.

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\(^{11}\) KNCHR and KHRC used a joint monitoring instrument.

\(^{12}\) This group will form the core from which a pool of volunteers will be retained to monitor the campaigns process for the December 2007 General Elections.

\(^{13}\) The KNCHR in a bid to ensure national coverage, also tapped into the existing network of the Kenya Human Rights Commission field monitors who received an induction on how and what to monitor during the campaigns.

\(^{14}\) KNCHR and KHRC joint Public Service Announcement.
The referendum on the proposed new constitution held on November 21st 2005 was a historic moment for Kenya for several reasons. It was supposed to be the culmination of a difficult fifteen-year search for a new constitution to replace the independence constitution. Kenya’s road to a new constitution got underway under retired President Moi and the quest has since remained an endeavour steeped in controversy, littered with walk-outs, resignations, political intrigue and legal high-stakes. The search has traversed cross-party minimum reforms (Inter Parliamentary Parties Group reforms) to the constitution in 1997, and endured court battles before Kenyans were given an opportunity to directly express their views on whether they would ratify or reject the proposed new constitution. The debate on a new constitutional dispensation, which remains unfinished business, helped nurture and at the same time consolidate Kenya’s evolution as a democracy.

The ruling National Rainbow Coalition (NARC) was elected by Kenyans in 2002 to, among other things, facilitate enactment of a new constitution. NARC and its presidential candidate promised to deliver the new constitution in one hundred (100) days. After failing to deliver on its promise for a new constitution within 100 days of assuming office, the NARC administration finally succumbed to pressure and restarted the process in a manner that was however highly contentious. The national Constitutional Conference was revived to complete the process to give Kenyans a new constitution. The constitutional conference was held at the Bomas of Kenya grounds. Upon the election of NARC in 2002, the reconstituted constitutional convention quickly became a platform for the power politics that emerged after 2003 characterized by the bickering of the different factions of the Rainbow alliance that had brought President Kibaki to power.

At the heart of the struggle was the famous Memorandum of Understanding struck between the National Alliance of Kenya on the one hand and the Rainbow Coalition on the other. This deal done behind closed doors, had assured Mr. Raila Odinga the non-existent post of Prime Minister while guaranteeing the presidency to Mr. Kibaki. After assuming power, the President and his allies became reluctant to honour the secret pact. During the acrimonious sessions at Bomas, the pro-government faction showed its hand early; that it would not countenance the weakening of the presidency during President Kibaki’s tenure. On the other hand, the faction allied to Mr. Odinga demanded a second center of power through creation of the post of Executive Prime Minister. Awkwardly for the President and his supporters, the draft that came out of the convention otherwise known as Bomas, recommended a powerful position of Prime Minister and a much weakened presidency. These polarizations became bogged down in political maneuvering and towards the end, the pro-government side walked out of the conference leaving their “rivals” to come up with what was called the “Bomas Draft Constitution”.

The Bomas document was not the “holy writ” that those who supported it may want Kenyans to believe. It had its glaring weaknesses; among them was the removal of the recall clause for errant Members of Parliament, the exercise of full executive powers by an unelected Prime Minister, an unwieldy four-tiered structure of governance and the removal of the requirement for Ministers to be Members of Parliament to mention but a few. This is the genesis of how a process of years of national consultation became hijacked by politics.
culminating in the government opting to amend the “Bomas” draft (as it was popularly known) and instead push an alternative draft through Parliament.

The Draft Constitution generated by Parliament (comprising only of government friendly Members of Parliament) was called the “Kilifi draft”. Later, many simply referred to it as the “Wako draft”, as it had been drafted with the current AG’s assistance. The “Wako Draft” too had its evident faults. It watered down clauses that sought to rein in executive authority and retained sweeping Presidential powers while weakening legislative powers and watering down devolution provisions. While it did retain strong protection for women’s rights and freedom of expression and radical changes with regard to property and religious courts, the failure to reduce executive authority was perceived to be nothing more than a power play by the Government.

Ideally, the referendum should have provided the opportunity to affirm the national consensus that had driven the constitutional reforms process. However, President Kibaki and his government chose not to take a neutral stance towards the proposed new constitution. Indeed the President and his loyalists in government campaigned actively for the ratification of the “Wako Draft”, which is the draft that Kenyans were asked to ratify or reject. That decision to take a partisan stance led to the referendum becoming a proxy for issues other than the actual content of the proposed constitution. The Cabinet, which constitutionally aids the President in governing the country was split, with seven members rejecting the so called “Wako Draft” and joining the opposition in a partisan campaign to have the proposed constitution rejected.

Electioneering for the referendum took off long before the Electoral Commission announced the official date for commencement of campaigns. The level of inflammatory rhetoric by politicians on both sides, those for ratification and those for rejection, increased by the day and instances of violence were not too far behind, and by the end of the campaign period, ten people had died as a result of campaign violence. While the run-up to the vote was a highly charged affair, the actual voting day was peaceful. It is within this context that KNCHR and KHRC undertook the referendum project - moved by a concern that the referendum process had been “hijacked” from the Kenyan people and that the repercussions were going to have serious implications on the country’s future.
Nice shot.

They have a great advantage.

Hamutali Kauru Muamo
Kumana Kalu Geral Eman
Chinen Edo Hattara

...a jewel/...
WHAT DOES THIS HAVE TO DO WITH HUMAN RIGHTS?
Kenya has had a history of divisive politics that revolves primarily around ethnic allegiances. As a result, it has become common-place for politicians to appeal to the ethnicity of Kenyans in order to further their own agendas – typically the quest for political power and access to public resources for personal use especially, that this entails.

Unfortunately, this type of political mobilization often degenerates into use of “hate speech” along ethnic lines and derogatory remarks about other tribes, races and communities. Many politicians engage in hate speech because not only does it increase their political capital among “their people”, but it has not attracted any sanctions or opposition thus far. This impunity remains unchecked and Kenya’s ethnic diversity has thus been a source of conflict in the past. KNCHR and KHRC strategized to ensure these statements were accurately recorded and widely circulated so that the politicians would be seen for whom they really are and not the people they pretend to be. Also, both organizations considered that the exposure of such statements would encourage the exercise of political free will.

The right to express oneself freely is without a doubt one of the most important pillars of a rights-based society. However, the right must be exercised with restraint in light of other rights and responsibilities.

The current Constitution of Kenya guarantees the freedom of expression, as does the International Covenant on Civil and Political Rights. The U.N. Human Rights Committee which has been responsible for monitoring the implementation of ICCPR, has clearly said in its general comment on Articles 19 and 20 that such limitations are those necessary for the protection of the rights of others or the interests of national security. The limitations do not undermine the right to freedom of speech and are in fact in keeping with the duties that go along with that right. Furthermore, Article 4 of the Convention on the Elimination of All Forms of Racial Discrimination, to which Kenya has acceded, clearly prohibits and urges states to condemn all propaganda and forms of dissemination of ideas or theories which project a particular race(s) or group(s) as superior to others or which bring about hatred or discrimination on these lines.

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15 It provides under Article 20: "(1) Any propaganda for war shall be prohibited by law. (2) Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law." Moreover, Article 19, of the ICCPR guarantees the right to freedom of speech in 19(2) and also provides under Article 19(3): "The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order or of public health or morals."

16 ICCPR General Comment 11 (19th session, 1983) Paragraph 2 - "Article 20 of the Covenant states that any propaganda for war and any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law. In the opinion of the Committee, these required prohibitions are fully compatible with the right of freedom of expression as contained in article 19, the exercise of which carries with it special duties and responsibilities. The prohibition under paragraph 1 extends to all forms of propaganda threatening or resulting in an act of aggression or breach of the peace contrary to the Charter of the United Nations, while paragraph 2 is directed against any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, whether such propaganda or advocacy has aims which are internal or external to the State concerned."
It, therefore, follows that any speech conducted during the campaign rallies that advocated national, racial, ethnic, or religious hatred was not just an action that impeded the exercise of free political will during the referendum, it also constituted a violation of human rights. When politicians paint the Constitution of Kenya as belonging to one particular tribe/community and ask the people to accept or reject it as symbolization of our ethnic identity and unity, thereby sowing the seeds of hatred and discrimination, there is no doubt that this has everything to do with the human rights of individual Kenyans. The fact that the speech did not result in physical harm or violence does not lessen the effect of hate speech or derogatory remarks - the resulting stigmatization, dehumanization, and hatred is just as harmful.

In light of the above, the KNCHR had earlier facilitated a four-day sensitization working trip to Rwanda with twenty three Members of Parliament accompanied by media representatives between 21st and 25th August 2005. Prior to the visit, a preparatory session was organized to familiarise the legislators with the events surrounding the Rwanda genocide, that took place in 1994 and in which more than 800,000 Rwandans were killed in a short span of time by their fellow countrymen and women. In the course of the visit, the team met with the Rwandan President, Paul Kagame, Members of the Senate and the Chamber of Deputies, the Ombudsman, the Press, the National Unity and Reconciliation Commission and the National Human Rights Commission. Also, the team met genocide survivors and visited two main genocide memorial sites.

In organizing this visit, KNCHR’s interest was to appraise Kenyan legislators and journalists about the dangers of negative ethnicity, hate speech and how these can degenerate to a source of serious conflict in Kenya. Further, KNCHR hoped to precipitate concrete conflict prevention strategies at home, rather than reactionary measures after the eruption of conflict. KNCHR recognised the central role that Members of Parliament and the media could play in conflict prevention, given their positions of influence in shaping public opinion. The flagrant misuse of public resources, government office time and taxpayer’s money in the public gatherings and campaign rallies also has everything to do with human rights. The misuse of public property violates the Public Officers Ethics Act and is also in contravention of Kenya’s obligations under the International Covenant on Economic, Social and Cultural Rights which Kenya has signed. The misuse of government resources and public funds prevents the realization of social and economic rights as well as the political and civil rights of Kenyans by reducing what is available for public services through official waste. Misappropriation of public resources is also discriminatory against the majority of citizens dependent on public services for their survival. It also perpetuates a “culture of entitlement” and abuse of office leading to impunity and lack of a “public servant” mentality.

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17 Section 15 (1) of the Act provides that a public officer shall take all reasonable steps to ensure that property that is entrusted to his care is adequately protected and not misused or misappropriated. (2) A person who contravenes sub section (1) shall be personally liable for losses resulting from the contravention.

18 Article 2(1) of the ICESCR states that, “Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.”

19 For a more comprehensive reading, please the KNCHR biannual publication “Nguzo za Haki” Issue No. 3 of February 2005 “Corruption is a violation of human rights”. Available at http://www.knchr.org
Sisi hapa katika Orange, Raila, Balala, Nyong'o, na wengine ndio tuliweka Kibaki State House... na siku hizi ali-kuwa anapeleka na wheel barkow...

...lakini hawa watu wana midomo kom-bokombo wana-tutawala kwa Kiburi!

19-11-2005 Njia Stadium
Section 96 of the Penal Code Cap 63 Laws of Kenya provides,

“Any person who 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-

a) to bring death or physical injury to any person or to any class, community or body of persons; or
b) to lead to the damage or destruction of any property; or

c) 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 to any lawful authority,
is guilty of an offence and is liable to imprisonment for a term not exceeding three years”

Paragraph 6 (a) of the Election Code of Conduct further prohibits the use of inflammatory language that can be used to incite people to violence. KNCHR and KHRC kept a watchful eye on the politicians who traversed the country either for or against the proposed constitution and recorded the utterance of words and statements or such actions that would amount to incitement as defined by the law.

In the next section, we list a tabulation of commission of the offence of incitement contrary to Section 96 of the Penal Code during the course of the campaigns.20

20 The KNCHR submitted an official complaint vide a letter dated 10th November 2005 and referenced KNCHR/3/RM/34 detailing violation of the law to the Attorney General for investigation and if necessary prosecution of the politicians listed on account of their utterances. To date, our complaint has elicited no response.
UTTERANCES ON INCITEMENT CONTRARY TO SECTION 96 OF THE PENAL CODE.

Thirikwa Kamau, Immediate former MP Ndaraigua
10 Oct 05
Njambini Grounds

“physically resist encroachment by the Orange team into Nyandarua”.

Simeon Nyachae, Energy Minister and MP, Nyaribari Chache
15 Oct 05
Ndumberi Stadium

‘Wale hawajatahiri peleka Jandoni’
(those who are not circumcised should be taken for a circumcision ceremony)

‘Naambia Kombo alete hao chokoraa councilors Kapenguria ndio ajue kwa nini punda hakuna mapembe
(I tell Kombo to bring those councilors who look like street children to Kapenguria and he will understand why donkeys have no horns.)

Samwel Moroto, MP for Kapenguria
15 Oct 05
Iten Stadium

‘Wakisimamisha pension ya Moi, then Wakalenjin na Wakamba watavamia State House’.
(If they stop Moi’s pension, then the Kalenjin and the Kamba communities will invade State House)

Daudi Mwanzia, MP for Machakos Town
15 Oct 05
Iten Stadium

“Hao watu wa YES wakija Kakamega,wachapwe viboko na wapigwe na mawe”
(If the YES campaign comes to Kakamega, whip and stone them)

George Khaniri, MP for Khamisi
24 Sep 05
Muliro Gardens
Hon Khaniri was summoned on a count of incitement contrary to section 96 of the Penal Code. The Commission had submitted a complaint to the A-G’s office on the 25th of October 2005 with detailed evidence of incitement. There was no response from the Attorney-General despite the fact that the Commission had furnished more than sufficient evidence to warrant prosecution. The Commission, therefore, moved to court under the provisions of the constitution and section 88 (1), 89 and 90 of the Criminal Procedure Code (Cap 75 Laws of Kenya) in the face of the Attorney-General’s continued refusal to act. The AG took over and terminated this case. As a post script, KNCHR intends to pursue this matter further in the High Court. It is worthy of note that in spite of the AG’s promise in court to investigate the incidents of violence as he had promised with Hon. Khaniri’s case, no officer from the AG office or any police officer has sought a statement from the Commission regarding Khaniri’s utterance on incitement.

“squatters occupying the late JM Kariuki’s land should not vacate, notwithstanding a court’s order to the contrary”.

Mwangi Kiunjuri, Ass. Minister for Energy and MP Laikipia East
Kabazi Open Ground

People should prepare for war if NO wins

William Wambugu, Councillor (Mukaru Ward)
06 Nov 05
Ithekahuno Shopping Center, Tetu

If we pass this Constitution, the Orange Team should not step in Meru unless they remove their flags.

Peter Munya, MP, Tigania East
07 Nov 05
Divisional HQs, Tigania East

Nyeri should be at the forefront in the YES campaign and any rebel will be dealt with accordingly. Anybody who wants to behave like a rebel should be folded. We have no time to flatter demons whose work is to ruin the scheme of things.

Chris Murungaru, MP, Kieni
21 Oct 05
Nyamachaki Hall, Nyeri

Amos Kimunya, Minister for Lands and MP, Kipipiri
24 Oct 05
Ol-Kalou Market

Raila the monster should be hit on the head and killed so as not to destabilize the Kibaki government.
There are two arch-enemies in Kenya today; Raila and Kalonzo. Then he led the crowd in exorcizing the two Raila Shindwe (Down with Raila), Kalonzo Shindwe (Down with Kalonzo).

S.M. Wambugu, Councillor, Nyeri
06 Nov 05
Ithekahuno Shopping Center, Tetu

Najib Balala, MP, Mvita
Bura

Pili tumeona CKRC, tumejua wana ubaguzi, alafu wanaenda kuchagua kikundi kimoja cha ntzi kinaitwa Muslim Youth of Kenya imewekwa kwa constituency yote hapa kwenu pia iko Muslim Youth of Kenya hapa, mnawajua hao?...hao ni watu wamechukua msimamo wa ndizi, hatuwataki na ikiwa wamekuja mmekubaliwa tutawachapa! Mko tayari? Ikiwa watu waletwa na wamechukua msimamo wa ndizi, mnajua kazi yenu...

Second, we have seen that CKRC is biased in favour of the Banana Camp. They have come here and appointed a group- the Muslim Youth of Kenya- who are allied to the Banana camp and put them in-charge of civic education in each constituency. They are also here in this rally......you know them?...Those are people who have adopted the Banana stand, we do not want them here and if they come you are at liberty to beat them up. Are you ready? If the Banana supporters come here you know what you have to do to them

(KTN Lib.No.1175)
The context was in goading the crowd to some form of violence against those perceived to have altered the Bomas draft.

Citizen Radio hatutaki kuwaona kati yetu kama hawataki kuripoti mambo ya ukweli na tunatoa onyo kali wasije wakatulaumu. Wanatoa habari ya kupotosha'.

We do not want to see Citizen Radio reporters in our meetings if they do not want to report the truth. We are warning them now so that they do not blame us later.

(Nation TV Clip)

..hao wanao badilisha mambo ya Bomas watajua kwamba Kenya ina wenyewe na wakija huku nyanza wakitumia mali ya uma mtawafanya nini?...

(Those watering down the Bomas Draft will know that Kenya has its owners and if they come to Nyanza misusing public resources in the process, what will you do to them?)

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22 The context was in goading the crowd to some form of violence against those perceived to have altered the Bomas draft.
‘Huyu kijana mdogo anayesema yakuwa anakula mamba. Namuonya yeye na wenzake wakome kuwingilia Raila na wakome kuwingilia kampeni ya chungwa. Na mimi ningependa kuwaambia na kuwauliza, akija hapa? akija hapa? (from the crowd, ua! choma! choma!) haya mshajibu!’...

(There is this young man who claim he feeds on crocodiles. I am warning him and his colleagues to stop mudslinging Raila and the Orange Campaign. If he comes to Kisumu, what will you do to him? (lynch him the crowd responds)
You have answered.

“Ni makosa wabunge kuhongwa na wanapokea mshahara mkubwa. Nyinyi vijana endeni mchukue hizo pesa hakuna mtu atakaye uliza nyinyi”.

(It is wrong for Members of Parliament to be bribed yet they receive hefty salaries. You the youth, go grab the money from them; no one will hold you accountable)

Na huyo mtu wa Citizen anaandika uongo. Mkiwaona hapa watolewe waende huko kwao Uhuru park. Hatuwataki hapa. (And these Citizen reporters are broadcasting lies. If you see them here, remove them to Uhuru Park where they belong... we do not need them here!)

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**Hon. Joe Khamisi, MP, Bahari**
25 Sep 05
Nyanza

**Hon. Joseph Kamotho, MP, Mathioya**
24 Sep 05
Kakamega, Muliro Gardens

**Hon. Fred Gumo, MP, Westlands**
09 Nov 05
Nyayo Stadium
RECOMMENDATIONS

• The KNHCR and KHRC recommend the Investigation and prosecution of the above named politicians for incitement under Sections 95 & 96 of the Penal Code.
REFERENDUM REPORT

SUBVERSIVE ACTIVITIES
Section 77 of the Penal Code provides:

(1) “Any person who does or attempts to do, or makes any preparation to do or conspires to do, or conspires with any person to do, any act with a subversive intention, or utters any words with a subversive intention, is guilty of an offence and is liable to imprisonment for a term not exceeding three years...

(3) For the purposes of this Section, “Subversive” means -

Intended or calculated to promote feelings of hatred or enmity between different races or communities in Kenya:

Provided that the provisions of this paragraph do not extend to comments or criticisms made in good faith and with a view to the removal of any causes of hatred or enmity between races or communities;

The use of hate speech along ethnic or racial lines thus falls under the class of offences categorized as subversion under the law. For purposes of this report, we have defined hate speech as

“a form of speech that degrades others and promotes hatred and encourages violence against a group on the basis of a criteria including religion, race, color or ethnicity. It includes speech, publication or broadcast that represents as inherently inferior or degrades, dehumanizes and demeans a group.”

The KNCHR and KHRC also monitored radio and TV broadcasts as well to document this form of speech. Politicians in this country have always viewed electioneering as a platform to unleash utterances that demonize, dehumanize or are otherwise negative to other ethnic groups. Hate speech has been deliberately used by the political elite as a tool of manipulating their ethnic support bases in a quest for acquisition and control of political power. This type of language greatly contributes to negative ethnicity that bedevils our politics to date.

The Kenyan political elite have perfected the art of polarizing the country into ethnic camps while maneuvering for power. The politically instigated clashes in various parts of Kenya before the 1992 and 1997 General Election respectively were symptomatic of this phenomenon. Neighboring communities were pitted against each other in the run up to the two elections and the Akiwumi Report on land clashes for instance pinpoints political rallies as the spark that fuelled the ethnic conflict in Kenya.

During the referendum campaigns, the resurgence of ethnic-based hate speech and the resulting high political tension in the country was disconcerting. In fact, ethnicity threatened to overshadow the whole constitutional review process and there was great concern about what would happen in the aftermath of the referendum. Temperatures had been stoked to beyond boiling point yet Kenyans would still have to live together as part of one nation and not as balkanized communities. The big question thus

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23 According to the Committee on the Elimination of Racial Discrimination (CERD), systematic and widespread use and acceptance of speech or propaganda promoting hatred and/or inciting violence against minority groups, and grave statements by political leaders that express support for affirmation of superiority of a race or an ethnic group, dehumanize and demonize minorities, or condone or justify violence against a minority are likely to lead to conflict situations or genocide.
became whether the divisive campaigns based on ethnicity represented a step back in terms of consolidating the country’s democracy.

Some may argue that there is a thin line between free speech and incitement. Indeed it has been argued that all speech should be considered a form of opinion and expression, which is protected in all major human rights instruments. The KNCHR and KHRC agree but only to a certain extent. The freedom of speech should not be viewed as an unfettered right for it comes with grave responsibilities.24

The African Charter on Human and People's Rights in Article 9 (2) recognizes an individual’s right to freedom of opinion and expression within the given law of individual states. The Charter also maintains that, “every individual shall have the duty to respect and consider his fellow beings without discrimination, and to maintain relations aimed at promoting, safeguarding and reinforcing mutual respect and tolerance.”25

KNCHR and KHRC decided to publicize the utterances employed by politicians during the campaign process. The unacceptable behavior of politicians in Kenya is usually only discussed in the abstract and the two institutions decided to concretize it for both the politicians and the public by publishing “Lists of Shame.” As stated elsewhere in this document this served a dual purpose, first to shame the politicians, who perhaps were thinking that no one was really watching them; secondly to stir debate about the impact of ethnic biases and speech in politics. In this way, it was hoped that if the political class could learn, it could learn that public space comes with onerous duties especially during electoral or referendum campaigns.

In the next section, we list the utterances that constitute hate speech along ethnic or racial lines and hence subversion under the Penal Code.

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24 One only has to look at the recent riots and deaths caused by the Danish cartoons depicting prophet Mohammed to see the powerful negative impact the speech and expression can have.

25 See also Universal Declaration on Human Rights (UDHR) Article 30 and the International Convention on Civil and Political Rights (ICCPR) Article 19 and 20.
The "community" against whom the hate speech is directed in this utterance are persons with disabilities by implying they are inferior.

It is obvious that such an utterance would raise hatred towards people of Central Province.

The statement was likely to arouse race tensions in suggesting that Arabs (all of them purported to have roots in Zanzibar) subject the indigenous population to servitude.

Hate speech component was in implying that members of the Luo community are lazy and conversely their counterparts from the Kikuyu community are hard working.
The way I was born holding a microphone is the way Raila was born holding a stone with his people, fighting all the time.30

Elias Mbau, MP for Maragua
05 Nov 05
St. Mary’s Cathedral, Muranga, Central

Delamere kills Africans like dogs, the new constitution will teach him and the settlers a lesson since their land will revert to the government.32

P.G. Mureithi, MP for Nyeri Town
06 Nov 05
Ithekahuno Shopping Center, Tetu, Central

Kalembe Ndile, MP for Kibwezi
05 Nov 05
Nunguni Market, Eastern

‘wengi wenu mumesoma hii report ya constituency levels of poverty Kenya yote. Ukienda mahali kama Nyanza province huko watu hawafanyi kazi wanangojea watu wa Central wafanye kazi - kazi yao ni kungojea’ (Majority of you have read the report on constituency levels of poverty. In places like Nyanza Province, people do not work, instead they wait for the people of Central province to work)31

30 Inference is that Raila Odinga, a Luo, hails from a community stereotyped as rowdy and violent.
31 See footnote 30 above
32 The Delamere name is associated with a British aristocrat family among the pioneers of settler farmers in Kenya. In the local context, the speaker was referring to an incident in 2005 when Tom Cholmondeley a grandson of the Delameres shot and killed a Kenya Wildlife Service Game ranger. After he was arraigned on a charge of murder, the State subsequently terminated the prosecution on the grounds that the facts were not sufficient to sustain the charge.
Debate about the constitution stopped long ago when Raila and his group started scheming on how to usurp power from our tribe. Now the big question is, are you surrendering power to Raila or not? You have to turn out in large numbers on November 21st or else this Luo takes over power from us. We are three million while the Luos are only seven hundred thousand.33

Muhika Mutahi, Immediate former MP for Mukurweini
06 Nov 05
Ithekahuno Shopping Center, Tetu, Central

‘That Asian who was brought here called Prof Yash PalGhai34 went to Sri Lanka and wrote a Constitution like the one he brought to Bomas. Immediately he left, people in Sri Lanka were already slaughtering each other even worse than the Tutsis. -We Kikuyus are many, we are found all over including Mombasa, Kisumu & Isiolo. We should then turn out in large numbers to vote so that we are not defeated’

Mutahi Kagwe, MP for Mukurweini
06 Nov 05
Ithekahuno Shopping Center, Tetu, Central

If YES wins, the Kikuyus should pack their bags and move out of Eldama Ravine. Kikuyus from Shauri, Maji Mazuri and Timboroa will not be issued with Title Deeds if they vote Yes.

Musa Sirma, MP, Eldama Ravine
06 Nov 05
Eldama Ravine, Rift Valley

33 Hate speech component is that members of the Luo community are not fit to assume the presidency and conversely, only Kikuyus can.
34 Prof Yash Pal Ghai was the Chairperson of the Constitution of Kenya Review Commission (CKRC) which was responsible for taking down the views of Kenyans and subsequently preparing a draft document that was the basis of discussion at the Bomas Conference.
RECOMMENDATIONS

The KNCHR and KHRC recommend the following:

• The investigation and Prosecution of the above named politicians under Section 77 (3) (e) of the Penal Code for subversion; and
• The enactment of legislation to bolster the existing law on subversion outlawing hate speech.
REFERENDUM REPORT

POLITICS OF THE FORESKIN
We were appalled by the level of derogatory language denigrating Kenyans from communities that do not practice circumcision as unworthy of taking leadership positions. There are different rites of passage from childhood to adulthood in traditional African societies. The type of rite differs from society to society and circumcision is just one of them. For some communities the removal of the two lower teeth would constitute the rite of passage. The bottom-line remains that neither the circumcision nor the removal of the teeth qualifies one for leadership at the national forum. The use of the same to belittle fellow leaders is pathetic and unfortunately exposes the limited capacity of the politicians to instill true leadership values to the society the lead. One wonders how those who shouted loudest on circumcision as a mark of leadership would react if it was to be argued that communities which do not remove the two lower teeth as a ritual of passage are unfit to lead the country.

In this report speeches or utterances that celebrate male circumcision as a mark of ability to lead are dubbed “politics of the foreskin”. By continually alluding to circumcision as the only mark of leadership, our politicians are by extension averring that one cannot lead without a penis and that a circumcised penis is a requirement for leadership. Woe unto those who have uncircumcised penises and even worse for those without one! The following is a sample of some the utterances on circumcision that we documented:

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35 The traditional rite of passage among the Luo Community was the removal of two of the lower front teeth which marked transition from childhood to adulthood.
In the Kenyan context this type of language particularly targeted the Luo Community being among the tribes that don’t practice circumcision.

The bold print is vernacular Kiembu language.

It is noteworthy to take into account the context of this utterance. The term “crossing the bridge” in local parlance refers to the rite of passage of circumcision - crossing from childhood to adulthood.

Wale hawajatahiri peleka Jandoni’ (those who are not circumcised should be taken for a circumcision ceremony)

James Gathaka, Former Nyeri Mayor
06 Nov 05
Ithekahuno Shopping Center, Tetu

Kalonzo is lost, Kambas do not walk with uncircumcised men “gutie mwikamba uthisaga na ivisi” (there is no Kamba who walks with uncircumcised men)

Simeon Nyachae, Energy Minister and MP for Nyaribari Chache
08 Oct 05
Maua Stadium

‘No one knows whether Uhuru ever got circumcised since he studied abroad. But I want to tell you that since he will come to lie to you here, we should all position ourselves strategically in the various exit points. Then we strip him naked and establish whether he is circumcised’

Njeru Ndwigia, Minister for Cooperatives and MP for Manyatta
08 Oct 05
Maua Stadium

Raila is an outsider, he is from the lakeside. Watu wengine hawajavuka daraja (Some people have not crossed the bridge) I cannot work with him (Raila) as he has not passed through rites of adulthood

Simeon Nyachae, Energy Minister and MP for Nyaribari Chache
08 Oct 05
Maua Stadium

In the Kenyan context this type of language particularly targeted the Luo Community being among the tribes that don’t practice circumcision.

The bold print is vernacular Kiembu language.

It is noteworthy to take into account the context of this utterance. The term “crossing the bridge” in local parlance refers to the rite of passage of circumcision - crossing from childhood to adulthood.
Should the draft constitution pass, Parliament should add a section that demands every man of age to get circumcised. A campaign on circumcision should be launched by the government.

**James Njiru, Former Minister**
05 Nov 05
Kerugoya

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‘How can an uncircumcised man call a circumcised man? ‘Mtu hajatahiri hana siri’ (An uncircumcised person can not keep confidences)

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‘Leo ningekuwa waziri wa Internal Security (If today I were the minister for internal security) ... Kalonzo would be inside today. Juzi alikuwa anaenda Mombasa na vijana ambao hawajatairi wa Baghdad.’ (Recently he went to Mombasa with uncircumcised Baghdad boys).

**Norman Nyaga, Government Chief Whip and MP for Kamukunji**
16 Oct 05
Runyenjes Town

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These people are opposing the constitution yet they were part of the process. Isn’t that what we call ubiici (behaving like one who is not circumcised).

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**Mwangi Kiunjuri, Ass. Minister for Energy and MP for Laikipia East**
08 Oct 05
Maua Stadium

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**Njeru Ndwiga, Minister for Cooperatives and MP for Manyatta**
05 Nov 05
Kerugoya Stadium

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39 Part in bold constitutes vernacular Embu language.
RECOMMENDATIONS

- The KNCHR and KHRC recommend that the above named render a public apology to Kenyans for suggesting that those without a penis are unfit to occupy positions of leadership.
There were utterances which though did not violate the law, were generally distasteful and unfit on the public platform. It has become customary for Kenyan politicians to seek votes through general bad language without any modicum of civility. As an illustration, below are some of the utterances documented under this category.  

40 These were not the only instances. Unsavoury language was used extensively and the table presents the instances were captured politicians on tape.

41 In the local context, the term "fish eater" refers to the Luo Community by virtue of their habitation around Lake Victoria and the fishing industry the lake is associated with.

‘Raila is a murderer because he participated in the 1982 coup where people lost their lives’

Kalembe Ndile, MP for Kibwezi
07 Oct 05
Gusii Stadium, Nyanza

‘Raila ni shetani’
(Raila is a devil)

Kalembe Ndile, MP for Kibwezi
07 Oct 05
Kisii, Nyanza

Wenda wazimu wanatuamburga tuseme NO
(these mad people are telling us to say NO)

Norman Nyaga, Govt Chief Whip and
MP for Kamukunji
08 Oct 05
Maua Stadium, Eastern

‘Raila Odinga is a ‘mla samaki’
(fish eater) who sneaked the prime minister who is powerful than the president into the Bomas Draft.

Raila Odinga, Minister for Transport and
MP for Lang’ata
08 Oct 05
Bungoma, Western

Since Nyachae is an old man, the brain is equally old and he should go home.

Paul Muite, MP for Kabete
22 Oct 05
Ol kalou Stadium, Central
Huyu mbunge wenu John Serut alinunuliwa kwa mnada huko bunge (Your MP was bribed in parliament)

William Wambugu, Councillor for Mukaru Ward
06 Nov 05
Ithekahuno Shopping Center, Tetu, Central

Tuhote nyamu ino iragiria tugie na katiba
(We should defeat this animal called Raila that is preventing us from getting a new constitution)

‘...Kenya inaongozwa na watoto wa shetani...’ (Kenya is being led by children of the Devil)
[ KTN Lib. No.1157A, 01:20:05] 42

Martin Shikuku, Former MP Butere
06 Nov 05
Kajiado, Rift valley, Tetu, Central

Gideon Moi, MP for Baringo Central
25 Oct 05
Mt. Elgon Stadium, Rift Valley

42 Bold language is vernacular Kikuyu language.
When others were being persecuted, others were kissing the backsides of the colonial master. These people cannot deliver a legitimate constitution. These people are trash. These MPs sold their consciences in parliament to the highest bidder the way goats are bought in an auction (PNC).

'These NO people are saying that the new constitution allows gay marriages. Even if that is the case, who would marry Raila?'

'S.M. Wambugu, Vice Chair, Nyeri County Council' 06 Nov 05
Itethehuno Shopping Center, Tetu, Central

'Wanasema sana juu ya Kiraitu.....Wachana na mambo ya mdomo ikiwa kando....wacha hiyo. Angalia picha yake ya 2002 uone viatu vyake alivyokuwa akivaa...kiatu yake ilikuwa imekaa upande...' (a lot is being said about Kiraitu. Not so much about his crooked lips...forget that, but take a look at his 2002 snap shot and notice the kind of shoes he wore which were crooked)

'Hon. Raila Odinga, MP, Langata' Thika, Central

'Hon. Reuben Ndolo, MP, Makadara' 24 Nov 05
Muliro Gardens, Western
Powers za president wameseema ni kubwa zaidi na mimi nikiwaambia, hasa mama zetu, wamama, itafika wakati huyo raisi atakuwa hapo atapanga wamama zetu mstari..., mmesikia yule kiongozi-Emperor Mswati wa Swaziland? Emperor Mswati anapanga wamama mstari.

(Presidential powers are unlimited and I tell the womenfolk, there will come a time when a President will parade you the way King Mswati of Swaziland parades women43

Tuliandika ile katiba ya Bomas!
Sivyo? Halafu wakora wadogo wanaenda kule Kilifi.... wanachukua ndogo ndogo huko....halafu wanakwenda wanaharibu ile Katiba ambayo Wakenya walikubaliana.
(We drafted the Bomas Draft! Didn’t we? And then some thugs/ crooks went to Kilifi with their Mistresses and altered the provisions that Kenyans had built consensus on)

[KTN Lib. No. 1162, 27:39:10]

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43 Referring to the cultural practice of the reed dance performed by young virgin girls before the King every year in Swaziland.
‘Nimeenda kwangu nikaimba... nikaambia huyu Wako ile katiba (Bomas Draft) ameweka kwa drawer yake na ameenda Mombasa na wasichana sijui ngapi,warembo sijui amewapata wapi wengine nasikia amewatoa Ghana ati wanaenda kutengeneza katiba! Wameenda kukula pesa ya wananchi wa Kenya bure’ (KTN; 1157A; 01: 09:30)...

(I sang saying Wako had hidden the constitution (Bomas Draft) in his drawer and gone to Mombassa with Mistresses; I don’t know how many of them... others I hear were from Ghana. They claimed that they had gone to make a Constitution for Kenyans but had only gone there to embezzle public funds...)
They were the minority in Bomas. So they came from there and headed to Kilifi where they were accompanied by Mistresses. After just a few days, they adulterated the Bomas Draft. They infected the pregnancy we had conceived at Bomas with venereal diseases... They infected the foetus too... now the new born baby is not the one we conceived at Bomas. Many MPs were being bought like cattle at a livestock auction market.

Hon. Raila Odinga, M.P. Lang'ata
Kajiado, Rift Valley
Wacha mambo ya Tuju.\textsuperscript{45} Ni takataka sitaki kusema ya kasia mimi. Saa ile tunaongea mambo muhimu ya taifa hili, hatutaki kusikia mambo ya vinyangarika... Walienda kule Kilifi halfu yule msichana mrembo tulitoa kule Bomas walimpeleka kule Kilifi na mzee mmoja akamchukua na kumbaka kule Kilifi (Don’t mention Tuju to me, he is rubbish and I don talk about trash. When we are talking of national issues, we should avoid talking about busy bodies... These people took the beautiful girl we had nurtured at Bomas to Kilifi where an old man raped her)

\textsuperscript{45} Raphael Tuju is currently the Foreign Affairs Minister and MP for Rarieda, and a bitter political foe of Raila Odinga in matters of Nyanza politics.
Sisi hapa katika Orange, Raila, Balala, Nyongo, na wengine ndio tuliweka Kibaki State House na siku hiyo alikuwa anapelekwa na wheel barrow ... Na sema hii watu wengine ambao wana midomo inakaa namna hii (kombokombo) wananchi wa Kenya wanatawaliwa na sheria; rule of law ... lakini hawa watu wanatutawala kwa kibuli.

(It is us here in ODM, Raila, Balala, Nyong'o and others who propelled Kibaki to State House when he was being wheeled around on a Wheelbarrow. I say that Kenya is governed through the rule of law but these people with crooked mouths are ruling Kenyans with arrogance).

Hon. William Ole Ntimama, MP, Narok
19 Nov 2005
Nyayo Stadium, Nairobi
RECOMMENDATIONS

• The KNCHR and KHRC recommend that the above named render a public apology to Kenyans for using unsavoury and derogatory language unbecoming of political leaders on a public platform.
REFERENDUM REPORT

GENDER INSSENSITIVE LANGUAGE CONSTITUTING DEROGATION OF WOMEN
Politicians were not in the least ashamed in the unforgivable manner they denigrated women as being inferior to men where leadership was concerned. The amount of vile sexist language implying that women were unfit to lead was shocking. In spite of the gains made in recent years directed at gender parity and more specifically the empowerment of historically marginalized groups among them women; it was clear that politicians had reverted fully to their male chauvinism once accorded a public platform during the campaigns.

**USE OF GENDER INSENSITIVE SPEECH**

“The whole of Kisauni Constituency supports the Orange Camp, and I dare the Kisauni MP Anania Mwaboza to come there and hold a rally if he IS man enough”.

Ali Hassan Joho, Kisauni parliamentary aspirant
16 Oct 05
Changamwe

“We have men and there are those who are like women because they are fearing to defect from the Banana camp”

Maina Kamanda, Then Ass. Minister for Local Govt. and MP for Starehe
30 Sep 05
Nairobi

‘Amepigwa na akina mama amemalizika na wewe ukisha pigwa na akina mama umefika mwisho’
(He has been beaten by women and once you have been beaten by women, you are finished)

William Ruto, MP for Eldoret South and Kanu Secretary General
08 Oct 05
Marakwet

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46 Referring to an incident where David Mwenje the MP for Embakasi was involved in a fracas at a Nairobi hotel.
Huko Kilifi walienda kuogelea hata niliona Kalembe Ndile akiogelea na wamama wazee wakizungu. Kweli anaweza danganya wananchi alichangia kuandika katiba mpya? (They went to Kilifi on holiday. I even saw Kalembe Ndile swimming with old European women. Can he surely tell Kenyans that he actually contributed to the drafting process?)

‘Ataenda nyumbani…. Na kama yeye ni mwanaume, avunje Bunge, tutakutana uwanjani’ (He will go home. If he is man enough, I dare him to dissolve Parliament and we meet in the open.(Unveiled reference to the President).)

Hon. Joseph Kamotho, MP for Mathioya Thika

Hon (late) Peter Owidi, Former MP, Kasipul Kabondo
Kip Keino Stadium
RECOMMENDATIONS

- The KNCHR and KHRC recommend that the above named render a public apology to Kenyans for using gender insensitive language unbecoming of political leaders on a public platform.
MISUSE OF STATE RESOURCES
The KNCHR monitored all Ministers, public officials and public agencies on the use of public resources to conduct referendum campaigns. The legal basis for this work was underpinned by Section 15 of the **Public Officers Ethics Act**, whereby all public officers (including Ministers) must take steps to ensure that property that is entrusted to them is not misused or misappropriated.\(^{47}\) The concept of a “people-driven” constitution meant that there was no “Government” position from the beginning to the end.

The focus on the misuse of state resources was therefore hinged on the need to inculcate accountability and transparency in the conduct and funding of campaigns,\(^{48}\) particularly as a prelude to the 2007 elections. In the same vein, we also urged the NGOs and other bodies engaged in civic education to embark on similar programs by disclosing the amounts and sources of resources available to them for work on issues related to the referendum.

We were further concerned with the cost of the various rallies both camps held and more importantly the source of their funding:

1) Who paid for the transportation of the leaders to the rallies and at what cost?
2) Who paid for their accommodation in areas where they did not have homes?
3) Who paid for the mobilization of people including the posters, flyers, clothes, banners and other apparel that we saw?
4) Who paid for the catchy advertisements running at prime times on TV and radio or the numerous colorful fully paid adverts in the print media?
5) Did Ministers use state resources such as vehicles, fuel, security services or official drivers in to organize these events?
6) If so, when did the referendum campaigns become official government business?

To attempt to answer question no. 6 above; there had never been nor could there be an articulated government position on the constitutional reforms process. Furthermore, there was no “Government position” on the referendum - indeed a referendum is the quintessential example of a people-driven political process. To the extent that the President, Ministers, and Assistant Ministers contributed and engaged in the campaign process, it was necessarily either as Members of Parliament or representing political parties or other interest groups.

The Government did not give views to the Professor Yash Pal Ghai Commission; the “Government” did not have a delegate participating in the Bomas process; and there was no Cabinet decision stating what its position was, one way or the other. It, therefore, followed that there could be no justification for the use of taxpayers’ resources to campaign on either side. KNCHR and KHRC repeatedly expressed the view that the Government was both legally and ethically bound to avoid taking a position on the referendum, or use state resources to campaign on either side since this could potentially affect the popular will of Kenyans and

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\(^{47}\) The Act provides that: “(1) A public officer shall take all reasonable steps to ensure that property that is entrusted to his care is adequately protected and not misused or misappropriated. (2) A person who contravenes subsection (1) shall be personally liable for losses resulting from the contravention.”

\(^{48}\) The funding of political campaigns is a prescient issue as the Anglo-leasing scandal has revealed. For some background on party financing in Kenya see this report - www.accessdemocracy.org/library/1880_ke_cgdnominations.pdf.
dilute an individual’s vote; thereby inhibiting the democratic process. If Ministers or Assistant Ministers wanted to campaign or conduct civic education, they were obliged to use their personal or party resources, including transportation, fuel, and security.49

On September 20, 2005 KNCHR and KHRC and with the support of the Electoral Commission of Kenya (ECK) hosted a joint press conference announcing a campaign to monitor the waste of taxpayers’ resources by Ministers, Assistant Ministers and other public officers. In addition, the need for the support of the Kenyan people to achieve the campaign’s objectives was recognized and to this end 24-hour telephone hotlines were set up to receive pertinent information on cases of government waste, as well as other matters pertaining to violation of individual rights during the referendum process such as intimidation, threats, and confiscation of identity cards. The announcement also called on civil servants, especially those in the provincial administration, to blow the whistle where they were encouraged or required to mobilize or otherwise support the campaigns on either side. The goal was to extend a culture of probity beyond institutions like KNCHR and KHRC.

The announcement elicited an unexpected response from the government. On the 21st of September 2005, the government’s press secretary, Dr. Alfred Mutua issued a press briefing to clarify the role of the government in the constitutional review process. In assuring Ministers and Assistant Minister that they could use Government vehicles to conduct the campaigns he stated,

“the use of government transport in these processes should therefore be viewed as Official Government Business.”50

The next day, the then Minister for Justice and Constitutional Affairs Hon. Kiraitu Murungi in remarks to a consultative forum of Members of Parliament observed in his official speech,

“The referendum is a government project. One of the key pledges of the NARC government was the free primary education and a new constitution. It is the duty of the government to provide the infrastructure and enabling environment for the referendum. The government cannot stand by and look the other side in a referendum. It is like completing a stalled project e.g. the Kisii-Chemosit Road. You cannot tell it (government) to be neutral in the construction of the road. Constitution making is not the same as electioneering where the government is not expected to take a position because individuals are competing for power... The new constitution is a government document printed by the government printer with taxpayers’ money. It is our duty as government to ensure that it is passed at the referendum. We should not be intimidated by those who want the government to fail.”51(Emphasis ours)

Clearly, the government was on the defensive and taken aback by the calls for a new culture of discipline, openness and accountability in the conduct of political campaigns. The government was also acting in a manner that negated the very idea that a referendum was a form of direct democracy.

The KNCHR and KHRC pressed on nevertheless further buoyed by the Government’s own official policy on the use of Government, State Corporations and Local Authority Vehicles.\(^5^2\) The official policy is encapsulated in a circular by the Head of the Civil Service and Secretary to the Cabinet Ambassador Francis Muthaura. It states that these vehicles are for official use only. Further, except for those officers whose terms of service specify so, the use of Government vehicles for house to office use is prohibited! Obviously, the use of government or local authority vehicles to campaign cannot be classified as official use. The following table is a summary of the politicians who used government vehicles to attend and conduct referendum campaign rallies in the months of October and November 2005:

<table>
<thead>
<tr>
<th>Name</th>
<th>Venue</th>
<th>Vehicle</th>
<th>Registration No.</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hon. Martha Karua(^5^3)</td>
<td>Kisii</td>
<td>Mitsubishi Trooper</td>
<td>GK A 928 D</td>
<td>7 Oct 05</td>
</tr>
<tr>
<td>Hon. Martha Karua</td>
<td>Naivasha</td>
<td>Land Rover</td>
<td>GK A 614 K</td>
<td>22 Oct 05</td>
</tr>
<tr>
<td>Hon. Amos Kimunya</td>
<td>Kehancha</td>
<td>Mitsubishi D/Cab</td>
<td>GK A 880 H</td>
<td>9 Oct 05</td>
</tr>
<tr>
<td>Hon. Kiraitu Murungi</td>
<td>Naivasha</td>
<td>Toyota Prado</td>
<td>GK A 331 H</td>
<td>22 Oct 05</td>
</tr>
<tr>
<td>Hon. Simeon Nyachae</td>
<td>Kehancha</td>
<td>Mitsubishi Pajero</td>
<td>GK A 682 G</td>
<td>9 Oct 05</td>
</tr>
<tr>
<td>Hon. Mukhisa Kituiy</td>
<td>Bungoma</td>
<td>Toyota Land Cruiser</td>
<td>GK A 598 H</td>
<td>23 Oct 05</td>
</tr>
<tr>
<td>Hon. Kivutha Kibwana(^5^4)</td>
<td>Makueni</td>
<td>Mitsubishi Pajero</td>
<td>GK A 935 D</td>
<td>5 Nov 05</td>
</tr>
</tbody>
</table>

\(^5^2\) Official Government circular dated 18/10/2003 provides that government vehicles are for official use only.

\(^5^3\) Martha Karua, then Minister for Water and Irrigation in correspondence with the Commission argued she is a Minister 24 hours and thus entitled to use her official vehicle at all times. In a subsequent letter, she argued that the referendum was not a private venture hence justifying the use of her official vehicle. In the Commission’s view, no cabinet decision was taken on what the Government position on the referendum would be. Consequently, the campaigns did not constitute official duty. The Commission reiterated that Government could not take a position on such an issue as the referendum where the use of state resources on either side could potentially affect the popular will of Kenyans.

\(^5^4\) Hon. Kibwana wrote to the Commission on 2nd January 2006 admitting using a Government vehicle but only for conducting civic education. The Commission’s view remains that the only authorized civic education was that conducted by the Constitution of Kenya Review Commission and voter education by the Electoral Commission.
<table>
<thead>
<tr>
<th>Name</th>
<th>Venue</th>
<th>Vehicle</th>
<th>Registration No.</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hon. Joseph Munya</td>
<td>Kehancha</td>
<td>Toyota Land Cruiser</td>
<td>GK X 783</td>
<td>9 Oct 05</td>
</tr>
<tr>
<td>Hon. Wangari Mathai</td>
<td>Tetu</td>
<td>Isuzu Trooper</td>
<td>GK A 595 H</td>
<td>6 Nov 05</td>
</tr>
<tr>
<td>Hon. Chris Murungaru</td>
<td>Moyale</td>
<td>Land Rover 110</td>
<td>GK A 049 F</td>
<td>8 Nov 05</td>
</tr>
<tr>
<td>Hon. David Mwiraria</td>
<td>Moyale</td>
<td>Land Rover 110</td>
<td>GK A 049 F</td>
<td>8 Nov 05</td>
</tr>
<tr>
<td>Hon. Mohamed Abdi Mohamud</td>
<td>Moyale</td>
<td>Land Rover 110</td>
<td>GK A 049 F</td>
<td>8 Nov 05</td>
</tr>
<tr>
<td>Hon. Wilfred Machage</td>
<td>Kehancha</td>
<td>Volkswagen Passat</td>
<td>GK A 479 K</td>
<td>9 Oct 05</td>
</tr>
<tr>
<td>Hon. David Were</td>
<td>Bungoma</td>
<td>Isuzu Trooper</td>
<td>GK A 221 E</td>
<td>23 Oct 05</td>
</tr>
<tr>
<td>Hon. Joshua Toro</td>
<td>Makueni</td>
<td>Toyota Land Cruiser</td>
<td>GK A 481 G</td>
<td>5 Nov 05</td>
</tr>
<tr>
<td>Hon. Beth Mugo</td>
<td>Makueni</td>
<td>Toyota Land Cruiser</td>
<td>GK A 827 G</td>
<td>5 Nov 05</td>
</tr>
<tr>
<td>Hon. Jimmy Angwenyi</td>
<td>Moyale</td>
<td>Toyota Land Cruiser</td>
<td>GK A 775 C</td>
<td>8 Nov 05</td>
</tr>
<tr>
<td>Hon. Guracha Galgalo</td>
<td>Moyale</td>
<td>Land Rover 110</td>
<td>GK Y 752</td>
<td>8 Nov 05</td>
</tr>
<tr>
<td>Hon. Abdi Tari Sasura</td>
<td>Moyale</td>
<td>Land Rover 110</td>
<td>GK Y 752</td>
<td>8 Nov 05</td>
</tr>
<tr>
<td>Hon. Robinson Githae</td>
<td>Thika</td>
<td>Nissan X-Trail</td>
<td>GK A 499 K</td>
<td>15 Nov 05</td>
</tr>
<tr>
<td>Mrs Guracha Galgalo</td>
<td>Moyale</td>
<td>Mitsubishi L200 Double Cabin</td>
<td>GK A 878 H</td>
<td>8 Nov 05</td>
</tr>
<tr>
<td>Mrs Abdi Sasura</td>
<td>Moyale</td>
<td>Mitsubishi L200 Double Cabin</td>
<td>GK A 878 H</td>
<td>8 Nov 05</td>
</tr>
</tbody>
</table>
RECOMMENDATIONS

KNCHR and KHRC recommend as follows on the misuse of state motor vehicles:

• Surcharge at prevailing market rates of the persons named above under Section 15 of the Public Officer Ethics Act by the responsible Commission for enforcing the Code of Conduct & Ethics for misuse of public property.

• Disciplinary action to be taken by the responsible commission for Ethics against the above persons and if need be prosecution under Section 38 of the Ethics Act for breach of the code of conduct and ethics.
There was also extensive use of vehicles, which though bearing private civilian registration plates, failed to comply with Section 20 of the Traffic Act (Cap 403) Laws of Kenya which requires all privately registered vehicles to carry and display the requisite stickers in a manner prescribed by the Act. In the cases where we encountered vehicles without the requisite insurance and road licence stickers, we had reason to believe that these cars were probably government vehicles disguised in civilian number plates. Even where it has turned out that these vehicles belong to the individuals named below; our information would then indicate that at the time and place they have been cited, they failed to comply with the provisions of the Traffic Act:

Table 7. USE OF VEHICLES THAT DID NOT COMPLY WITH THE TRAFFIC ACT

<table>
<thead>
<tr>
<th>Date</th>
<th>Venue</th>
<th>Person</th>
<th>Vehicle</th>
<th>Registration No.</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>7 Oct 05</td>
<td>Gucha</td>
<td>Hon. Ochilo Ayacko</td>
<td>Mitsubishi Pajero</td>
<td>KAM 808 Z</td>
<td>Displayed no stickers</td>
</tr>
<tr>
<td>8 Oct 05</td>
<td>Maua Stadium-Meru North</td>
<td>Hon. David Mwiraria</td>
<td>Nissan Patrol</td>
<td>KAC 780 U</td>
<td>Displayed no stickers</td>
</tr>
<tr>
<td>8 Oct 05</td>
<td>Maua Stadium</td>
<td>Hon. David Mwiraria</td>
<td>Toyota Prado</td>
<td>KAJ 118 Q ***</td>
<td>Displayed no stickers</td>
</tr>
<tr>
<td>8 Oct 05</td>
<td>Maua Stadium</td>
<td>Hon. David Mwiraria</td>
<td>Nissan Patrol</td>
<td>KAL 578 Q</td>
<td>Displayed no stickers</td>
</tr>
<tr>
<td>8 Oct 05</td>
<td>Bungoma Airstrip</td>
<td>Hon. Ochilo Ayacko</td>
<td>Toyota Prado</td>
<td>KAM 808 Z</td>
<td>Displayed no stickers</td>
</tr>
</tbody>
</table>

In this section, there are vehicles which though bearing private registration plates, we had reasonable suspicion to believe that some of them could be official cars disguised in civilian plates. Our suspicion is based on the fact that when we wrote to the Registrar of motor vehicles to furnish us details of ownership, his oral response was to state that the numbers in question were classified and not available for public consumption. In all those instances where the Registrar declined to furnish our request for particulars, our inference is that the vehicle is a government vehicle disguised in civilian plates for which we have used the symbol *** to denote this fact.
<table>
<thead>
<tr>
<th>Date</th>
<th>Venue</th>
<th>Person</th>
<th>Vehicle</th>
<th>Registration No.</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>8 Oct 05</td>
<td>Bungoma Airstrip</td>
<td>Hon. Andrew Ligale</td>
<td>Toyota Land Cruiser</td>
<td>KAS 503 D$^{56}$</td>
<td>Only bore parliamentary gate pass sticker</td>
</tr>
<tr>
<td>8 Oct 05</td>
<td>Maua Stadium</td>
<td>Hon. Kiraitu Murungi</td>
<td>Toyota Land Cruiser VX</td>
<td>KAN 938 N***</td>
<td>Displayed no stickers/ with ministerial pendant</td>
</tr>
<tr>
<td>8 Oct 05</td>
<td>Maua Stadium</td>
<td>Hon. Chris Murungaru</td>
<td>Toyota Land Cruiser VX</td>
<td>KAR 405 M***</td>
<td>Displayed no stickers</td>
</tr>
<tr>
<td>8 Oct 05</td>
<td>Maua Stadium</td>
<td>Hon. Kiraitu Murungi</td>
<td>Mercedes Benz E 240</td>
<td>KAS 989 X</td>
<td>Displayed no stickers</td>
</tr>
<tr>
<td>8 Oct 05</td>
<td>Maua Stadium</td>
<td>Hon. Simeon Nyachae</td>
<td>Isuzu Trooper</td>
<td>KAU 120 L</td>
<td>Displayed no stickers</td>
</tr>
<tr>
<td>11 Oct 05</td>
<td>Mwingi</td>
<td>Hon. John Michuki</td>
<td>Land Rover</td>
<td>KAT 428 M</td>
<td>Displayed no stickers</td>
</tr>
<tr>
<td>11 Oct 05</td>
<td>Mwingi</td>
<td>Hon Kalembe Ndile</td>
<td>Toyota Double Cabin</td>
<td>KAU 570 L$^{57}$</td>
<td>Displayed no stickers</td>
</tr>
<tr>
<td>15 Oct 05</td>
<td>Iten</td>
<td>Hon. Ochilo Ayacko</td>
<td>Mitsubishi Pajero</td>
<td>KAM 808 Z$^{58}$</td>
<td>Displayed no stickers</td>
</tr>
<tr>
<td>15 Oct 05</td>
<td>Ndumberi Stadium - Kiambu</td>
<td>Hon. Simeon Nyachae</td>
<td>Toyota Land Cruiser</td>
<td>KAQ 814 R$^{59}$</td>
<td>Displayed no stickers / with ministerial pendant.</td>
</tr>
<tr>
<td>15 Oct 05</td>
<td>Ndumberi Stadium - Kiambu</td>
<td>Hon. Njenga Karume</td>
<td>Range Rover</td>
<td>KAR 962 M$^{59}$</td>
<td>Displayed no stickers</td>
</tr>
</tbody>
</table>

$^{56}$ See successes and impact in the Executive Summary. The registration in question is for a Massey Ferguson Tractor registered in the MP’s name. This clearly discloses the commission of various offences under the Penal Code and it is worrying to note that political leaders could be adopting the same tactics employed by carjackers to disguise stolen vehicles.

$^{57}$ Though Hon. Kalembe Ndile was not an Assistant Minister at the time, we received anonymous information that he had been furnished with an official vehicle to campaign for the YES side.

$^{58}$ Hon Ayacko extensively used this vehicle throughout the period of the campaigns. The Registrar of vehicles declined to furnish particulars of ownership of this vehicle upon request, which gives us reason to infer that the same could be a government vehicle.

$^{59}$ Records held by the Registrar of Motor Vehicles indicate that as of 9th November 2005, the vehicle was registered under the name of Njenga Karume.
<table>
<thead>
<tr>
<th>Date</th>
<th>Venue</th>
<th>Person</th>
<th>Vehicle</th>
<th>Registration No.</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>16 Oct 05</td>
<td>Kahuruko Stadium-Muranga</td>
<td>Hon. Kiraitu Murungi</td>
<td>Land Rover</td>
<td>KAP 354 Z</td>
<td>Displayed no stickers</td>
</tr>
<tr>
<td>16 Oct 05</td>
<td>Kahuruko Stadium-Muranga</td>
<td>Hon. Kiraitu Murungi</td>
<td>Toyota Land Cruiser</td>
<td>KAP 938 N</td>
<td>Displayed no stickers</td>
</tr>
<tr>
<td>16 Oct 05</td>
<td>Kahuruko Stadium-Muranga</td>
<td>Hon. Mwangi Kiunjuri</td>
<td>Toyota Lexus</td>
<td>KAQ 008 W</td>
<td>Displayed no stickers</td>
</tr>
<tr>
<td>16 Oct 05</td>
<td>Runyenjes Town</td>
<td>Hon. Njeru Nd wigia</td>
<td>Range Rover</td>
<td>KAL 484 E</td>
<td>Displayed no stickers</td>
</tr>
<tr>
<td>16 Oct 05</td>
<td>Runyenjes Town</td>
<td>Hon. Martha Karua</td>
<td>Toyota Land Cruiser VX</td>
<td>KAR 701 V</td>
<td>Displayed no stickers</td>
</tr>
<tr>
<td>21 Oct 05</td>
<td>Kitui Sports Ground</td>
<td>Hon. Ochilo Ayacko</td>
<td>Mitsubishi Pajero</td>
<td>KAM 808 Z</td>
<td>Displayed no stickers</td>
</tr>
<tr>
<td>22 Oct 05</td>
<td>Ol Kalou Stadium</td>
<td>Hon. Kiraitu Murungi</td>
<td>Toyota Land Cruiser</td>
<td>KAN 938 N</td>
<td>Displayed no stickers</td>
</tr>
<tr>
<td>22 Oct 05</td>
<td>Ol Kalou Stadium</td>
<td>Hon. Chris Murungaru</td>
<td>Toyota Land Cruiser</td>
<td>KAR 405 M</td>
<td>Displayed no stickers</td>
</tr>
<tr>
<td>22 Oct 05</td>
<td>Ol Kalou Stadium</td>
<td>Hon. Martha Karua</td>
<td>Toyota Land Cruiser</td>
<td>KAR 701 V</td>
<td>Displayed no stickers</td>
</tr>
<tr>
<td>22 Oct 05</td>
<td>Ol Kalou Stadium</td>
<td>Hon. Amos Kimunya</td>
<td>Range Rover</td>
<td>KAR 651 P</td>
<td>Displayed no stickers</td>
</tr>
<tr>
<td>22 Oct 05</td>
<td>Bungoma Airstrip</td>
<td>Hon. Moses Wetangula</td>
<td>Toyota Rexton</td>
<td>KAC 832 T</td>
<td>Vehicle model is too recent for the registration plates it carried</td>
</tr>
</tbody>
</table>

60 See Successes and impact. Records at the Registrar of Motor vehicles indicate that motor vehicle registration no KAP 938 N is a white/cream Suzuki owned by Kenrub Investments. Once more, this is a case that discloses commission of a serious criminal offence.

61 Records at the Registrar of Motor Vehicles indicate that as of 9th November 2005, the vehicle was registered under the name of Mwangi Kiunjuri.
<table>
<thead>
<tr>
<th>Date</th>
<th>Venue</th>
<th>Person</th>
<th>Vehicle</th>
<th>Registration No.</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>23 Oct 05</td>
<td>Bungoma Airstrip</td>
<td>Hon (Dr) Noah Wekesa</td>
<td>Toyota Land Cruiser</td>
<td>KAM 863 V</td>
<td>Displayed no stickers</td>
</tr>
<tr>
<td>27 Oct 05</td>
<td>Kenyatta Stadium-Kitale</td>
<td>Hon Peter O doyo</td>
<td>Isuzu Trooper</td>
<td>KAQ 997 M(^{62})</td>
<td>Displayed no stickers / did not have the front number plate</td>
</tr>
<tr>
<td>27 Oct 05</td>
<td>Kenyatta Stadium-Kitale</td>
<td>Hon. Ochilo Ayacko</td>
<td>Mitsubishi Pajero</td>
<td>KAM 808 Z</td>
<td>Displayed no stickers</td>
</tr>
<tr>
<td>29 Oct 05</td>
<td>Afraha Stadium- Nakuru</td>
<td>Hon. Ochilo Ayacko</td>
<td>Mitsubishi Pajero</td>
<td>KAM 808 Z</td>
<td>Displayed no stickers</td>
</tr>
<tr>
<td>29 Oct 05</td>
<td>Afraha Stadium- Nakuru</td>
<td>Hon Najib Balala</td>
<td>Mitsubishi Pajero</td>
<td>KAP 310 A***</td>
<td>Displayed no stickers</td>
</tr>
<tr>
<td>30 Oct 05</td>
<td>Kamukunji Grounds - Nairobi</td>
<td>Hon. Joshua Toro</td>
<td>Nissan Patrol</td>
<td>KAC 780 U(^{63})</td>
<td>Displayed no stickers</td>
</tr>
<tr>
<td>30 Oct 05</td>
<td>Kamukunji Grounds - Nairobi</td>
<td>Hon. Maina Kamanda</td>
<td>Toyota Prado</td>
<td>KAJ 118 Q</td>
<td>Displayed no stickers</td>
</tr>
<tr>
<td>30 Oct 05</td>
<td>Siaya Stadium</td>
<td>Hon. Ochilo Ayacko</td>
<td>Mitsubishi Pajero</td>
<td>KAM 808 Z</td>
<td>Displayed no stickers</td>
</tr>
</tbody>
</table>

\(^{62}\) Records held by the Registrar of Motor Vehicles indicate that as of 9th November 2005, the vehicle was registered under the name of O doyo P. Ochieng. Hon O doyo wrote to the Commission on 10th November 2005 following the publication of the Commission’s list of shame on the use of government vehicles clarifying the ownership of the vehicle in question and including a copy of the log book showing the vehicle to be his private property. A letter to the same effect was written by the Permanent Secretary in Hon O doyo’s then Ministry indicating that the former Assistant Minister had used his private vehicle.  

\(^{63}\) See successes and impact. Records held by the Registrar of Motor Vehicles indicate that Motor vehicle KAC 780 U is a blue Honda motor cycle owned by Fred O seko of Kericho. It constitutes a serious criminal offence to use registration plates for a different vehicle.
<table>
<thead>
<tr>
<th>Date</th>
<th>Venue</th>
<th>Person</th>
<th>Vehicle</th>
<th>Registration No.</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>30 Oct 05</td>
<td>Siaya Stadium</td>
<td>Hon. Andrew Ligale</td>
<td>Toyota Prado</td>
<td>KAS 503 D⁶⁴</td>
<td>Only bore parliamentary gate pass sticker.</td>
</tr>
<tr>
<td>4 Nov 05</td>
<td>Nyamira Primary School</td>
<td>Hon. Simeon Nyachae</td>
<td>Isuzu Trooper</td>
<td>KAP 484 Z⁶⁵</td>
<td>Displayed no sticker / with ministerial pendant</td>
</tr>
<tr>
<td>4 Nov 05</td>
<td>Gusii Stadium</td>
<td>Hon. Ochilo Ayacko</td>
<td>Mitsubishi Pajero</td>
<td>KAM 808 Z</td>
<td>Displayed no stickers</td>
</tr>
<tr>
<td>5 Nov 05</td>
<td>Kerugoya Stadium</td>
<td>Hon. Njeru Ndwwiga</td>
<td>Range Rover</td>
<td>KAR 484 E</td>
<td>Displayed no stickers</td>
</tr>
<tr>
<td>5 Nov 05</td>
<td>Kerugoya Stadium</td>
<td>Hon. Martha Karua</td>
<td>Toyota Land Cruiser</td>
<td>KAR 710 V</td>
<td>Displayed no stickers</td>
</tr>
<tr>
<td>5 Nov 05</td>
<td>Nkubu-Meru</td>
<td>Hon. David Mwiraria</td>
<td>Toyota Land Cruiser (Prado)</td>
<td>KAJ 118 Q</td>
<td>Displayed one sticker</td>
</tr>
</tbody>
</table>

⁶⁴ A search at the Registrar of motor vehicles revealed that the vehicle in question though registered in the name of Hon. Ligale, motor vehicle KAS 503 D is a Massey Ferguson Tractor.

⁶⁵ Records held by the Registrar of Motor Vehicles indicate that as at 9th November 2005, the vehicle was registered under the name of Simeon Nyachae.
<table>
<thead>
<tr>
<th>Date</th>
<th>Venue</th>
<th>Person</th>
<th>Vehicle</th>
<th>Registration No.</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>5 Nov 05</td>
<td>Nkubu-Meru</td>
<td>Hon. Kiraitu Murungi</td>
<td>Land Rover 110</td>
<td>KAP 354 Z</td>
<td>Displayed one sticker</td>
</tr>
<tr>
<td>7 Nov 05</td>
<td>Muriri-Tigania East</td>
<td>Hon. David Mwiraria</td>
<td>Toyota Prado</td>
<td>KAJ 118 Q</td>
<td>Displayed no stickers</td>
</tr>
<tr>
<td>7 Nov 05</td>
<td>Muriri-Tigania East</td>
<td>Hon. Kiraitu Murungi</td>
<td>Toyota Land Cruiser</td>
<td>KAN 938 N</td>
<td>Displayed one sticker</td>
</tr>
<tr>
<td>16 Nov 05</td>
<td>Dedan Kimathi Grounds - Nyeri</td>
<td>Hon. Kiraitu Murungi</td>
<td>Toyota Land Cruiser</td>
<td>KAN 938 N</td>
<td>Displayed no stickers</td>
</tr>
<tr>
<td>16 Nov 05</td>
<td>Dedan Kimathi Grounds - Nyeri</td>
<td>Hon. Kiraitu Murungi’s security detail</td>
<td>Land Rover 110</td>
<td>KAP 354 Z</td>
<td>Displayed no stickers</td>
</tr>
</tbody>
</table>
RECOMMENDATIONS

The KNCHR and KHRC recommend that:

• The Motor Vehicle Registry provide details of ownership for the vehicles marked *** in the above table during the period covered by this report.

• Ministers and Assistant Ministers adhere to Section 20 and other provisions of the Traffic Act when using privately registered vehicles.
Huko kufu walienda kuogela, hata nhiona kalemba ndile akiogele na wanama wazee wa kizungu!

...kwa ni anaweza danganya wananchi ipo amchangia kuandika katoo mpaka???
REFERENDUM REPORT

Hon Moses Wetangula in Bungoma, 22nd October 2005

Ochilo Ayako in Gucha 7th October 2005

Kiraitu Murungi, Maua Stadium 8th October 2005

Kiraitu Murungi, Kahuroko Stadium 16th October 2005

Martha Karua Runyenjes Town 16th October 2005

Amos Kimunya Ol kalou Stadium 22nd October 2005
URGENT NEED FOR A FREEDOM OF INFORMATION LAW

From the difficulties the Kenya National Commission on Human Rights has faced in accessing information held by Government; in spite of enjoying its statutory status as an independent agency of State, it is clear that an ordinary citizen would face even more insurmountable difficulties. Malfeasance thrives in an environment characterized by secrecy and obscurity. Our recent experience in seeking routine information from the Registrar of Motor Vehicles makes the strongest case yet for the absolute necessity on a law on access to information held by Government. There is need to have as a priority the right of citizens to request and receive information on all decisions and operations of Government that are not a matter of national security.

DISREGARD FOR THE TRAFFIC ACT

It is disturbing to note that some Ministers, Assistant Ministers and Members of Parliament could be deliberately ignoring the provisions of the Traffic Act (Cap 403 Laws of Kenya). Section 20 requires all motor vehicles to carry and display the requisite stickers in the manner prescribed. The requisite stickers are the road licence and insurance certificate. Under the principle of equality under the law, the law must apply equally to all without discrimination. It is inexplicable why these persons would decide to flout these provisions with impunity. We recommend that the Traffic Department ensures that the private vehicles of legislators, assistant ministers and ministers fully comply with the law.
RECOMMENDATIONS

The KNCHR and KHRC make the following recommendations with regard to difficulties to access information held by the government on behalf of the people:

• A speedy enactment of the International Commission of Jurists (ICJ) Kenya freedom of information law to enable citizens access to information held by Government.

• Repeal of the Official Secrets Act Cap 187 Laws of Kenya

• Prosecution of officials using vehicles with different number plates under Section 349 of the Penal Code for forgery.
The use of vehicles belonging to local authorities was also noted in various rallies yet the campaigns did not constitute official business of any local authority. The following section lists local authority vehicles that were used during the referendum campaigns:

**TABLE 8. USE OF LOCAL AUTHORITY VEHICLES**

<table>
<thead>
<tr>
<th>Date</th>
<th>Venue</th>
<th>Vehicle</th>
<th>Registration</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>22 Oct 05</td>
<td>Ol Kalou</td>
<td>Peugeot 504</td>
<td>KAB 154 Q</td>
<td>Used to ferry local councilors to and from the venue</td>
</tr>
<tr>
<td>22 Oct 05</td>
<td>Ol Kalou</td>
<td>Land Rover 109</td>
<td>KTL 812</td>
<td>Used to ferry local councilors to and from the venue</td>
</tr>
<tr>
<td>25 Oct 05</td>
<td>Makutano, Kilimambogo at Gatuanyaga Chief's Camp</td>
<td>Toyota Corolla</td>
<td>KAB 173 Q</td>
<td>Used to ferry Mayor Mutahi and councilors to the rally</td>
</tr>
<tr>
<td>25 Oct 05</td>
<td>Gatuanyaga Chief's Camp, Makutano</td>
<td>Toyota Corolla</td>
<td>KAN 215 P</td>
<td>Used to ferry councilors and Mayor Mutahi</td>
</tr>
<tr>
<td>27 Oct 05</td>
<td>Municipal Hall, Machakos Town</td>
<td>KAL 033 T&lt;sup&gt;66&lt;/sup&gt;</td>
<td></td>
<td>Used by the Mayor of Machakos Town</td>
</tr>
</tbody>
</table>

<sup>66</sup> It is interesting to note that though this vehicle bears local authority registration plates, records available at the Registrar of motor vehicles indicate that motor vehicle registration no. KAL 033 T is a Nissan / Datsun Bus / Coach which as of 17th November 2005 was registered under the name of Khalid Mahsan Omar of P.O. Box 17592 Nairobi.
<table>
<thead>
<tr>
<th>Date</th>
<th>Venue</th>
<th>Vehicle</th>
<th>Registration</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>27 Oct 05</td>
<td>Municipal Hall, Machakos Town</td>
<td>Mitsubishi Pajero</td>
<td>KAR 572 L</td>
<td>Used by Allois Mwaiwa, Chairman Makueni County Council</td>
</tr>
<tr>
<td>28 Oct 05</td>
<td>Kapsabet Show Ground</td>
<td>Toyota Land Cruiser</td>
<td>KAH 075 Y</td>
<td>Ferried Chairman and Vice Chair of Kipsigis County Richard Arap Samoei and Korir Alfred respectively</td>
</tr>
<tr>
<td>2 Nov 05</td>
<td>Emuhaya Divisional Headquarters</td>
<td>Mitsubishi Pajero</td>
<td>KAR 113 L</td>
<td>The Vihiga Municipal Vehicle was used by Mayor Henry Ramogi</td>
</tr>
<tr>
<td>5 Nov 05</td>
<td>Kerugoya Stadium</td>
<td>Range Rover</td>
<td>KAR 593 L</td>
<td>Ferried councillors to the venue</td>
</tr>
<tr>
<td>8 Nov 05</td>
<td>Moyale Football Grounds</td>
<td>Land Rover 110</td>
<td>KAR 122 L</td>
<td>Brought ‘Yes‘ supporters to the rally</td>
</tr>
<tr>
<td>11 Oct 05</td>
<td>Mwingi Town</td>
<td>Mitsubishi Pajero</td>
<td>KAR 572 L</td>
<td>Makueni County Council Chairman Allosi Mwaiwa used his official vehicle</td>
</tr>
<tr>
<td>16 Nov 05</td>
<td>Dedan Kimathi Grounds - Nyeri</td>
<td>Land Rover</td>
<td>KAR 106 L</td>
<td>Transported individuals wearing Yes campaign t-shirts and waving a large Yes banner</td>
</tr>
</tbody>
</table>
RECOMMENDATIONS

• KNCHR and KHRC recommend as follows regarding misuse of local authority motor vehicles: surcharge of the above persons at market rates under Section 15 of the Ethics Act for misuse of public property.
USE OF PUBLICLY OWNED AIRCRAFT FOR POLITICAL ACTIVITY

The KNCHR also documented some cases where police aircraft were used to attend the referendum campaigns. While it may be acknowledged that the ferrying of cabinet ministers and other public officials to political rallies aboard police aircraft may not of itself suffice as evidence of misuse of public resources, it should be noted that the Government is under an obligation to ensure that public property is not misappropriated, and that those who hire the various aircraft pay for them at authorized rates.

In addition to the instances reported in the media, KNCHR documented the following two instances on the use of police aircraft for political activity:

On 8th October 2005 at a “yes” rally held at Maua Stadium in Eastern Province, the then Minister for Special Programs, Hon, Njenga Karume currently the Minister for Defence was ferried to the rally aboard a police helicopter registration number 5Y EXC between 12.30 pm-5.30 pm.

On 9th October 2005 at a “yes” rally held at Kehancha Football grounds in Kuria District of Nyanza Province, Hon, Njenga Karume then Minister for Special Programs, Hon Simeon Nyachae then Minister for Energy and now Minister for Roads and Public Works, Hon. jospeh Munya the Minister for Livestock and Fisheries, Hon Amos Kimunya then Minister for Lands and Housing and now Minister for Finance, Hon. Norman Nyagah NARC Chief Whip and several other politicians from Nyanza Province were ferried to the rally aboard a police helicopter registration number 5Y STA between 12 noon and 4.30 pm.

In addition, the Commission received reports from members of the public which information was also available in the media of the use of the Kenya Pipeline Helicopter by politicians during the campaigns. By a letter dated 14th February addressed to the Kenya Pipeline Company Ltd, the National Commission asked to be furnished with details of private hire of the Parastatal’s aircraft during the campaigns.

A reply dated 7th March 2006 was received on 8th March 2006. A summary of its contents is as follows:

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67 Kenya Pipeline Company supplied copies of invoices and receipts of payments
From the above figures, senior political figures owe the Kenya Pipeline Company Ltd, a public corporation funded by the tax payer a whooping Kshs 5,636,399.30 being sums outstanding for the private hire of the corporation’s helicopter.

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**TABLE 9. PRIVATE HIRE OF THE KENYA PIPELINE HELICOPTER FOR POLITICAL ACTIVITY**

<table>
<thead>
<tr>
<th>Name</th>
<th>Invoice No.</th>
<th>Amount in Kshs</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hon. Martha Karua</td>
<td>4274</td>
<td>427,228.00</td>
<td>Unpaid</td>
</tr>
<tr>
<td>Hon. Martha Karua</td>
<td>4294</td>
<td>619,718.40</td>
<td>Unpaid</td>
</tr>
<tr>
<td>Hon. Amos Kimunya</td>
<td>5291</td>
<td>605,462.00</td>
<td>Unpaid</td>
</tr>
<tr>
<td>Hon. Musikari Kombo</td>
<td>4290</td>
<td>778,200.75</td>
<td>Unpaid</td>
</tr>
<tr>
<td>Hon. Raphael Tuju</td>
<td>4273</td>
<td>971,355.00</td>
<td>Unpaid</td>
</tr>
<tr>
<td>Hon. Mwangi Kiunjuri</td>
<td>4275</td>
<td>100,920.00</td>
<td>Unpaid</td>
</tr>
<tr>
<td>Hon. Mwangi Kiunjuri</td>
<td>4292</td>
<td>141,636.00</td>
<td>Unpaid</td>
</tr>
<tr>
<td>Hon. George Saitoti</td>
<td>4295</td>
<td>170,288.00</td>
<td>Paid</td>
</tr>
<tr>
<td>Yes Secretariat</td>
<td>4288</td>
<td>305,393.50</td>
<td>Paid</td>
</tr>
<tr>
<td>Hon. Simeon Nyachae</td>
<td>4286</td>
<td>458,345.00</td>
<td>Paid</td>
</tr>
<tr>
<td>Hon. Simeon Nyachae</td>
<td>4272</td>
<td>417,722.95</td>
<td>Paid</td>
</tr>
<tr>
<td>Hon. Simeon Nyachae</td>
<td>4289</td>
<td>217,258.35</td>
<td>Paid</td>
</tr>
<tr>
<td>Kenya Electricity(^{68}) Generating (KenGen) Co Ltd</td>
<td>3892</td>
<td>220,662.00</td>
<td>Paid</td>
</tr>
<tr>
<td>Ken Gen Ltd</td>
<td>4287</td>
<td>94,250.00</td>
<td>Paid</td>
</tr>
</tbody>
</table>

---

\(^{68}\) The Kenya Pipeline clarified vide a letter dated 10th April 2006 to the National Commission that KENGEN had hired the aircraft to enable the visiting Senator Yano from Japan to visit the Ol Karia Power Station accompanied by the Minister for Trade and Industry.
RECOMMENDATIONS

The KNCHR and KHRC recommend that:
- Hon. Martha Karua, Hon. Amos Kimunya, Hon Musikari Kombo, Hon. Raphael Tuju and Hon Mwangi Kiunjuri be compelled to settle the respective amounts owed-Kshs 5,636,399.30 failure of which they should be surcharged.
USE OF THE SCHOOL OF DENTAL SERVICES
(FORMER KENYA SCHOOL OF LAW) AS SECRETARIAT FOR THE “YES” CAMPAIGNS

The above premises along Valley Road were designated as the official Secretariat of the Campaign coordinating the “yes” vote in support of the proposed constitution. In the meantime, the NO Secretariat was housed in private property in the Upper Hill area of Nairobi. In pursuance of the campaign to check misappropriation of public property, the Commission summoned information from the University of Nairobi and the Director General of the “yes” Secretariat on the circumstances in which the premises were being used for political activity.

The University of Nairobi wrote back and furnished a lease signed by Mr. Titus Mbathi on behalf of the “yes” Secretariat. Be that as it may, evidence of payment for the lease of the said premises has not yet been submitted to the Commission. The Commission has not been successful in verifying whether any payments were made or indeed whether this transaction was proper and lawful.

The NO Secretariat operated from premises in Upper Hill area of Nairobi which they orally informed us was a private residence. Be that as it may, a letter to the Secretariat asking for confirmation of these particulars has gone unanswered to date.
RECOMMENDATION

• The KNCHR and KHRC recommend that an audit of the University of Nairobi accounts be carried out to determine if payment was received for the hire of the former Kenya School of Law for partisan political activity.
"WENGI WENU MUMPSONIA HII RIPON GA
'CONSTITUENCY LEVELS OF POVERTY' KENYA GOTE
UKIENDA MHANI KAMA Mfangaza Province, Huko
Watu Hawafanyi Kazi... Wanangoea Watu
Wa Central Wafanye Kazi... Kazi Gao Ni
Kungojea Tu" — Elias Mbau
REFERENDUM REPORT

ABUSE OF PUBLIC OFFICE
The Public Officer Ethics Act was passed in 2003 to provide a code of conduct and ethics for public officers. It defines a public officer as “any officer, employee or member, including an unpaid, part-time or temporary officer, employee or member of any of the following—government or any department service or undertaking of the Government, the National Assembly or the Parliamentary Service, any public corporation, a corporative society, a public university or any other body prescribed by regulation as a public body”.

It is highly possible that many Members of Parliament while passing the act may not have read its provisions. Section 16 of the Act has provisions requiring public officers to observe political neutrality. Section 16 states:

“(1) A public officer shall not in the or in connection with the performance of his duties as such—
(a) act as an agent for or so as to further the interest of a political party, or
(b) indicate support for or opposition to any political party or candidate in an election
(2) A public officer shall not engage in political activity that may compromise or be seen to compromise the political neutrality of his office”

These provisions are further reinforced by the National Assembly and Presidential Elections Act, Cap 7 Laws of Kenya. Section 17B provides “(1) No public officer shall—
(a) engage in the activities of any political party or act as an agent of any such party; or
(b) publicly indicate support for or opposition against any party or candidate participating in an election under this Act or under the Local Government Act.
(2) A public officer who contravenes any of the provisions of subsection (1) shall be guilty of an offence and liable to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding six months, or to both.”

Finally, Section 130 of the Penal Code stipulates “Everyone who willfully disobeys any written law by doing an act which it forbids, or by omitting to do any act which it requires to be done, and which concerns the public may part of the public, is guilty of a misdemeanour and is liable, unless it appears from the written law that it was the intention of parliament to provide some other penalty for the disobedience, to imprisonment for two years”.

The Commissions documented the following cases where public officers contravened the Public Officer Ethics Act by dabbling in politics:
Mr. Titus Kitili Mbathi

During the course of the campaigns, the official “yes” Secretariat was headed by Mr. Titus Kitili Mbathi who was designated its Director General, while he had been appointed by the President in 2003 to be chairman of the Board of Directors of the Kenya Electricity Generating Company (KENGEN) - clearly a public position under the Public Officer Ethics Act. Mr. Mbathi is also the Chairman of the National Party of Kenya which makes his tenure as chairman of the board of a public company untenable in law since that fact, on its own, already compromises the political neutrality of his office. The Commission wrote to the Attorney General on 13th October 2005 appraising his office of the violation of the law on account of Mr. Mbathi’s involvement in politics contrary to the law. In spite of a subsequent reminder being sent to the A-G on 25th October, 2005 no action was taken to vindicate the law. On 2nd of November 2005, KNCHR moved to the Nairobi Chief Magistrate’s Court and obtained orders to summon Mr. Mbathi before the Court virtue of Section 17B of the National Assembly and Presidential Elections Act and Section 16 of the Ethics Act.

The Commission relied on the provisions of the constitution and section 88 (1), 89 and 90 of the Criminal Procedure Code (Cap 75 Laws of Kenya) in the face of the Attorney-General’s continued refusal to act against Mr. Mbathi. When the case came up for the taking of plea along another private prosecution against Hon. George Khaniri, the Attorney-General applied to take over the two cases and terminate them through the exercise of the powers of nolle prosequi.

The trial magistrate while acknowledging the Commission’s “spirited arguments”, expressed her frustration with the current state of the law which she said “denied an avenue for redress for those who seek to ensure that the ends of justice are met”. She ruled that she therefore had no choice but to grant the Attorney General’s application since as a magistrate, she lacked the jurisdiction to question the A-G’s discretion. She further expressed her sympathy for the National Commission, stating that unless the jurisdiction of the Magistrates’ Court was changed with respect to private prosecutions, she had no choice but to accept the application to terminate the case.

Mr. Mbathi’s violation of the law continues even after the campaigns as he still is the Chairman of the National Party of Kenya while serving on the Board of KENGEN

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69 Private Prosecution No. 6 of 2005 before the Chief Magistrate’s Court in Nairobi

70 The charge was “Engaging in the activities of a political party while in public office contrary to section 17 B(1) of the National Assembly and Presidential Elections Act or in the alternative, acting as agent of a political party while in public office contrary to section 17 B (1) of the same act".
Mr. Alex Kibaki Mureithi

Mr. Alex Kibaki Mureithi was the Spokesman for a parallel “yes” Secretariat that was based in Lavington, Nairobi, to complement the efforts of the national secretariat headed by Mr. Mbathi. Mr. Kibaki is also the Director of the NARC Elections Board. He was further appointed by the President in 2003 to occupy the position of the Chairman of the Board of Directors of the Tana & Athi Rivers Development Authority (TARDA). By virtue of the referendum campaigns being de jure and de facto political campaigns, Mr. Kibaki’s participation clearly violated the requirement not to compromise or appear to compromise the political neutrality of his office as required by the Ethics legislation and the Elections Act. In spite of submitting a formal written complaint to the Attorney General on 28th October 2005, no action has been forthcoming from his office. Like Mr. Mbathi’s case above, Mr. Kibaki’s offence persists as he still chairs the board of TARDA.71.

Mr. Francis Mutwol

The Commission in the course of its work received a written complaint from the Electoral Commission of Kenya alleging that Mr. Francis Mutwol, the Chairman of the Board of Directors of the Kerio Valley Development Authority (KVDA) had been prominently vocal in campaigning for the “no” side in spite of being an employee of a statutory board.

71 The Commission has so far submitted over 20 complaints of violations of law by senior officials in government to the A-G in relation to the referendum campaigns together with detailed evidence and to date no action has been forthcoming from the A-G. The Commission will continue filing further private prosecutions relating to these breaches to prompt the A-G to perform his constitutional duty. If the A-G is unable or unwilling for whatever reasons to prosecute those who break the law, then he should not become an obstacle to those who are able and willing to force accountability from the political class.
RECOMMENDATIONS

The KNCHR and the KHRC recommend the following:

• Investigations and prosecution of the above named persons for contravening the Public Officer Ethics Act and the Presidential and Parliamentary Elections Act (together with subsidiary legislation) commence immediately. While under investigation the said individuals should step aside, until they are cleared. If not cleared the penalties stipulated under the law should attach to them.

• Disciplinary action be taken against the said officials by the relevant commission under Section 38 of the Ethics Act.

• The President should strive to appoint to office persons who recommend themselves positively to the respect the rule of law and thereby desist from appointing persons eager to play politics or active politicians into public office.
"Raila is a murderer because he participated in the 1982 coup where people lost their lives!!"

- Kalambe Ndile

SAY NO!
REFERENDUM REPORT

MEDIA COVERAGE OF THE REFERENDUM CAMPAIGNS
It became necessary to monitor media coverage of the referendum in order to gauge its influence over the referendum process for a proposed new constitution and the outcome. We were motivated by a concern that the ability of Kenyan voters to exercise free political will would be inhibited by external influences.

The role of the media in Kenyan politics cannot be overstated. Most Kenyans rely on the media, especially radio, as the primary source of information on politics. In addition, the media has become an important tool for receiving news, expressing opinions and engaging public figures via call-in shows, short text messages, debates and so on. The fact that several media houses collaborated to host two widely viewed debates on the referendum, and that all major media houses conducted informative campaigns on the referendum is testament to just how critical the media has become in the political process. As we found out, this can be a double-edged sword.

The Steadman Group was contracted to, among other things: conduct a comprehensive media study that would give invaluable data and recommendations on the content from newspaper, TV and radio broadcasts. Steadman was required to specifically monitor broadcasts by the sole public broadcasting house Kenya Broadcasting Corporation (KBC) on whether both sides received equitable coverage. Steadman was to document instances where coverage on the public broadcast corporation had been skewed to either side. Lastly, Steadman was asked to monitor and document broadcasts by private TV stations, secular and ethnic FM radio stations on hate speech-including insults, abuses and other stereotypical attributions-by politicians against communities deemed to have divergent political views.

The following radio stations were monitored: Citizen, Inooro, Kameme, KBC English, KBC Swahili, Ramogi FM, and Kiss FM.

The following TV Stations were monitored - KBC (Kenya Broadcasting Corporation), NTV (Nation Television), Citizen, KTN (Kenya Television Network).

The following newspapers were monitored - Daily Nation and East African Standard.
Balanced Coverage?

Steadman, the media analysts, stated in their report that the “Yes” campaign received the widest level of news coverage overall compared to the “No” side both in the publicly and privately owned media. The Radio stations monitored, carried 176 articles about the “Yes” campaign during the period between 17th and 23rd October compared to 107 on the “No” Secretariat. Similarly, the Yes campaign was accorded a total of 2 hours 20 minutes of airtime by the seven radio stations including KBC English and Kiswahili stations while the No campaign received 1 hour 29 minutes. Nevertheless it was not possible to determine whether the air-time included media spots, talk shows and/or mentions.

A similar trend was witnessed during the week running from 7th to 13th November where the “Yes” campaign was mentioned 80 times which amounted to 1 hour 50 minutes while the No campaign received 59 mentions which translated to 40 minutes in the same media (see table 1 below).

Between 17th October and 23rd October, the “Yes” campaign received 3 hours 3 minutes of television airtime compared to 1 hour 20 minutes enjoyed by the No campaign (see Table 3 below). In the three weeks analyzed above, the “Yes” camp had the equivalent of 37 pages of print coverage while the “No” team had 29 pages in the Daily Nation and the Standard during the same period (See table 2 below). Though KBC is lumped together with the other stations, it is important to note of the statutory obligation incumbent on a public broadcaster to be fair.

According to the report, Radio Citizen dedicated more time and resources to the coverage of the referendum than any other radio station. While the privately owned radio station gave a lot of airtime to the “Yes” campaign, which translated to 42 mentions (38 minutes) in the first week, it is worth noting that it also covered the “No” campaign more than any other radio station during the monitoring period. For example between 17th and 23rd October, the No campaign received 25 mentions equivalent to 21 minutes on Radio citizen. This was far above other radio stations including the popular KBC Swahili service that had only 8 mentions of the “Yes” campaign and 6 of the “No” campaign in the week running from 7th to 13th November, 2005.

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72 Analysis of news coverage entails time allocated to either of the campaigns during the news slots this analysis does not include paid advertisements by either of the campaigns.
### TABLE 10: AMOUNT OF NEWS COVERAGE BY RADIO STATION

<table>
<thead>
<tr>
<th>Media</th>
<th>Airtime in minutes 17th-23rd Oct 05</th>
<th>Airtime in minutes 7th-13th Nov 05</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Citizen</td>
<td>38</td>
<td>21</td>
</tr>
<tr>
<td>Inooro FM</td>
<td>18</td>
<td>17</td>
</tr>
<tr>
<td>Kameme</td>
<td>16</td>
<td>14</td>
</tr>
<tr>
<td>KBC English</td>
<td>19</td>
<td>9</td>
</tr>
<tr>
<td>KBC Swahili</td>
<td>13</td>
<td>3</td>
</tr>
<tr>
<td>Ramogi FM</td>
<td>31</td>
<td>15</td>
</tr>
<tr>
<td>Kiss</td>
<td>5</td>
<td>10</td>
</tr>
<tr>
<td>Total airtime</td>
<td>2 hours 20 minutes</td>
<td>1 hour 29 minutes</td>
</tr>
</tbody>
</table>

### TABLE 11: AMOUNT OF NEWS COVERAGE BY PRINT MEDIA (BY PAGES)

<table>
<thead>
<tr>
<th>Media</th>
<th>17th-23rd October</th>
<th>7th -13th November</th>
<th>14th -21st November</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Standard</td>
<td>10 pages</td>
<td>8 pages</td>
<td>7 pages</td>
</tr>
<tr>
<td>Nation</td>
<td>12 pages</td>
<td>9 pages</td>
<td>8 pages</td>
</tr>
</tbody>
</table>

### TABLE 12: AMOUNT OF NEWS COVERAGE BY ELECTRONIC MEDIA – TELEVISION

<table>
<thead>
<tr>
<th>Media</th>
<th>Airtime in minutes 17th-23rd Oct 05</th>
<th>Airtime in minutes 7th-13th Nov 05</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>KBC</td>
<td>54 minutes</td>
<td>15 minutes</td>
</tr>
<tr>
<td>NTV</td>
<td>48 minutes</td>
<td>25 minutes</td>
</tr>
<tr>
<td>Citizen</td>
<td>50 minutes</td>
<td>19 minutes</td>
</tr>
<tr>
<td>KTN</td>
<td>31 minutes</td>
<td>25 minutes</td>
</tr>
<tr>
<td>Total Airtime</td>
<td>3 hours 3 minutes</td>
<td>1 hour 20 minutes</td>
</tr>
</tbody>
</table>
The Kenya Broadcasting Corporation (KBC) the state owned media house has had a long history of broadcasting pro-government propaganda. In the run up to the 1992 and 1997 multiparty elections, KBC was accused by opposition leaders of impartial coverage to their campaigns. KBC which is mandated by legislation to ‘provide independent and impartial’ coverage and to ‘keep a fair balance in allocation of broadcasting hours between different political viewpoints’ deviated from this function because it allocated more coverage to the Yes camp. During the first week of campaigns from 17th to 23rd October, KBC television allocated 54 minutes to the “Yes” camp as compared to a meager 15 minutes to the “No” camp during the same period. The biased coverage by KBC television continued to the weeks preceding the referendum where on the 7th to 13th November, KBC allocated the “Yes” camp 92 minutes as compared to 28 minutes for the “No” camp. KBC radio in its English and Kiswahili Services allocated a total of 32 minutes to the “Yes” camp during the 17th to 23rd October week as compared to 12 minutes for the “No” camp. The same trend was replicated in the 7th to 13th November week where 18 minutes were allocated to the “Yes” camp in contrast to 11 minutes for the No camp in the same duration. Please see Table 13 below for total amount of media coverage.

**TABLE 13: TOTAL AMOUNT OF NEWS COVERAGE BY KBC TELEVISION AND RADIO**

<table>
<thead>
<tr>
<th>KBC</th>
<th>Airtime in minutes 17th-23rd Oct 05</th>
<th>Airtime in minutes 7th-13th Nov 05</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Television</td>
<td>54 minutes</td>
<td>15 minutes</td>
</tr>
<tr>
<td>Radio</td>
<td>32 Minutes</td>
<td>12 Minutes</td>
</tr>
</tbody>
</table>
There was a widely held belief by protagonists in either of the camps that most media houses had adopted biased coverage against certain camps. For example, supporters from the “Yes” camp attacked and injured a Standard journalist on 3rd October 2005 in Kakamega Town after Hon. Muskari Kombo asked journalists from the Standard and KTN to leave the meeting, supporters of the Yes camp who were brandishing whips and sticks forcefully evicted the journalists whom they claimed had covered the “Yes” camp negatively. Uhuru Kenyatta, a “No” camp supporter accused the media of bias in reporting Orange rallies. Raila Odinga on 25th September 2005 at Kenyatta Stadium in Kisumu also accused the media of biased coverage and at this same rally journalists from the Nation Media Group and Citizen were barred from entering the premises.

The Steadman Group analyzed Radio Mentions Tonality. According to the Steadman Group the coverage of the two campaigns by radio stations was largely positive, especially at the beginning of the campaign. One exception was KISS FM which provided balanced tonality during its broadcasts. (Please see table 5 and 6 for tonality in radio mentions during the 17th to 23rd October week and 7th to 13th November week)

Even radio stations broadcasting in vernacular and which were said to be supporting particular sides did not seem to have been overtly negative about the opposite side. Thus according to the report, media content and trend analysis report of the week beginning 17th October, Inooro FM had 18 positive mentions of the “No” campaign and only “4” in the negative. Similarly, Kameme FM had “12” positive mentions compared to only two negative mentions of the “No” campaign. The “Yes” campaign fared better in terms of positive mentions. For example, Citizen Radio had only 10 negative mentions with 34 positive mentions. KBC had no negative bulletin of the “Yes” campaign during that week and instead recorded 12 positive mentions. The report notes that the tone of the news coverage did not become particularly slanted as the campaigns progressed.

This clearly contradicts the information in the public domain that the coverage of certain Radio stations such as Citizen, Kameme and Inooro was largely negative of the “No” campaign and a lot more positive of the “Yes” campaign. However it is important to note that the monitoring was only limited to the news segment, leaving out other programmes such as talk shows, breakfast shows, call-in programmes that dedicated a lot of time to the referendum, and that may have indicated other biases. As such these findings are not a conclusive assessment of the overall tone adopted by various stations.

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73 KBC Television – 24th September 2005, Prime Time News 9:00pm (12/CD/KNCHR/2005 clip 7)
75 Tonality analysed on the basis of how the messages were imparted by media houses to the public through their journalist as well as the politicians. The term tonality connotes the positivity or negativity of the messages aired. For example if a message aired by a media house seemed to favour one of the camps then the message would be negative to the camp not favoured by the journalist. Tonality can also be analysed in terms of coverage given to protagonists from one camp bashing the other, for example if a “Yes” camp protagonist is aired as bashing the “No” camp then the “No” camp would receive negative coverage thus the tonality would be negative.
### TABLE 15: RADIO MENTIONS TONALITY (7TH - 13TH NOVEMBER)

<table>
<thead>
<tr>
<th></th>
<th>YES CAMPAIGN</th>
<th></th>
<th>NO CAMPAIGN</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Positive</td>
<td>Negative</td>
<td>Positive</td>
<td>Negative</td>
</tr>
<tr>
<td>Citizen</td>
<td>34</td>
<td>10</td>
<td>21</td>
<td>5</td>
</tr>
<tr>
<td>Inooro FM</td>
<td>26</td>
<td>6</td>
<td>18</td>
<td>4</td>
</tr>
<tr>
<td>Kameme</td>
<td>21</td>
<td>5.5</td>
<td>12</td>
<td>2</td>
</tr>
<tr>
<td>KBC English</td>
<td>12</td>
<td>0</td>
<td>6</td>
<td>4</td>
</tr>
<tr>
<td>KBC Swahili</td>
<td>14</td>
<td>2.5</td>
<td>3</td>
<td>2</td>
</tr>
<tr>
<td>Ramogi FM</td>
<td>23</td>
<td>8</td>
<td>15</td>
<td>6</td>
</tr>
<tr>
<td>Kiss</td>
<td>5</td>
<td>5</td>
<td>13</td>
<td>3</td>
</tr>
</tbody>
</table>
B) Media Ownership

From the summary of our analysis, television and print media coverage of the referendum clearly brought out how media ownership and editorial policies influenced the airtime and space allocated to each campaign. The public broadcasting house KBC allocated more coverage to the “Yes” camp, keeping with its long-term tradition of supporting the government.

Citizen Radio, which is part of the Royal Media stable, owned by businessman S.K Macharia, adopted an editorial policy favorable to the “Yes” campaign. As such it allocated 65 minutes to the “Yes” side as compared to 22 minutes given to the “No” side in the week running from 14th -21st November. KTN which is owned by the Standard Group, associated with the former President Daniel Arap Moi and allied businessmen, adopted an editorial policy favorable to the “No” team as demonstrated in Table 7 below.

Of the three weeks sampled above, the leading daily newspaper, The Daily Nation owned by the His Highness the Aga Khan and local investors allocated the about 40.5 pages to the “Yes” campaign compared to 32 pages allocated to the “No” campaign. The Standard newspapers owned by the same consortium as KTN dedicated 19 pages to each side of the divide (please see table 8 below). As indicated by the graph 1 below (on page *), the tone of the coverage of each of the newspapers depended on the alignment adopted. Thus the content of the Nation Newspapers on the “No” campaign for the week 3rd-9th October was more negative than positive. In the same vein, the coverage of the “No” campaign by the Standard during the same period was more positive.

<table>
<thead>
<tr>
<th>Media</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>KBC</td>
<td>46 minutes</td>
<td>27 minutes</td>
</tr>
<tr>
<td>NTV</td>
<td>35 minutes</td>
<td>43 minutes</td>
</tr>
<tr>
<td>Citizen</td>
<td>65 minutes</td>
<td>22 minutes</td>
</tr>
<tr>
<td>KTN</td>
<td>24 minutes</td>
<td>43 minutes</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Media</th>
<th>3rd - 9th Oct</th>
<th>17th - 23rd Oct</th>
<th>7th -13th Nov</th>
<th>14th - 21st Nov</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Standard</td>
<td>15 pages</td>
<td>12 pages</td>
<td>10 pages</td>
<td>8 pages</td>
</tr>
<tr>
<td>Nation</td>
<td>15 pages</td>
<td>10 pages</td>
<td>12 pages</td>
<td>9 pages</td>
</tr>
</tbody>
</table>
Conclusion

The print media in Kenya is dominated by two major publishing houses, the Nation and Standard, both of which also have substantial broadcasting operations. In addition to Royal Media Services, there is an emerging sense of a "trio-poly" of media ownership across print and broadcast media. For the functioning of our emerging democracy, the requirement of a diverse ownership of the daily mass media cannot be over-emphasized in order to ensure that public life is reported in a fair and open manner. Prevention of multimedia domination of opinion has thus become part of the KNCHR’s agenda in consolidating democratic practice in Kenya.

The KNCHR would like to encourage diversity in the ownership of the most influential forms of the commercial media: the daily press and free-to-air television and radio in view of the emerging sense of monolithic ownership by the Nation Media Group, the Standard/KTN Group and Royal Media Services.

Frequencies and airwaves are an expensive public resource that should benefit all. There is therefore an urgent need for regulation of cross-media ownership to guarantee a diversity of sources of information and a variety of voices. It bodes ill for our democracy if Kenyans are expected to make choices based on three sources of information.
RECOMMENDATIONS

KNCHR recommends the following:

• Fast tracking of the media bill to regulate cross-media ownership.
• More equitable allocation of frequencies as a public resources.
CONCLUDING OBSERVATIONS
The people’s verdict in rejecting the Draft Constitution was more than clear, even though a great many Kenyans did not vote on the merits or demerits of the draft.

The referendum campaigns unfortunately were reduced to issues of politics, power, ethnicity, revenge and protection of old and new corruption, instead of being focused on a new Constitutional order. Though there were some issues of substance dividing both sides, the overriding issue remained the question of control of the process that would lead to the final document. Politicians felt that whoever controlled the process would be able to get what they wanted in the final document without the need for compromise and negotiations. In a nutshell, the political class - on both sides - outwitted us all by hijacking the process and were then able to sell their personal views as the views of their communities. In this regard, the one month period for civic education was plainly inadequate to reach the millions of Kenyans.

From the foregoing, the referendum demonstrated that Kenyans are so divided and polarized that there are few among us who would not be perceived, rightly or wrongly, to be supporting one side or the other. This fact and a variety of other reasons make constitution making a much more difficult exercise in Kenya. But behind every dark cloud is a silver lining; in our case, Kenyans did demonstrate that they firmly believe in the right to vote as an indispensable tool in making decisions and sending a message to the political class. The calm and maturity they exhibited was highlighted to the contrast of the behaviour of politicians, even in areas where there were clearly divergent views; the level of respect for the other side was overwhelming. This was in spite of the best efforts of politicians to incite violence and ethnic hatred; inflame passions and raise emotions.

We therefore wish to ask all the people of Kenya to do their part in reigning-in the errant forms of speech that our politicians are fond to employ against their rivals during campaigns. Did the adoring crowds clap when the politicians made derogatory comments about other ethnic communities? Did they cheer when some politicians stated as a matter of fact that those who are not circumcised cannot lead? Did they respond in the affirmative when politicians asked them to attack their adversaries? We believe that politicians have used this type of uncouth and dangerous language in mobilizing because there is demand for it. Is this a general pointer of decadence in our society that this kind of language is acceptable in public? Our general recommendation to Kenyans is that they limit the parameters within which politicians speak to them by not condoning such untoward speech and utterances as a tool of electioneering.

The electioneering process for the 2007 elections is already underway in earnest. The referendum presented a trial run for the political class to perfect their art of deception and once more Kenyans have another opportunity to have their say come December 2007. The stakes in the forthcoming election will be much higher than ever before. What is the key to ensuring that this important process will be beyond reproach? The answer lies in generating confidence around the process-confidence that state resources will not be misused by the government of the day to campaign, confidence that the political class will not resort to violence and intimidation to protect their niche and confidence that the use of
hate speech along ethnic lines will not be used to canvass for votes. Indeed, we believe that it is possible to have fiercely contested, competitive, meaningful and yet fair elections based on informed debate without politics, power games and ethnic discord intervening to blur the competition for political power.

Kenyans have spoken that they want governance that is more respectful towards them, that is not selfish and that is not corrupt. The National Commission has thus embarked on preparations for monitoring the campaigns process for the 2007 General Elections. We have decided to prepare well and early and in this way, promote public accountability in the electioneering process. The Government and those in the Opposition must disclose their respective war chests to contest the forthcoming elections. As the Anglo Leasing and related scandals have shown, “Grand Corruption” is fanned by the need for the political class to amass funds for political activity. If we can demand accountability from our leaders at this early stage, then we will be on the highway towards protecting our hard earned public resources and therefore the realisation of the rights of all Kenyans.