KENYA NATIONAL COMMISSION ON HUMAN RIGHTS

MIRAGE AT DUSK

A HUMAN RIGHTS ACCOUNT OF THE 2017 GENERAL ELECTION
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A HUMAN RIGHTS ACCOUNT OF THE 2017 GENERAL ELECTION
“ALL SOVEREIGN POWER BELONGS TO THE PEOPLE OF KENYA AND SHALL BE EXERCISED ONLY IN ACCORDANCE WITH THIS CONSTITUTION.”

~ARTICLE 1, CONSTITUTION OF KENYA, 2010.
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Dedication

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

The Kenya National Commission on Human Rights wishes to acknowledge and appreciate every voter from every corner of our country, who turned up and queued at the polling station for long hours to ultimately exercise their inalienable right to vote and fulfil their sovereign will to determine their leaders. Our monitoring efforts were geared towards protecting the sanctity of this right. The KNCHR also appreciates and takes cognisance of the leadership role and guidance of the Chairperson, Commissioners and the Commission Secretary who provided staff with the policy direction and steered the monitoring process in order to promote the right to vote and be voted for. Their provision of space for professionalism to thrive amongst the staff informed critical decisions in the midst of challenging situations.

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

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

The Commission wishes to express its gratitude to its donors and development partners, who supported the efforts and made it possible for the Commission to undertake the monitoring process. Their constant encouragement and words of wisdom helped strengthen our resolve to promote and protect human rights in Kenya.
Finally, we acknowledge members of the public who entrusted the Commission with critical information that shaped this report. We now boldly speak on your behalf to seek justice and accountability that such violations should not recur in any future electoral process.

WE NOW BOLDLY SPEAK ON YOUR BEHALF TO SEEK JUSTICE AND ACCOUNTABILITY THAT SUCH VIOLATIONS SHOULD NOT RECUR IN ANY FUTURE ELECTORAL PROCESS.
Executive Summary

Mirage at Dusk is an election-focused documentation by the Kenya National Commission on Human Rights (KNCHR) from a human rights lens, guided by the vision of monitoring the right to vote and be voted for.

**THE INITIATIVE WAS SUPPORTED BY RECRUITMENT AND DEPLOYMENT OF 540 MONITORS COMPRISING OF 131 STAFF, 139 FULL-TIME OBSERVERS AND 270 SHORT-TERM OBSERVERS IN 47 COUNTIES.**

It is a culmination of more than one year of relentless efforts to ensure the electoral environment adheres to both local and international human rights standards. The August 8th 2017, General Election was a passion-driven political process with great expectation characterised by the formation of new political outfits, shifting and tilting of political positions, mergers and fallouts. The stakes were heightened by the clamour for the expansive political positions, under the new devolved system of governance which attracted the highest number of aspiring candidates in the history of Kenyan electoral process; from 12,776 in 2013 to 16,259 in 2017, an increase of 27.26 2%. It also had the highest number of independent candidates in the history of Kenya electioneering period totalling to 3,752. Most of them were unsuccessful at the political party primaries.¹

KNCHR, in anticipation of a highly charged electoral cycle, developed a strategy to monitor and ensure compliance of human rights standards and principles. With the Commission having engaged

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

A toll-free number (0800 720 627) and SMS platform (22359) was also created to enable real-time reporting and data collection.
in the electoral laws process in 2016, the real work began in April 2017 with the development of the KNCHR 2017 Election Management System (EMS) that formed the basis for data collection and analysis. A toll-free number (0800 720 627) and SMS platform (22359) was also created to enable real-time reporting and data collection. The initiative was supported by recruitment and deployment of 540 monitors comprising of 131 staff, 139 full-time observers and 270 short-term observers in 47 counties. They were all taken through intensive training on the key reporting parameters to guarantee credible and verifiable data.

The first fruits of these efforts are documented in the political party primaries report titled ‘The Fallacious Vote’ that was launched on 15th May, 2017. The Commission established that all political parties flouted majority of electoral laws during the nomination process hence compromising the quality of leaders that were presented on the final ballot to the voters. The primaries as conducted negated existing laws aimed at ensuring that leaders elected meet the ethical standards set out in Chapter 6 of the COK. A raft of recommendations and advisories were shared with relevant bodies for further action as the Commission embarked on a heavier task of monitoring the campaigns that began soon after the nominations.

The Campaign Period

During the campaign period, which was gazetted and set to begin on 28th May and end on 5th August 2017, the Commission focused on the following parameters: misuse of public resources, incitement, bribery, actions and inactions by security organs, unequal access to public resources and facilities, appropriateness and accessibility of polling venues, violence and security. While setting the monitoring parameters, KNCHR was conscious that its work complements that of other institutions and thus worked closely with state and non-state actors including: National Police Service (NPS), National Gender and Equality Commission (NGEC), Commission on Administrative Justice (CAJ), Independent Policing Oversight Authority (IPOA), National Cohesion and Integration Commission (NCIC), Independent Electoral Boundaries Commission (IEBC), Civil Society Organizations (CSOs) and religious institutions, just to mention but a few.
From the findings of political party campaigns, the Commission commends the police for their conduct in managing crowds and conducting situations that in several places and instances threatened to get out of hand. The National Police Service exercised restraint and thus security provision around the campaign period indicated a National Police Service that is growing in understanding its role in safeguarding not just themselves but also citizens. Its participation in community dialogues as documented by the Commission went a long way in building confidence between itself and the citizenry. That minimal cases of violence were recorded amidst heightened political temperatures is an indication of security agencies that worked seamlessly with various partners including grass root networks to ensure the electoral environment is safe for all to enjoy the fruits of democracy. There were two reported deaths at the hands of the security officers during the campaign period. These cases have been referred to IPOA to investigate and ensure justice is done.

With the exception of Cabinet Secretaries and members of the County Executive Committees, Section 23 (1) of the Leadership and Integrity Act prohibits state and public officers from engaging in any political activities that may compromise or may seem to compromise the political neutrality of the officer. The Commission however, is of the view that this provision is open to abuse. It is one of those avenues that we noted a rampant misuse of state resources, where Cabinet Secretaries used their offices to campaign for the government such as; through food donations, launching of roads and water projects and much more. On the same note, Governors too used taxpayer monies to continue with their campaigns, which included use of government vehicles and blocking their competitors’ access to public venues to hold campaign rallies.

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

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

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

The Polling Day

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

As was expected, Kenyans took to the queues as early as 2:00 a.m. hoping to be on time for the 6.00 a.m. opening of the polling centres. From the Commission’s findings, over 95% of the 1,218 polling centres monitored by its personnel opened at 6 a.m. and the first voters were able to cast their votes by about 6:15 a.m.
There were few recorded cases of polling centres that opened as late as 8:00a.m., largely because of passwords hiccups and configurations by Presiding Officers (POs). However, the POs were able to compensate voters with the same amount of time lost during the opening and no cases were recorded by the Commission of voters who were denied access to vote due to expiry of the set operational hours of the polling centres.

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

In respect to campaigns during polling day, the Commission observed that politicians restrained themselves except for a few cases that are documented within specific pages of this report. However, there were considerable cases of display of posters at the entrances of polling centres and as documented in this report, the same will be forwarded to the relevant offices for action within the confines of the Elections Offences Act, 2016.

Post-Polling Scenarios

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

As a result, heavy security presence was witnessed in Nairobi city, Kisumu, Siaya, Homa Bay and Migori, most of which areas had previously been mapped as hotspots. On 11th August 2017 at 10:00 p.m., the IEBC made the announcement of the Presidential results and what followed were gunshots and teargas mostly in; Mathare, Kibera, Dandora, Lucky Summer and Kawangware all within Nairobi City County and Manyatta, Kondele, Nyamasaria in Kisumu County as police tried to disperse demonstrators under the cover of darkness.

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

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

**Attacks on Civil Society and Development Partners**

In any growing and maturing democracy, it is the voice of a strong civil society movement that has offered safeguards on actions that may backtrack or hinder the enjoyment of fundamental freedoms of the citizens. The entrenchment of the Bill of Rights in the Constitution of Kenya, 2010 has gone a long way in strengthening the civil rights movement in Kenya thus creating an environment of accountability and transparency.
During this electoral period, civil society members and organizations played a pivotal role in monitoring the continuous enjoyment of human rights and updated the nation on their findings as the days went by. They have filed and supported various cases that touched on election, sought interpretations through the same corridors on issues to ensure the realization of the right to vote and be voted for.

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

**Recommendations**

Based on analysis of monitoring data, the results shows that citizens’ rights to vote and be voted for, among other rights were violated during party primaries and during general elections 8th August 2017. The report therefore recommends a number of strategies to be applied by various stakeholders to ensure that, human rights are protected before, during and after elections. Some of the recommendations includes; IEBC should continuously register voters guided by IEBC Act section 4, political parties to strengthen disciplinary measures for errant candidates and enforce political party discipline and make public reports of cases they handle. Media houses to consider careful selection of political analysts to ensure that opinion especially during the live media shows would be more on issues affecting the electorate rather than focusing on personalities, EACC should ensure that all candidates fronting their names for the various positions for clearance meets the integrity threshold as prescribed in the constitution and all other written laws ans the PSC work with IPOA to ensure that any bodies collected from any scene are properly handed over to the relevant institutions like morgues in accordance with the law and the due process.
THE BILL OF RIGHTS, THAT FORMS THE LARGEST CHAPTER IN THE CONSTITUTION OF KENYA, IS BINDING TO ALL PERSONS AND STATE ORGANS AND ALSO GUARANTEES EVERY PERSON TO ENJOY THE RIGHTS AND FREEDOMS TO THE GREATEST EXTENT THAT IS CONSISTENT WITH THE NATURE OF THESE RIGHTS AND FREEDOMS.
The Kenya National Commission on Human Rights (KNCHR) opines that General Election is not limited to casting the ballot on a gazetted election day but encompasses the totality of preparatory actions that only concludes after the declaration of a winner. The process may therefore stretch into months and perhaps years and thus ought to ideally be characterised by participatory consultations involving multiple stakeholders to ensure the credibility of the outcome.

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

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

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

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

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

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

The report captures the issues collected in selected parts of the country where the Commission was able to reach. The Commission, having learnt from its past experience in monitoring elections from a human rights perspective, was able to undertake strategic interventions that contributed in large measure to safeguarding the final voting process. The Commission observes that the country has made positive strides while noting the increased levels of awareness by the voters.
As the democratic space continues to progress, the accountability of leaders becomes the focal point to the citizenry, so will the standards of election processes improve and be strengthened. Kenya made great strides in promulgating the Constitution in 2010. The challenge now is on realisation of its aspirations which in the human rights language is referred to as, a progressive process.

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

The Bill of Rights, that forms the largest chapter in the Constitution of Kenya, is binding to all persons and state organs and also guarantees every person to enjoy the rights and freedoms to the greatest extent that is consistent with the nature of these rights and freedoms.
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<td>AFRICOG</td>
<td>Africa Center for Open Governance</td>
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<td>ANC</td>
<td>Amani National Coalition</td>
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<td>CAJ</td>
<td>Commission on Administrative Justice</td>
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<td>CAK</td>
<td>Communication Authority of Kenya</td>
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<td>COK</td>
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<td>CRPD</td>
<td>Committee on the Rights of Persons with Disabilities</td>
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<td>DANIDA</td>
<td>The Danish International Development Agency</td>
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<td>DEB</td>
<td>District Education Board</td>
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<td>ELOG</td>
<td>Election Observation Group</td>
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<td>EACC</td>
<td>Ethics and Anti-Corruption Commission of Kenya</td>
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<td>FAP</td>
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<td>GE</td>
<td>General Election</td>
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<td>GSU</td>
<td>General Service Unit</td>
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<td>HRBA</td>
<td>Human Rights Based Approach</td>
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<td>ID</td>
<td>Identification</td>
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<td>IEBC</td>
<td>Independent Electoral and Boundaries Commission</td>
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<td>ICERD</td>
<td>International Convention on the Elimination of All Forms of Racial Discrimination</td>
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<td>IPOA</td>
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JOOTRH  Jaramogi Oginga Odinga Teaching and Referral Hospital
KANU  Kenya African National Union
KCB  Kenya Commercial Bank
KIEMS  Kenya Integrated Elections Management System
KPMG  Klynveld Peat Marwick Goerdeler
KNCHR  Kenya National Commission on Human Rights
KPR  Kenya Police Reservists
MCA  Member of County Assembly
MTRH  Moi Teaching and Referral Hospital
NASA  National Super Alliance
NCIC  National Cohesion and Integration Commission
NCRC  National Crime and Research Centre
NCSA  National Coroners Service Act
NGEC  National Gender and Equality Commission
NGOs  Non-Governmental Organizations
NPS  National Police Service
NPSC  National Police Service Commission
RO  Returning Officer
RTS  Results Transmission System
OCPD  Officer Commanding Police Division
ODM  Orange Democratic Party
ODPP  Office of the Director of Public prosecution
OHCHR  Office of the United Nations High Commissioner for Human Rights
ORPP  Office of the Registrar of Political Parties
OSIEA  Open Society Initiative for Eastern Africa
PBO  Public Benefits Organization
PWDs  Persons with Disabilities
<table>
<thead>
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<tr>
<td>PO</td>
<td>Presiding Officer</td>
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<tr>
<td>POTA</td>
<td>Prevention of Torture Act</td>
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<tr>
<td>PPDT</td>
<td>Political Parties Dispute Tribunal</td>
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<tr>
<td>SIG</td>
<td>Special Interest Groups</td>
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<td>TSC</td>
<td>Teachers Service Commission</td>
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<tr>
<td>UNDP</td>
<td>United Nations Development Programme</td>
</tr>
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</table>
The electoral reforms were necessitated by a myriad of issues stemming from the 2013 general elections.
1.1 Contextual Background

Kenya held its second General Election under the Constitution of Kenya 2010 against a backdrop of key legal and institutional reforms in the electoral sector. The electoral reforms were necessitated by a myriad of issues stemming from the 2013 General Elections. Some of the general issues fronted included; perceived lack of credibility, lack of trust and confidence, perceived partiality, complaints of incompetence, claims of impropriety in the procurement process of key electoral equipment and mishandling of the elections during the disputed 2013 General Election and the need to entrench in the law and guarantee the use of technology in the election process.\(^2\)

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

Other key proposals contained in the Bill included proposed amendments to the Constitution through the popular initiative to increase the revenue allocation to the County governments from 15% to be capped at a minimum of 45% of the national revenue, land reforms and proposals on enhancing inclusivity in public service. However, upon presentation of the signatures to IEBC for purposes of verification and certification to confirm whether or not it satisfied the constitutional threshold on amendment by popular initiative, the IEBC established that the draft Bill did not meet the threshold since out of the 1.4 million signatures collected, only 891,598 signatures were valid. Hence, IEBC declared that the proposed constitutional amendment through the Okoa Kenya initiative had collapsed by operation of law.

This generated further controversy and triggered an agitation by a section of the Kenyan society calling for the immediate removal of the then IEBC Commissioners from office and reconstitution of a new team so as to guarantee a free, fair and credible General Elections in 2017. The country witnessed public demonstrations and protests led by key opposition leaders and sections of the civil society which in some instances turned violent and were characterized by use of excessive force by the security agencies in dispersing the protesters.

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3 The Okoa Kenya Referendum Draft Bill of 2015 which was drafted by a Committee of experts under the Okoa Kenya movement and presented to IEBC in 2015.
4 Pursuant to Article 257 of Constitution of Kenya 2010 stipulates the requirements for amending the Constitution through popular initiative. These include; requirement of at least 1 million signatures of registered voters, drafting of a Bill, verification and certification by IEBC among others.
5 IEBC Press statement issued on 22nd March 2016 by the then Chair Issaack Hassan.
by the security agencies in dispersing the protesters. In the process, a total of five lives were lost, hundreds of protesters sustained varied degree of injuries and property worth millions was destroyed.

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

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

The Joint Parliamentary Committee held several hearings and invited a cross-section of key stakeholders including the KNCHR, other Constitutional Commissions, the civil society, professional bodies, religious bodies, political parties, county governments, the business community and members of public to give views and opinions on the issues raised and propose the necessary electoral reforms. KNCHR submitted both oral and written memoranda in which it reiterated its

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

recommendations based on the key findings made in the 2013 General Election. For instance, based on the questions on the integrity of the voters register which incidentally formed part of grounds of the presidential petition in 2013, the Commission recommended the need for IEBC to adopt a computerized register of voters that should be finalized in reasonable time and early enough, inspected by members of the public and upon verification, be tamper-proof against any changes prior to the immediate upcoming elections.

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

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

Among key legislative reforms adopted include amending the Elections Act 2016 to require IEBC to undertake an audit of the voters register, expanding/increasing the period of verification and scrutiny of the voters register from 60 days to 90 days before elections, means of verification via biometric voter data, online inspection of the register through establishing a public portal, inclusion of legal provisions for the mandatory use of technology in the electoral process from voter registration, voter identification results transmission and capping of number of voters per

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polling station to a maximum of 700 voters.

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

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

However, in January 2017 and in a twist of events, an amendment to the negotiated Elections Laws was passed in Parliament amidst protests from the Opposition. By dint of the amendment, Parliament obligated IEBC to put in place a complementary mechanism for identification of voters and transmission

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10 Report of the Independent Review Commission on the General Elections of 2007 which was established in February 2008 to inquire into the issues that arose out of the disputed 2007 General Elections.
of election results that is simple, accurate, verifiable, secure, accountable and transparent to ensure that IEBC complies with the provisions of Article 83 of the Constitution. This was strongly opposed by the opposition leaders who deemed such an amendment as a way of introducing the use of the manual voting system through the back door. This turn of events further polarized the nation into ethnic and political divides that heightened tension in the country. Parliament further suspended the operationalization of the Elections Campaigns Financing Act of 2013 and pushed its enforcement to commence after the 2017 General Election.12

On the institutional reforms front, the Joint Parliamentary Committee recommended the establishment of a Selection Panel comprising of a multi-sectoral membership to oversee the process of reconstituting IEBC and appointment of new commissioners. The IEBC Act, 2011 was thus amended to provide for the removal from office of the then IEBC commissioners through a negotiated settlement and further provide for a seamless transition in the institution. This process subsequently culminated in the appointment of Chairperson Mr. Wafula Chebukati and six (6) new Commissioners in January 2017 and effectively, set the country in motion towards the General Election in August 2017.

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

With reference to the management of the electoral cycle, the IEBC issued and gazetted timelines to guide the process in the lead-up-to the General Election. Key processes included conclusion of the mass voter registration exercise (MVR I & II), auditing and cleaning up of the voter register, voter verification of the register, political parties’ nominations, official campaigns period and subsequently, the

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12Section 1A of the amended Elections Campaigns Financing Act.
polling process on August 8th 2017. Notably upon conclusion of the voter registration exercise, a total of 19,611,423 had been registered as voters eligible to vote in the General Election 2017.13 This number included 4,393 Diaspora voters in 5 countries namely; Rwanda, Burundi, Tanzania, Uganda and South Africa and 5,528 voters registered in 118 Prisons across the country. Comparatively, this number represented a 36% increase from the elections held in 2013. In terms of gender representation, 53% of those registered were male and 47% were female. The IEBC gazetted a total of 40,883 polling stations that were capped at not more than 700 voters each in accordance with the provisions of the amended Elections Act.

In conformity with the legal requirements, IEBC contracted Klynveld Peat Marwick Goerdeler (KPMG) to undertake an audit of the voter’s register. The audit sought to assess, verify the accuracy of the register and recommend measures and mechanisms of updating and enhancing the accuracy of the register. The major findings of the audit report14 pointed to a number of inaccuracies and irregularities in the register of voters. For instance, the audit revealed that of the 19,646,673 records in the Register of Voters, a total of 19,401,354 records matched to ID numbers while a total of 53,077 matched to passport numbers. However, at least 5,427 records did not have biometric fingerprint images in the Register of Voters. The report further revealed a number of irregularities in the Register of Voters that required further validation to confirm whether they are bonafide voters. These 171,476 voters whose details of IDs could not be found in the data provided by the National Registration Bureau, 17,523 voters whose details could not be found in the data on passports provided by the Directorate of Immigration. Of these, 98 were confirmed to be Diplomatic Passports whose data had not been provided as at the time of the audit, 264,242 records in the Register of Voters with duplicate IDs or passports and 2,610 Voters who had registered with both an ID and Passport.

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

13IEBC Press statement titled ‘The Certification of the Register of Voters’ issued on June 27th 2017; Pursuant to the Gazette Notice No. 4413 voters register on the IEBC website; www.iebc.co.ke
The audit revealed that of the 19,646,673 records in the Register of Voters, a total of 19,401,354 records matched to ID numbers while a total of 53,077 matched to passport numbers.

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

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

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

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

The 2017 election was also organized and held against a backdrop of security challenges attributable to both external and internal threats. The relentless attacks by the Al Shaabab militia under the guise of retaliating against the ongoing war on terrorism in Somalia posed the biggest threat to the voter registration exercise, preparation and conducting of peaceful elections especially in the North-Eastern region and parts of the coastal region. The country experienced several attacks targeted against security agencies, government officials and civilians in Lamu, Tana River, Garissa and Mandera.

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17IEBC Press statement titled *Security concerns on Voter Registration in Mandera East Constituency* issued on 2nd February 2017 in which IEBC confirmed the disappearance of 3 BVR kits during an Al Shabaab attack in Arabia town in Mandera County.
counties. Several lives were lost, property of unknown value destroyed and a section of community members displaced from their homes. The attacks further targeted key communication installations which greatly hampered the electoral body and other actors involved in the election preparedness.

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

The focus on the 2017 General Election was also characterised by a paradigm shift of interest and focus on the seats at the county level with an unprecedented increase of the number of independent aspirants. IEBC records indicate 3,752 independent candidates, 11,330 political party candidates were cleared to contest for the various seats in the General Election as independent candidates. This marked a 100% increase up from 350 candidates who vied as independents in the 2013 election. This shift was partly attributable to the bungled party primaries which were characterized by numerous incidences of bribery, use of violence, intimidation and harassment; destruction of voting material, targeted attacks meted against special groups such as women & PWD aspirants, blatant disregard to electoral laws, Code of Conduct and party rules among others. The rise in independent candidates further posed logistical challenges for the electoral body especially with regard to the preparation of the ballot materials and the general management of polling stations due to the high number of candidates and their respective agents.

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18KNCHR Press statement titled ‘The Prevailing insecurity in the North Rift region’ issued on 2nd March 2017
Despite the change of guard, the IEBC continued to face criticism and lack of trust from political actors and section of civil society with questions raised especially on the integrity of the voter register, allegations of discriminatory approaches in undertaking exercises such as the mass voter registration, delay in satisfying the election timelines particularly in the procurement of ballot papers, use of technology in election and procuring an audit firm for purposes of cleaning up the voters register. In this context, there were various cases filed in court by different actors drawn from political parties and the civil society on a number of issues including the finality of the declaration of presidential results, the delay in publishing the voter register on the online portal, questions on the procurement process of the BVR kits, the constitutionality of the application/use of the manual system as a backup in the General Elections.

The outcome of these cases especially on the finality of the declaration of Presidential results at the polling station level which shifted the focus from the national level to the polling station level of which the court identified as the true locus of the free exercise of the will of the voter. In so doing, the net effect of the court’s determination sought to institutionalize the electoral process by requiring IEBC to among other things put in place a credible results transmission system, take administrative measures including the hiring of competent electoral officials at all levels from national to the polling station in a way that guarantees and safeguards the integrity of the process. Notably, the role of the IEBC’s Chairperson was interpreted within the confines of Article 86 of the Constitution of Kenya 2010 to be limited to tallying and verifying the results received from the constituency level in respect to the presidential election. This marked a departure from past practice in election which required the returning officers from both the county and constituency levels to announce provisional results at each respective level and then physically submit the results to the national tallying centre for purposes of verification and ultimate announcement of final results by the Chairperson. This practice was cumbersome and susceptible to manipulation and alteration of results which raised questions on the integrity of the election outcome as witnessed in the disputed 2013 presidential election.
1.2 KNCHR Project Objectives

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

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

1.3 Methodology

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

In line with internationally accepted best practices in electoral cycle involving early scenario building, conflict monitoring and mapping, KNCHR begun monitoring the 2017 general election from the understanding that systematic monitoring of electoral processes provides adequate documentation of incidences for timely and appropriate interventions. In order to operationalize this, KNCHR developed an election monitoring strategy which identified three key phases; the party primaries, campaigns and the polling period with hindsight on the post-poll scenarios.
KNCHR further mapped out 36 counties either as perceived hotspots or potential hotspots during the elections. This assessment was based on data and information obtained from security agencies, various partners including the NCIC, IEBC, involved in the election monitoring and observation and the Commission’s own assessment stemming from past and current engagements in the field.

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

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

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

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

elections2017@knchr.org
ARTICLE 10 IS THE CORNERSTONE OF THE KENYAN NATION BY PROVIDING THE GUIDING PRINCIPLES AND VALUES THAT BIND THE NATION, KEY AMONG THEM BEING HUMAN RIGHTS, NON-DISCRIMINATION AND PROTECTION OF THE MARGINALIZED.
Elections in any democratic country provide an opportunity for the citizenry to exercise their most fundamental sovereign power and to exercise their civil and political rights to elect leaders that would have an effect on the realization of their rights and freedoms including Economic, Cultural and Social Rights. Every citizen has the right, without any discrimination and without unreasonable restrictions, to take part in the conduct of public affairs, to vote and to be elected to government. The realization and implementation of these political rights is enhanced and made possible if free, fair, transparent and credible election is conducted.

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

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

\textbf{2.1 National Framework}

The Constitution of Kenya, 2010 is the supreme law of our land that sets out key fundamental tenets and principles that govern the nation. Article 1 of the Constitution is dedicated to the people of Kenya by vesting all sovereign power to the citizens. The Article further states that the people may exercise this sovereign power directly or through democratically elected leaders. Article 10 is the cornerstone of the Kenyan nation by providing the guiding principles and values that bind the nation, key among them being human rights, non-discrimination and protection of the marginalized.

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

\textsuperscript{21}OHCHR, Manual on Human Rights monitoring: Chapter 23: Monitoring Human Rights in the Context of Elections, Pg. 9-10
\textsuperscript{22}Art 26.27.28……51
by three (3) Acts, the Kenya National Commission on Human Rights, the National Gender and Equality Commission and the Commission on Administrative Justice.

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

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

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

Article 88 of the Constitution establishes the Independent Electoral and Boundaries Commission that sets out its composition and functions to include the continuous registrations of citizen as voters, regulating the process by which political parties nominate candidates for elections, voter education, and facilitation of observation and monitoring of elections among other key functions.

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

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

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

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

2.2.1 The Elections Act, 2011

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

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

The Electoral Code of Conduct is established under the 2nd schedule of the Elections Act and it provides for key regulations that bind all registered political parties and candidates to adhere to the values and principles of the Constitution. Among the key provisions that all political parties and candidates should abide by include; respect of human rights, to promote voter education campaigns, condemn, avoid and take steps to prevent violence and intimidation, promote gender equality and facilitate representation of special interest groups among others.
2.2.2 The Political Parties Act, 2011

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

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

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

2.2.4 The Elections Offences Act, 2016

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

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

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

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

2.3 Key Highlights of 2016 Amendments on the Electoral Laws

Following the clamour for electoral reforms, the select Joint Parliamentary Committee on electoral reforms proposed a raft of amendments to the electoral laws that was passed in October 2016. These key amendments have far reaching impact on very key components of the electoral cycle and the impacts thereof analysed in the matrix next page;
Table 1: Legislation analysis matrix

<table>
<thead>
<tr>
<th>Act</th>
<th>Thematic Area</th>
<th>Old provision in the Act</th>
<th>Analysis of amended Law and Impact</th>
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<tr>
<td><strong>Elections Act</strong></td>
<td><em>Inspection of the register of voters, verification of biometric data and audit of the voter register</em>&lt;sup&gt;23&lt;/sup&gt;</td>
<td>The law provided for the IEBC to open up the register for inspection.</td>
<td>✢ The 2016 amendment had a provision requiring IEBC to set up public portal for inspection of the register. However, this section was deleted by further amendments in January 2017. In the 2017 General Election, the IEBC set up the portal very late in the day in July 2017 and after much advocacy from key stakeholders including the KNCHR.</td>
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<td>✢ The time for the inspection of the biometric register was increased from 60 days to 90 days before a General Election thereby increasing the timelines for scrutiny and verification of the register.</td>
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<td>✢ The new amendments give the IEBC the option of engaging a reputable firm to undertake an audit of the register of voters six (6) months prior to an election. There were delays in engaging a firm to audit the voter register and the findings from the exercise were not fully implemented. For instance, the records of deceased voters were not removed from the register prior to the election.</td>
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<td><strong>Nomination of Candidates by political parties</strong>&lt;sup&gt;24&lt;/sup&gt;:</td>
<td>✢ The old provision provided for the time period in which political parties are to nominate its candidates as 45 days before the General Election</td>
<td>✢ The amendments extended this time from 45 days to 90 days to an election.</td>
<td>✢ This an apt provision that prevents party- hopping late into the day.</td>
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<td>✢ Political Parties must submit the names of persons contesting in the political primaries at least two (2) days prior.</td>
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<td>✢ Each party shall bear their own costs of the nomination process and may invite the IEBC to supervise the process.</td>
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<td>✢ Political parties have sixty (60) days before an election to submit the successful candidates</td>
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<td>These set timelines have the effect of reducing manipulation by political parties as has been witnessed in the past elections.</td>
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<td>However, the findings from the KNCHR after the Political Parties nominations indicate an unprecedented high rise of independent candidates because of the tight timelines set up by the law.</td>
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<sup>23</sup>Section 6, 6A and 8A of the Elections Act, 2011

<sup>24</sup>Section 13 of the Elections Act, 2011
<table>
<thead>
<tr>
<th>Act</th>
<th>Thematic Area</th>
<th>Old provision in the Act</th>
<th>Analysis of amended Law and Impact</th>
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<tbody>
<tr>
<td>Submission of party lists</td>
<td>The old provision provided that a Political Party shall submit its party list to the IEBC on the same day as the day designated for submission to the IEBC by Political Parties of nominations of candidates for an election.</td>
<td>The new amendment changed the requirement of Political Parties to submit the party lists on the same day as that of the nomination of candidates for elective seats forty-five (45) days prior to an election. This is not an ideal change as it gives Political Parties time to include the losers of political primaries in seats that have been reserved for special interest groups.</td>
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<tr>
<td>Number of voters per polling station</td>
<td>The old Act did not have this provision</td>
<td>The 2016 amendments introduced the concept of capping the maximum number of voters per polling station to 700. This is an ideal amendment and one that the KNCHR strongly recommended both in its 2013 election monitoring report and the memorandum presented to parliament as it has the effect of reducing the number of voters in a polling station thereby effectively managing the voting process. However, the KNCHR findings in this report indicate that the goal of this provision was not met as the crowding was still documented in many polling centres.</td>
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<tr>
<td>Determination and declaration of results</td>
<td>The law gave broad provisions on this thematic area stating that the IEBC shall determine, declare and public the results of an election immediately after close of polling</td>
<td>The new amendment laws enhanced the tallying and declaration process of the IEBC by providing for the procedure from the polling station to the constituency, county up to the national level. This section has further been enhanced by providing for the role of the county and constituency returning officers in the declaration of results from each polling station.</td>
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25Section 35 of the Elections Act, 2011
26Section 39 of the Elections Act, 2011
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<tbody>
<tr>
<td>IEBC partnership with other actors on Voter Education&lt;sup&gt;27&lt;/sup&gt;</td>
<td>The old law stated that IEBC shall put in place mechanisms for undertaking continuous voter education</td>
<td>The amendments introduce the concept of IEBC partnering with both state and non-state actors in offering voter education to the public and this is a positive step towards making the exercise as diverse and comprehensive as possible. However, in the KNCHR 2017 findings, this provision was not fully utilised and voter education remained a big challenge as it was conducted in the last week to elections.</td>
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<tr>
<td>Use of technology&lt;sup&gt;28&lt;/sup&gt;</td>
<td>The old law provided a broad statement that stated that the IEBC may use technology as it considered appropriate.</td>
<td>The 2016 amendment now provides an enhanced provision on the use of technology that establishes Integrated Electronic Electoral System that enables biometric voter registration, electronic voter identification and electronic transmission of results. IEBC has been mandated to develop a policy and regulations in consultation with stakeholders on the progressive use of technology in the electoral process. Further, IEBC is obliged by law to ensure that the technology to be used in the election period is simple, accurate, verifiable, secure, accountable and transparent. In addition, the amendment provides for the procurement of the technology devices to be used in the election in an open and transparent manner at least eight (8) months before such election. The testing of these devices is to be undertaken at least 60 days to the elections date. This section is extremely critical and was informed by the history of the country and recommendations of the Kriegler report on utilizing technology in the management of elections as an effective way of enhancing transparency credibility in elections.</td>
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<sup>27</sup>Section 40 of the Elections Act, 2011  
<sup>28</sup>Section 44 of the Elections Act, 2011
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<tr>
<td>Presentation of petitions[^29]</td>
<td>Thematic Area</td>
<td>The old provision provided for the timelines of filing election petitions twenty-eight (28) days from the date of publication of results</td>
<td>The amendment changed the timeline of presenting petitions from publication to 28 days after declaration of the results</td>
</tr>
<tr>
<td>Facilitation of persons with special needs including persons with disabilities (PWDS)[^30]</td>
<td>Thematic Area</td>
<td>There was no express provision under the old law covering this thematic area.</td>
<td>This Act was amended to ensure persons with disabilities are facilitated in their right to vote by mandating the IEBC to put in place appropriate infrastructure including special voting booths and officers at every polling station conversant with PWDs. The implication of this provision is such that IEBC must put in place the necessary infrastructure to allow persons with disabilities to vote. This is one of the recommendations that KNCHR strongly proposed. However in the 2017 KNCHR findings as highlighted in this report, shows that this provision was not actualized as persons with disabilities still continued facing challenges in exercising their right to vote.</td>
</tr>
<tr>
<td>Formation and registration of political parties[^31]</td>
<td>Thematic Area</td>
<td>The old law provided very broad requirements for the registration of political parties.</td>
<td>A Political Party now has a mandatory obligation to promote inclusiveness, democracy and participation of the people in the formulation of its policies and nomination of candidates for elections. One of the mandatory requirements for full registration of a Political Party is the inclusion of special interest groups in the membership and disaggregated data and proof of the same is required.</td>
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<tr>
<td>Deregistration</td>
<td>Thematic Area</td>
<td>The old law provided the general conditions that would warrant deregistration of a political party.</td>
<td>The 2016 amendments enhanced this section by adding that Political Parties can be deregistered on the grounds of lacking representation of special interest groups and contravention of Article 81(b) of the Constitution that “not more than two thirds of the members of elective public bodies shall be of the same gender”. Most of the Political Parties are yet to comply with these provisions</td>
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[^29]: Section 76 of the Elections Act, 2011  
[^30]: Section 104 of the Elections Act, 2011  
[^31]: Section 3 and 7 of the Political Parties Act, 2011
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<tbody>
<tr>
<td>IEBC Act</td>
<td>Vacancy of office of the Commission Secretary/CEO⁴³</td>
<td>There was no provision addressing circumstances that would lead to the vacancy of the Commission secretary.</td>
<td>There is more clarity on the circumstances that the Office of the Secretary becomes vacant - that is; if the holder dies, resigns from office by notice in writing addressed to the Commission or is removed from office if he/she has inability to perform functions, gross misconduct, bankruptcy or incompetency.</td>
</tr>
<tr>
<td>Relationship between the Commissioners and the Secretariat⁴⁴</td>
<td>There was no clear provision in the old law that addressed this thematic area.</td>
<td>The 2016 amendments now provide distinction on the various roles by providing that the Commissioners shall play an oversight role and be responsible for the formulation of policy and strategy of the IEBC while the Secretariat shall play an implementing role of these policies and strategies.</td>
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<tr>
<td>Establishment of Selection panel⁴⁵</td>
<td>The old law had provisions on the selection panel that still made reference to the Prime Minister hence not realizable.</td>
<td>The 2016 amendments corrected this anomaly and provided a new mode of the selection of panels by stating how the panel shall be formed and further providing that the selection panel shall be constituted at least six (6) months prior to the expiry of the terms of the Commissioners,</td>
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⁴²Section 25 of the Political Parties Act, 2011  
⁴³Section 10 of the Independent Electoral and Boundaries Commission, 2011  
⁴⁴Section 11A of the Independent Electoral and Boundaries Commission, 2011  
⁴⁵First Schedule of the Independent Electoral and Boundaries Commission, 2011
2.4 International Human Rights Standards

Kenya is a signatory to a raft of international treaties and convention that safeguards political rights and the sovereign power of people to cast their votes in a transparent and credible elections. The 2010 Constitution provides under Article 2(5) and (6) that the general rules of international law and any Treaty or Convention ratified by Kenya shall form part of the Kenyan laws. In relation to elections, several key human rights instruments apply. The 1948 Universal Declaration of Human Rights (UDHR) is the backbone of human rights worldwide by providing the foundations for fundamental human rights and freedoms. More specifically the UDHR enshrines the power in the people to participation in governance, freedom of assembly, speech, security and liberty among other fundamental rights and freedoms.36

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

In respect to issues of discrimination, the 1965 Convention on the Elimination of All Forms of Racial Discrimination (ICERD) enshrines the universal suffrage. Similarly, the 1981 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) protects and promote gender equality and non-discrimination in all spheres including in political representation and participation. The CEDAW specifically calls for equal participation of women in electoral processes. Persons with disabilities are specifically protected by the 2006 Convention on the Rights of

36Articles 3,5,9, 19,20,21 21, 19, of the 1948 UDHR
Persons with Disabilities (CRPD) that obligates all State parties to ensure that person with disabilities have the right to fully participate in political activities and fully facilitating them to freely cast their votes and be voted for.

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

2.5 Jurisprudence on Elections from the Courts

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

2.5.1 Diaspora Vote

On the issue of diaspora vote, the Courts have pronounced themselves on the political rights of non-residents as a trend towards extending to and facilitating the exercise of the right to vote by external citizens.
In the case of *New Vision Kenya (NVK Mageuzi) & 3 others v Independent Electoral & Boundaries Commission & 5 others*[^37]

The Court of Appeal held that

> "ARTICLE 82(1) (E) OF THE CONSTITUTION LEAVES NO DOUBT THAT THE RIGHT TO VOTE OF KENYANS IN THE DIASPORA IS TO BE ACHIEVED PROGRESSIVELY. ARTICLE 82, WHICH REQUIRES PARLIAMENT TO ENACT LEGISLATION ON ELECTIONS THAT AMONG OTHER THINGS PROVIDES FOR "THE PROGRESSIVE REGISTRATION OF CITIZENS RESIDING OUTSIDE AND THE PROGRESSIVE REALIZATION OF THEIR RIGHT TO VOTE" [^38]

### 2.5.2 Declaration of Results

The issue of what constituted declaration was settled by the Supreme Court in the case of *Hassan Ali Joho & another v Suleiman Said Sharbal & 2 others*.[^38]

The main issue before the Court was when the twenty-eight (28) days limitation period for filing an election petition begun running. According to the Court, declaration or election results took place at every stage of tallying. For example, the first declaration took place at the polling station; the second declaration at the Constituency tallying centre and the third declaration at the County returning centre. Thus the declaration of election results was the aggregate of the requirements set out in the various forms involving a plurality of officers. The finality of the set of stages of declaration was depicted in the issuance of the certificate in Form 38 to the winner of the election that marked the end of the electoral process by affirming and declaring the election results which could not be altered or disturbed by any authority.

### 2.5.3 Prisoners Right to Vote

On 20th May 2010, Kituo cha Sheria filed a petition[^39] in the High Court demanding that prisoners be registered to vote in the 2010 referenda for a new Constitution.

[^37]: [2014] eKLR, Civil Appeal 350 of 2012
[^38]: [2014] eKLR
This petition marked the first step in establishing that person's deprivation of liberty did not derogate also their right and responsibilities to engage in other democratic processes that impacted them in one way or the other. In this petition, the prisoners were allowed to participate by the courts in referenda vote.

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

### 2.5.4 Jurisdiction of the Court of Appeal in Election Matters

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

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

The Supreme Court in the case of *Evans Odhiambo Kidero & 4 others v Ferdinand Ndungu Waititu & 4 others [2014] eKLR*, had set out the timelines in filing and determining Electoral Appeals. The Court held that the question of timeliness in filing and determining election petitions as set by the Constitution and the Elections Act, section 85A(a) were neither negotiable nor could they be extended by any court for whatever reason.

2.5.6 Irregularities Arising from Human Errors

In dealing with issues regarding irregularities that occurred in the tallying process of elections, the Court of appeal addressed the question of what constituted human error. In *Dickson Mwenda Githinji v Gatirau Peter Munya & 2 others Civil Appeal No.38 of 2013* the Court of Appeal held that the burden to prove the existence of human error was excusable if it was a single, isolated and random occurrence. When the mistakes or errors were multiple and persistent such mistakes ceased to be human errors and pointed towards an inefficient, negligent, careless or even deliberate occurrence of the errors that affected the credibility of the declared results.

2.5.7 Counting, Tallying and Announcement of Final Results

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

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

If any verification or confirmation is anticipated, it has to relate only to confirmation and verification that the candidate to be declared elected president has met the threshold set under Article 138(4), by receiving more than half of all the votes cast in that election; and at least twenty-five per cent of the votes cast in each of more than half of the counties. Any changes to what was counted, confirmed and verified at the constituency level before transmission would be outside of his powers is tantamount to a serious assault on the will of the people of Kenya and an impermissible breach of the Constitution.

2.5.8 Public Participation in Procurement

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

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

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

2.5.9 Use of Technology

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

The court had to consider the impact or consequences if the exclusive electronic system failed. It would throw the entire election into jeopardy and imperil our democracy. The Court therefore found that it would not be feasible to declare that the elections to be held on 8th August 2017, be *exclusively electronic.*
THE CONSTITUTION PROVIDED FOR THE ENACTMENT OF THE ELECTIONS ACT, WHICH CONTAINED AN ELABORATE ELECTORAL CODE OF CONDUCT AND WHICH, AMONG OTHER MEASURES, SOUGHT TO EXPRESSLY BAN ALL FORMS OF VIOLENCE IN KENYA’S ELECTORAL PROCESS.
CHAPTER 3

Political Parties Primaries and Campaigns

This chapter focuses on discussions and incidences of electoral violence, voter bribery, incitements, rights to security during elections, internally displaced persons, impact of terror, ethnic tension and rights to fair election campaigns opportunities during 2017 political campaign period.

3.1 Electoral Violence

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

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

Apart from the various Constitutional and Statutory provisions geared towards ensuring that elections are conducted in a violent-free environment, the IEBC has also put in place an Electoral Code of Conduct that is supposed to regulate the conduct and behaviour of politicians during the electioneering period. Section 6 of the Electoral Code of Conduct requires all political aspirants to ensure that they minimize acts of electoral violence. As a commitment to the provisions of the foregoing, and in the course of campaigning, politicians are required to; publicly and repeatedly condemn any form of violence; refrain from taking any actions that involves violence or intimidation; ensure that no arms or weapons are carried or displayed in any political meetings; refrain from carrying out campaigns in places of worship or during burial ceremonies, cooperate and liaise in good faith with

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40The Grand Coalition Government was the product of a power-sharing deal between Hon. Mwai Kibaki and Hon. Raila Odinga. The deal was negotiated by H.E. Kofi Annan working in conjunction with the Panel of Eminent African Persons and it was instrumental in pulling Kenya back from the brink of massive and widespread political violence witnessed in December 2007 and January 2008.
other parties to avoid organizing meetings at the same venue; not to engage in anything that impedes the right of any party from freely campaigning and to avoid using the symbols of another political party in their campaigns.

It is therefore a matter of concern that despite the elaborate legal framework set out above, Kenyan politics continue to be characterized by incidences of electoral violence.

From our findings, it is safe to conclude that though we have elaborate laws on taming electoral violence in written word, the country still has challenges in their implementation, which means that electoral violence still continues to straddle our political landscape unabated, albeit to varying degrees of intensity, as will be shown in this report.

Out of the 1,112 political-campaign related events that KNCHR monitored and documented, 86 (7.7%) were cases of electoral violence. Acts of electoral violence were mostly widespread in the Nairobi City, Bungoma, Kakamega, Kisumu, Migori and Siaya Counties which have traditionally experienced electoral violence. The most affected areas included Mathare, Embakasi, Ruaraka, Kimilili, Webuye, Sirisia, Mumias, Lurambi, Kisumu Central, Kisumu Rural, Migori, Kuria, Awendo, Rarieda, and Alego. The KNCHR also observed and documented an emerging and worrying trend where electoral violence was increasingly reported from areas that have traditionally not experienced electoral related violence. These included but were not limited to, Marsabit, Isiolo, Turkana, Murang’a, Mandera, Kirinyaga, Kericho, Bomet and Meru.
Figure 1: Frequency of violent cases recorded by KNCHR during 2017 General Election political parties campaigns period per county. (Source: KNCHR Election Monitoring System (EMS))

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

Electoral violence affects the right of the Kenyan citizens to participate freely in the electoral process either as voters or candidates. However, part of the reason why acts of electoral violence continue to flourish in Kenya can be attributed to the fact that the perpetrators of the violence are rarely held to account whenever the said acts are committed. The KNCHR is firmly committed to its erstwhile call to all Kenyans to desist from perpetuating acts of electoral violence over and above
calling upon all the relevant law enforcement agencies to take full legal action against all those who breach the electoral laws that ban all forms of electoral violence. It is therefore the Commission’s expectation that action will be taken against all those who participated in the perpetuation of the electoral violence which were observed and documented as illustrated by the following sampled cases of this report.

3.1.1 Layers of Electoral Violence

I. Violence Associated with National Level Politics

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

KNCHR ascertained that from this confrontation, three (3) Kenya Police Reservists
(KPR) were arrested, arraigned in court and charged with an offence of causing actual bodily harm. It was further alleged that the KPRs who were charged were affiliated to the Frontier Alliance Party and thus failed in their duty of providing equal protection to all individuals as required by the National Police Service Act. Further, 7 more people were arrested during the skirmishes and charged with various offences ranging from creating disturbances to malicious damage to property.

![Photo 1: Supporters injured during Jubilee and FAP confrontation in Marsabit County on 26th July 2017. (Photo courtesy: KNCHR 2017)](image)

II. Violence Associated with County Level Politics

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

A contestation was documented in Uasin Gishu County which had two strong gubernatorial candidates namely; Hon. Jackson Mandago (the then incumbent and now re-elected Governor of Uasin Gishu County) and Independent Candidate Mr. Zedekiah Kiprop Bundotich alias BUZEKI. The win by Mr. Mandago at the party primaries led to political discord between some members of the Kikuyu and the Kalenjin communities residing in Uasin Gishu. The Governor openly declared that some of the prominent communities did not vote for him. He particularly singled out those living in Langas, Kimumu, Market and Huruma Wards. The contest between Hon. Mandago and Mr. Bundotich generated a lot of hostility, which was witnessed in several campaign activities across the County as illustrated below.

INCIDENCE

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

THE GOVERNOR OPENLY DECLARED THAT SOME OF THE PROMINENT COMMUNITIES DID NOT VOTE FOR HIM.
III. Youth: Leaders, Voters or Guns for Hire?

The youth are an important national resource for any country. Kenya is one of the African countries endowed with a budding, well-educated and talented youthful population. Kenyan youth are among the most enterprising and innovative in the African Continent\(^4\). Apart from excelling in the world of business and innovation, Kenyan youth have also offered themselves for various leadership positions at both the National and County Government levels. It was therefore encouraging to see a number of youthful Kenyans elected into office following the August 8th 2017 General Election.

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

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

**INCIDENCE 1**

On Tuesday 13th June 2017, at around 1:00 p.m., a Mr. Isaac Kide, a 41-year-old Businessman in Kapenguria was accosted by a group of about 30 armed youth dressed in KANU branded T-shirts. The rowdy youth had been chased by another group of youths dressed in Jubilee branded T-shirts from Chelang’a Gardens where the Jubilee Party was to hold a rally.

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

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

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INCIDENCE 2

Elisha Odhiambo, an ODM Candidate for Gem Constituency parliamentary seat in the company of his supporters, addressed a campaign rally at Akala center.

After the rally, his supporters had confrontation with the supporters of his competitor Jakoyo Midiwo, independent candidate. A stone-throwing melee ensued and 4 people sustained injuries. Two of the injured were taken to Aluor Hospital for treatment and the rest received first aid at the Akala Trading Center.

IV. Violence meted out on Political Leaders.

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

On Sunday 11th June 2017 at around 10.00a.m., a Mr. Cleophas Malala, a senatorial aspirant was in the company of Charles Odanga, the then incumbent MCA Mumias Central Ward and Suleiman Odanga an Independent candidate at St. Romamos Matawa Catholic in Mumias. The three were attacked by a group of 10 goons carrying truncheons, stones and machetes near the church after the service. The rowdy youths stopped them and started damaging their car with the machetes, Cleophas Malala’s vehicle and two others were smashed with stones and scratched with pangas on the front, back and side mirrors during the incidence. The MCA Candidate Mr. Charles Odanga sustained injuries on the head but rushed to St. Mary’s Hospital –Mumias and later transferred to Moi Teaching and Referral Hospital for treatment. Suleiman Odanga managed to escape unharmed.

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

Photo 4: An attack on aspirant’s vehicle in Matawa, Mumias West constituency, Kakamega County on Sunday 11th June 2017 at 10.00 am. (Photo courtesy: KNCHR 2017)
V. Threats and Violence Directed towards the Media

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

**INCIDENCE**

On Monday 5th June 2017, at around 5:00 p.m., a Mr. Namisi Cheptai who was in the company of his colleague Mr. Moses Masinde at Members Club. While there, he was approached by one of Hon. Ken Lusaka’s bodyguard, a former Kenya Defence Force Officer called Mr. Kisaka Mufuta who assaulted him with kicks and blows. He sustained injuries on his face, head and left leg. The bodyguard while assaulting the journalist stated thus: “Umekuwa ukituharibia jina ya kwamba tuliuwa mama kadogo na kuharibu jina ya Governor kuhusu wheelbarrow” (Translation- “You have been spoiling our reputation that we killed Kadogo’s mother?? And also the Governor’s name over the wheelbarrow saga”). The Journalist reported the case at Bungoma Police Station and later sought treatment at Bungoma Hospital for the injuries sustained.
VI. Electoral Violence at Social Gatherings

INCIDENCE 1

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

The youths present, who were strong supporters of Hon. Ranguma and Hon. Ochele, shouted that since Hon. Outa was supporting Hon. Anyang Nyongo, he had no business attending the funeral. They demanded that he should leave the burial ceremony immediately. The youths booed and heckled at Hon. Outa. The scene then turned violent as the youths moved to the podium where Hon. Outa was. This forced his security guards to shoot in the air to try and disperse the crowd that had already built up around Hon. Outa.

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

Photo 6: Youth throwing chairs during a burial ceremony at Ahero Township in Nyando Constituency on 10th June 2017. (Photo courtesy: KNCHR 2017)
INCIDENCE 2

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

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

KNCHR noted that during the fracas described above, one child aged about 10-years old was trampled upon during the violence, one lady was hit by a blunt object on her head and one man called Matthew Makanda was also hit on the right hand allegedly by goons aligned to Hon. Ken Lusaka. The case was reported at Kimilili Police Station by Hon. Wycliffe Wangamati for further investigation.

The violence in the cases above is key in drawing the nexus between funerals, politicians and the ensuing electoral violence which normally denies the bereaved the chance to mourn their loved ones and instead focuses on dealing with the mess caused by the political chaos. KNCHR call upon Kenyan politicians to rethink this retrogressive practice of invading the spaces of bereaved families to cause political mayhem and ask them to desist from turning funeral functions into political platforms. The Commission believe that most grieving families want a calm and sombre atmosphere so that they can mourn their loved ones in peace and dignity.
3.2 The Right to Fair Electoral Campaign Opportunities and Practices.

3.2.1 Misuse of Public Resources

Abuse of public resources during electoral cycle is common among the incumbents. The act constitutes a form of corruption that is geared towards gaining undue political advantage over political opponents who do not enjoy the trappings of incumbency. Abuse of public resources during the electoral cycle ranges from illegal use of government vehicles, installations and buildings during campaigns, distribution of material goodies and donations to the electorate, active involvement of public officers in partisan political activities aimed at influencing or tilting the choices of voters in the political contests.

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

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

During the campaign period, the Commission documented a total of 77 cases of direct public resources misuse and abuse of office across the country by politicians. The cases vary from the use of government vehicles, use of vehicles belonging to public schools, use of school playgrounds in holding political rallies, issuance and distribution of relief food and money and the commissioning and launch of projects. The cases mainly touch on public officers and candidates holding public office. Herein are some of the cases documented by the Commission.
INCIDENCE 1

The Commission documented misuse of public resources by the Jubilee Party through the online portal (delivery.go.ke) launched on 10th April 2017, barely one month into the campaign period highlighting their achievements in the last four and a half years they had been in office. The Jubilee Party also vigorously ran advertisements in both print and broadcast media on its achievements in contravention of the law.

INCIDENCE 2

On 6th July 2017, the Commission documented the inducement of voters through issuance of cheques ranging from Ksh 50,000 and above to women groups by Hon. Maison Leshomo during her campaign trail in Ngari Sungari sub-location, Samburu Constituency, Samburu County. The voter inducement was premised in the name of “economic empowerment” by the women representative of Samburu County. It is worth noting that, the Commission is not opposed to the empowerment of women groups but of concern is the timing on issuance of cheques which ultimately in one way or the other influences the voting pattern.

Photo 7: Hon. Maison Leshomo issuing cheques to women during her campaign trail in Ngari Sungari sub-location, Samburu constituency on 6th July 2017. (Photo courtesy: KNCHR 2017)
INCIDENCE 3

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

The Governor was accompanied by several County Officials including County Cabinet Secretary, CS Public Health, CS Agriculture, Sub-County Health Officer, County Nutritionist, Ag. Director – Health. The County Cabinet Secretary Mrs. Iscah Oluoch actively in public drummed support for the re-election of the Governor. Part of the statement made by Iscah include “Obado Tibim, Obado Kuome…. Waduaro ni mondo Waduok Jatelo kendo mondo wane dongruok kaka masani ni” which is loosely translated to mean “…we need to re-elect Governor Obado so as to get projects like the one he is officiating today in our County…”.

INCIDENCE 4

On 1st July 2017, during the Frontier Alliance Party (FAP) political rally held at Kamboe of Logologo Laisamis Constituency in Marsabit County. The team was led by Governor Ukor Yattani, accompanied by Hon. Nasra Ibrahim Ibren, Hon. Joseph Lemasolai Lekuton, Mr. Galgalo Tuye and Burji (REGABO) elders. During the campaign, the Commission documented the use of a Toyota Land cruiser double cab pickup white in colour registration number plate 10CG003A belonging to the County Government of Marsabit ferrying supporters, majority being minors to and from the venue.
INCIDENCE 5

On Monday, 20th June 2017, the Commission documented the use of Tendere Primary school playground in Bomachoge Chache Constituency, Kisii County during the launch of Kisii County Manifesto and official campaign for the ODM candidates. Those present included Governor Hon. James Ongwae, Hon. Joash Maangi, Prof. Ongeri, Hon. Janet Ong’era, and Hon. Gladys Wanga. It is worth noting that the venue was not appropriate as politicians interrupted school sessions and operations as learning was ongoing.
INCIDENCE 6

On 19th July 2017, at around 4.12 p.m., the NASA Coalition Co-Principals led by Hon. Moses Wetangula and Hon. Musalia Mudavadi accompanied by local politicians arrived at Kaptama Centre, Mt. Elgon Constituency, Bungoma County. In their campaign trail, the Commission documented a black Toyota Land Cruiser VX V8 (J200) that bore registered number plates KBM 763V used by the New Ford Kenya woman aspirant for Bungoma County Catherine Wambilianga. Upon closer scrutiny, the Commission noticed it bore government registration number GKA 062R on its window screens.
INCIDENCE 7

On 6th July 2017, during a trail of political rallies held at Emanani, Matungu, Busombi, Musaba, Harambee Market, Namulungu and Ebwayi, Kakamega County led by Wycliffe Oparanya, the Commission witnessed and documented the use of government vehicles, which included Land Rover registration number 37CG049A belonging to the Sub-County Administrator and a Toyota Hilux registration number 37CG025A.
3.2.2 Appropriateness and Accessibility of Venues.

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

The KNCHR documented instances where politicians did not adhere to the outlined timelines in their campaigns. These included night meetings, which were highly secretive and limited to a specific and small number of individuals as well as door-to-door campaigns at night. The Commission is of the opinion...
that such meetings could have been used as avenues for plotting or executing electoral malpractices. The night meetings were often not subjected to scrutiny hence offering an opportunity for the candidates to in one way or another mobilize, incite and induce the electorate. On venue usage, the Commission also documented instances where politicians used school playgrounds, funerals and church services to campaign.

3.3 Incitement

Hate speech has remained the most common form of political incitement during electoral cycles in Kenya.

Hate speech is prohibited under Section 96 of the Penal Code which describes incitement as:

“A SITUATION WHERE A PERSON WITHOUT LAWFUL EXCUSE, UTTERS, PRINTS OR PUBLISHES ANY WORDS, OR DOES ANY ACT OR THING, INDICATING OR IMPLYING THAT IT IS OR MIGHT BE DESIRABLE TO DO, OR OMIT TO DO, ANY ACT THE DOING OR OMISSION OF WHICH IS CALCULATED TO BRING DEATH OR PHYSICAL INJURY TO ANY PERSON OR TO ANY CLASS, COMMUNITY OR BODY OF PERSONS; OR TO LEAD TO THE DAMAGE OR DESTRUCTION OF ANY PROPERTY; OR TO PREVENT OR DEFEAT BY VIOLENCE OR BY OTHER UNLAWFUL MEANS THE EXECUTION OR ENFORCEMENT OF ANY WRITTEN LAW OR TO LEAD TO DEFiance OR DISOBEDIENCE OF ANY SUCH LAW, OR OF ANY LAWFUL AUTHORITY.”

Cap 63, Laws of Kenya.
Section 13 of the NCIC Act, 2008 states that hate speech happens when:

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

Hate speech is also prohibited under Section 67 (g) (1) of the Elections Act.

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

The Kenya National Commission on Human Rights notes that acts of hate speech can easily catalyse or amplify violence between two opposing factions. But defining what constitutes inflammatory language and elucidating how it can lead to violence is not easy because such language operates on multiple levels. Many potentially inflammatory terms are part of the national vernacular and appear often in daily conversations and media coverage. But these terms affect different people in diverse ways. For some, a certain term merely describes a situation in their complex social and political environment. For others, especially those already predisposed towards violence, the explicit and constant repetition of a potentially inflammatory term can amplify the dangerous nature of the language,

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44NCIC Act No. 12 of 2008
45Elections Act No. 24 of 2011
with harmful consequences. Therefore, unless checked, such utterances may have dire consequences on the entire electoral cycle.

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

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

**INCIDENCE 1**

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

**INCIDENCE 2**

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

**INCIDENCE 3**

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

“Ni Joshua ya mai ma ng’ombe!” which loosely translates to: “He is Joshua of the cow dung!”

**INCIDENCE 4**

On the night of 29th July 2017, leaflets emerged in Nandi County threatening other communities, namely Luhyas, Luos and Kipsigis, not to vote for Independent Candidates on August 8th 2017. These communities were instead being called upon to vote for Fred Kipkemboi for MCA and Alex Kosgey for MP or else they will be forced to leave the town or face dire consequences and that their wives and daughters will be raped if they failed to heed this call.
INCIDENCE 5

Another threatening leaflet was found in Naivasha Constituency, Nakuru County warning the residents of Kihoto and Lakeview Wards against one Hon. Karanja Mburu, the MCA of Lakeview Ward who was alleged to have visited a witchdoctor. Following which, he was said to have gained powers from the potions that he applied on his hands that made people praise him, and further that he drove around with snakes in his car. This was aimed at discrediting Mr. Mburu's character and dissuading potential voters from voting for him.
INCIDENT 6

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

Photo 14: Leaflets being circulated around Eldoret Town, Uasin Gishu County on 25th July 2017. (Photo courtesy: KNCHR 2017)

INCIDENT 7

On the eve of 7th August 2017, leaflets were found in the urban areas of Kajiado County warning non-Maasai’s in particular, the Kikuyu, Kisii, Kalenjin and Meru communities to leave the County as directed by Hon. Raila Amolo Odinga. This leaflet was linked to the meeting between Hon. Odinga’s and the Maasai leaders in Kajiado on 14th June 2017, where he allegedly asked non-Maasais not to encroach on Maasai land. This was aimed at spreading fear and panic among the named communities.
INCIDENCE 8


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

INCIDENCE 9

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

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Photo 13: A propaganda leaflet that was being spread in Naivasha Constituency, Nakuru County on 20th July 2017. (Photo courtesy: KNCHR 2017)
INCIDENCE 10

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

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

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

3.4 Voter Bribery

The Constitution of Kenya 2010 provides that elections in Kenya shall be free and fair. Parliament has enacted legislation that provide for election offences which if committed by persons vying for elective office adversely affect the consideration of elections as free and fair. Bribery is one of the most common election offences in Kenya. This offence involves a wide array of participants ranging from the political party leaders, political party agents, political aspirants and voters themselves.
Bribery can be described as an offence committed by one who promises or offers money or any valuable inducement to the electorate to entice the latter to vote in a particular way or to abstain from voting. Section 9 of the Election Offences Act describes bribery as a situation where one offers or receives money, a promise for employment or any other form of inducement to influence any voter to give or refrain from giving his vote, whether to a particular candidate or not. Voter bribery also occurs where a voter is influenced to attend, participate or refrain from attending a political meeting, a march, a demonstration or other political event. Offering inducement to a person to agree to be nominated as a candidate for elective office or refrain from becoming a candidate or withdraw if they have become candidates also falls within the confines of the offence of bribery.

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

i. Aspirants attending or participating in fund-raising functions (Harambees) within the community during the electioneering period;

ii. Making promises of rewards such as jobs and reimbursing those who attended political rallies;

iii. Cash hand-outs, distribution of clothes, kangas (lesos), caps, blankets and water tanks;

iv. Household shopping to influence voters;

v. Distribution of relief food and

vi. Settling hospital bills and school fees for families with the intention of influencing their way of voting.

The Commission documented cases of voter bribery in twenty (20) Counties but it was most prevalent in Kwale, Laikipia, Tana River, Bungoma and Kericho Counties. Some of the cases observed and documented by the Commission include:
INCIDENCE 1

On 7th June 2017, the Laikipia Governor, Mr. Joshua Iruungu accompanied by other Jubilee Party aspirants and Water Department heads and Umande Ward Water Committees, had a meeting with Umande Ward Community at Bingwa Primary School aimed at giving out water tanks to women groups within the ward. A hundred and sixty (160) water tanks were distributed to the targeted beneficiaries. While the distribution of water tanks by the water committees within the County is a noble act, the move at such a time was viewed as one aimed at winning over voters.

Photo 16: The beneficiaries and supporters of the then Laikipia Governor, Mr. Joshua Iruungu at a function at Bingwa Primary School on 7th June 2017, where water tanks were distributed.

INCIDENCE 2

On 7th June 2017, at Magombo Market in Kitutu Masaba Constituency- Nyamira County, the President gave Ksh. 10 million shillings and a school bus to Nyambariga High School contrary to the provisions of the Election Act. The Cabinet Secretary for Education, Fred Matiang’i who was in attendance also campaigned for the President in both Nyamira and Kisii County which is a violation of the Act which bars civil servants and cabinet secretaries from engaging in politics while still in office.

In another incidence on 11th July 2017, the President Hon. Uhuru Kenyatta donated a school bus to Maasai Girls High School in Ngong Town, Kajiado County.
INCIDENCE 3

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

INCIDENCE 4

On 14th June 2017 Mr. Silvanus Maritim made a visit to the elderly people of Kapchotoror in the evening. He went ahead and shared with them his manifesto. He gave each elderly person a blanket and encouraged them to vote for him during August General Election.

On 23rd July 2017, MP candidate for Ainamoi Constituency on a Jubilee Party ticket, Silvanus Maritim was in Kapsoit Village doing house to house campaigns. In each most of the houses he visited, he gave out sugar and blankets.
INCIDENCE 5

On 5th July, 2017 Jubilee Party Women Representative aspirant, Hon. Zainab Chidzuga while campaigning in a meeting at Kalalani Village, Mwavumbo Ward-Kinango Constituency, Kwale County distributed blankets. Those present at the meeting were mostly elderly men and women.

On 27th July 2017 Hon. Zainab Chidzuga, met the residents of Bofu Area in Kasemeni Ward to campaign for her re-election. She was later joined by the Kinango Sub-County Jubilee Party Coordinator Mr. Richard. She said if re-elected she would help the youth especially the bodaboda riders by buying them motor bikes and they will pay for them in instalments. She gave out a total of ten (10) blankets and also gave out Ksh. 15,000 which was shared as follows: Ksh. 7,000 to women, Ksh. 5,000 to men and Ksh. 3,000 to the youth present.

Photo 18: Blankets being distributed to elderly persons by the Jubilee Party MP Candidate for Ainamoi, Mr. Maritim in Kapchetor, Kericho County on 14th June 2017. (Photo courtesy: KNCHR 2017)
INCIDENCE 6

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

INCIDENCE 7

On 20th July 2017, during KNCHR monitoring at Baricho Market in Kerugoya Constituency Kirinyaga County, Ms. Anne Waiguru, the candidate for Jubilee Party vying for the gubernatorial seat made a speech and requested the people to vote for her during the August 8th election. After her speech, her campaign team organised the people in groups of ten (10) and distributed cash to the masses. Each group was given Ksh.1, 000 which they were to split amongst themselves.
Photo 19: Mr. Mwangi Kiunjuri, CS in the Ministry of Devolution and Planning, distributing Relief food to locals in Kinango Constituency, Kwale County. (Photo courtesy: KNCHR 2017)
INCIDENCE 8

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

Photo 20: The then incumbent (and now re-elected) Governor of Kakamega County, giving out free goods to the elderly at Malava Constituency on 30th July 2017.

INCIDENCE 9

On 3rd August 2017, at Golf Club Hotel, Kakamega, the gubernatorial seat candidate on a Ford-K ticket, Hon. Boni Khalwale, invited residents of Kakamega to the launch of his manifesto. Among those in attendance were members of the business community, the media and members of the public. Khalwale asked all the aspirants in the crowd to move into a tent and asked the rest of the crowd to go behind the tent and make two queues, one for women and the other men. Khalwale then started dishing out Ksh.200 in denominations of Ksh.100 to each person. All the while his security personnel were monitoring the queues for any person trying to capture the moment. The Commission monitor was present and witnessed the same.
INCIDENCE 10

On 4th August 2017, a meeting was convened for college students by the Mombasa Governor Ali Hassan Joho at Aga Khan Hall. He was accompanied by Hon. Raila Amolo Odinga and Hon. Rashid Bedzimba and other ODM supporters. There were about 2,000 youth in attendance. There was restricted access to members of the public as one had to show a student ID card to gain entrance to the venue. Everyone in the meeting was given Ksh.500 for attending. The Commission monitor was present and witnessed the same.

INCIDENCE 11

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

Photo 21: Mr. Francis Mureithi distributing maize flour to residents of Embakasi on 15th July 2017. (Photo courtesy: NTV at: https://www.youtube.com/watch?v=h0s2NZDLGdg)
The Commission notes with great concern the continued acts of blatant voter bribery witnessed and documented during the election campaigns across the Counties. Bribery constitutes an outright election offence that runs foul to the principle of free, fair and credible elections as it seeks to unduly influence the voter from making an independent and informed choice at the ballot. Notwithstanding the extensive electoral reforms and amendments in the electoral laws which sought to explicitly proscribe elections offences and impose stiff penalties and sanctions, the political actors and players from both government and opposition continue with similar voter-bribery trends and patterns witnessed in the past elections. It is disquieting that some State Officers and Public Officers were observed openly on the campaign trail engaging in acts of bribery and inducements which constitute electoral offences.

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

3.5 Right to Security during Elections

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

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

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

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

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

3.6. Internally Displaced Persons

Unlike what was witnessed in the 2007 electioneering cycle where about 350,000 people were internally displaced across the country, resulting from contested presidential election\(^4\)\(^6\), there were no massive displacements of Kenyans during the 2017 electoral cycle. However, the Commission documented a few cases of internal displacements that stemmed from various motives including militia attacks and cattle rustling. In most areas, the displacement was short-lived and people returned back to their habitual places of residence. There were however a few cases where people were forced to move to satellite camps.

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

During the 2017 General Election, internal displacement occurred in parts of Laikipia, Baringo, Samburu, Marsabit, Turkana, and Isiolo Counties. This stemmed from cattle rustling, leading to destruction of property and in some cases

\(^4\)\(^6\)http://www.knchr.org/portals/0/reports/knchr_report_on_the_brink_of_the_precipice.pdf
the destruction included schools mapped out by the IEBC to serve as polling centres. According to the Human Rights Watch\(^47\), prior to the General Election, attacks were carried out in Baringo South Constituency, in particular Mukutani, Arabal, Mochongoi and Chebinyiny locations. Following these attacks, twenty-two (22) primary schools and three (3) secondary schools that were to serve as the polling stations were shut down\(^48\). In July 2017 there were attacks that led to displacement of persons which were reported in Kamwenje area, Laikipia West, which could have driven some voters away and hence denying them the right to participate in the August 8\(^{th}\), 2017 polls.\(^49\)

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

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

In relation to the impact of attacks to the General Election, the Commission noticed that IEBC did not take steps to avail mobile polling stations to families at the satellite camps within Witu. Instead, most IDPs had to travel to Pandanguo

\(^{47}\)https://www.hrw.org/blog-feed/kenya-elections-2017
\(^{48}\)https://www.hrw.org/blog-feed/kenya-elections-2017
\(^{49}\)http://www.dailymail.co.uk/wires/afp/article-4690240/Bandits-kill-6-police-Kenyas-Laikipia-region.html
Primary School Polling centre to vote, while others opted not to vote at all citing insecurity at Pandanguo. The attacks compromised the constitutional rights of the IDPs, which are further anchored under section 9, sub-section 1(h) of the National IDP legislation\textsuperscript{50} which highlights the IDPs equal participation in public affairs to include elections\textsuperscript{51}, and Principle No. 22 of the Guiding Principles on IDPs, whether living in camps or not. The Principle provides that “IDPs shall not be denied the right to vote and to participate in governmental and public affairs”. As already noted, this right was violated by denying the displaced population the option of mobile polling stations.

\subsection*{3.6.1 Movement of Persons}

As the country was nearing the actual polling day, a spot check by the Commission confirmed a seemingly large number of people travelling with their belongings from urban areas to destinations believed to be ancestral regions to either vote or to avoid any potential violence. Equally, some foreigners left the country based on the travel warnings issued by their countries ahead of the country’s General Election. This was premised on the disputed 2007 General Election that led to violence in Kenya, and the political rallies marred with violence and protests prior to the Election Day. For instance, at the Machakos upcountry bus terminus in downtown Nairobi, large numbers of travellers were observed leaving. Transport costs had been hiked; travellers headed to Western Kenya were paying between Ksh 1600 and Ksh 2000, up from normal fare of Ksh 500 to Ksh 700. In some instances, travellers were asked by “touts” to confirm if they were registered at their intended destinations before being allowed to travel as a way of minimising low voter turnout in Nairobi County. The same was reported in Nakuru and Mombasa among other counties. In Naivasha; mass relocation of communities who felt threatened by political activities left for their rural homes a week leading to the polling day. In majani mingi Rongai Sub-county, the communities perceived as fewer in numbers (from Western Kenya and Nyanza) were also seen relocating to rural areas fearing for violence.

\textsuperscript{50}\textnormal{Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act, 2012}
The voluntary relocation or movement of persons was a concern to politicians. Most of them weighed in to call for the government to ensure security in areas perceived to be hot-spots to deter movement of persons. For instance, during a NASA political rally in Nakuru, Hon. Wetangula urged the NASA supporters to remain in Nakuru as opposed to moving to rural areas.

### 3.6.2 Illegal Transfer of Voters

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

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

### 3.7 Impact of Terror-Threat on the General Election

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

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

The Commission commends the security agencies for their concerted efforts in providing adequate security and ensuring that the election campaigns in the affected regions continued without any major incidence. In Lamu and Garissa, where a 6:00a.m., to 6:00p.m., curfew had been effected, the Commission noted that the same did not affect campaign activities as it fell within the stipulated campaign period set by the IEBC of 7:00 a.m. – 6:00 p.m. daily. The threat of terrorism had insignificant effect on electoral activities.

3.8. Inter-Ethnic Tensions

The Commission recorded complaints of security threats on individuals due to their ethnic background through its monitors who collected information on persons who were moving to safer grounds, about two or so weeks leading to the General Election. Those who were allegedly moving felt that the areas they reside belong to communities different from them and were thus afraid of any possible retaliation. KNCHR recorded these movements in Nairobi and Naivasha. In one of the visits in Narok, KNCHR met with one of the County’s security officers who together with his teams had mapped potential hotspot areas of inter-ethnic conflict. These included Narok town constituency where tension supposedly was growing between the Maasai and non-Maasai’s as well as inter-clan tensions between the Siria and the Purko communities who were supporting either of the two main gubernatorial candidates. The town is largely inhabited by non - Maasai (Kikuyu) and the Maasai’s allegedly felt that the “foreigners” should not participate in the elections to vote for the Governor’s seat.

In Mandera County, the County security agencies had received reports that inter-ethnic tension between the 4 main communities; Degodia, Gare (majority), Murule and the Corner tribes (minority tribes within the county) were being experienced especially for the position of the Member of Parliament. The Deputy County Commissioner confirmed his security team was working on beefing up security especially in the run up to 8th August.
Further, perceived “non – locals” in Mandera who include a section of quarry workers, civil servants and businessmen from other parts of the county (estimated to be around two thousand five hundred (2500) in number), were concerned about their safety. They had informed the area security agencies that that they will return to their home towns a few days to the election despite being registered as voters in Mandera County. It was being said that their collective votes could determine the winner and thus they were being cautious of their –safety and security.

3.9 Peace Forums and Promotion of Electoral Security

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

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

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

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

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

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

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

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

3.9.1 The Right to Assembly and Peaceful Demonstrations

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

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

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

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

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

**INCIDENCE 1**

In Kakamega County, the police made four arrests in connection to an attack on NASA affiliated candidates who were set upon by around 10 assailants. Mr. Cleophas Malala, the Amani National Congress (ANC) senatorial candidate, Mumias Central MCA Mr. Suleiman Odanga (Independent) and his rival for the MCA seat Mr. Charles Odanga (ANC). The aspirants were from attending a church service in Matawa, Mumias Constituency, when they were attacked by the armed youth. The latter sustained a deep cut on his head and he was rushed to St Mary’s Mumias Hospital for treatment. The victims reported the case to Mumias Police Station and the arrests were made after the victims positively identified the perpetrators.
INCIDENCE 2

In Kisumu County, in Ahero market, a vehicle that was transporting over 12 armed youths to disrupt a rally in Rabuor. This plan however did not materialize as the public made urgent reports to the Kisumu County Commissioner and Nyando Deputy County Commissioner who alerted their officers at Ahero police station to find out more details on the matter. As a result, the police officers reportedly found the culprits with 4 machetes, 2 knives and rolls of bhang. According to Ahero OCS, the culprits were intercepted at around 10a.m. as they were heading towards the Rabuor rally. He also added that later in the day, they were arraigned at Nyando Laws Courts.

INCIDENCE 3

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

3.9.2 Special Interest Groups (SIGs).

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

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

I. Persons with Disabilities (PWDs)

The Constitution entitles all persons with disability the right to be treated with dignity, respect and to be addressed or referred to in a manner that is not demeaning. They are also entitled to reasonable access to all places, transport and information. In terms of their communication, the Constitution guarantees them the use of sign language, braille or other appropriate means of communication and the access to materials and devices that will enable them to overcome the constraints that arise from their disability.

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

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

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\(^{52}\)Act No. 14 of 2003
\(^{53}\)Section 11 of Persons with Disability
\(^{54}\)Section 21 of the Persons with Disabilities
The Act at Section 29 further provides for the PWD’s right to be assisted in voting and provides for the procedure and manner of how it should be undertaken. It states thus:

(1) All persons with disabilities shall be entitled at their request, to be assisted by persons of their choice in voting in presidential, parliamentary and civic elections.

(2) A person who undertakes to render assistance under subsection (1) shall do so strictly in accordance with the instructions of the voter.

(3) A person described in subsection (2) shall bind himself, in the prescribed form, to comply with that subsection.

(4) A person who contravenes subsection (2) is guilty of an offence.

Section 30 of the Act sets out the provisions for the setting up of polling stations in regard to Persons with disabilities. It is a legal requirement that all polling stations ought to be made accessible to PWDs during elections and instructively, that the necessary and assistive devices and services be provided to facilitate PWDs in realizing this fundamental right.

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

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

During the campaigns monitoring, the Commission witnessed several incidences that were targeted at PWDs specifically and whose net effect, served to negate the PWD’s right to participate freely and actively in campaigns. They include:
INCIDENCE 1

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

INCIDENCE 2

The Commission further undertook an assessment of select and targeted polling stations across thirty (30) counties to determine the accessibility or otherwise of them stations for the PWDs. It was noted that most polling stations were situated in public primary institutions, some of which had ramps and hence were accessible to PWDs.

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

- In Sesik Primary school, Bungoma County, Mt. Elgon Constituency the inaccessibility is attributed to a big trench caused by Gully erosion at the school entrance.
- Bomani primary school in Kwale County the broken bridge posed a a problem to PWDs To access the polling center
- Ole Soilal polling center, Kilgoris Constituency Narok County, whose terrain is hilly accessing it from the north (Kona shopping center and its environs) is difficult as it is very steepy.
- In Isiolo County, the entrances to Bula Mpya Pry, Bula pesa dispensary, Kambi ya Juu Nursery, Marine Nursery, Pepo la Tumaini, Waso Pry and Water Kiosk are not accessible easily to PWDs with wheelchairs. In Wabera Primary School, the entrances have staircases with no ramps for PWDs.
- In Kericho County, the Bureti IEBC headquarters, is not friendly to people living with disability as it is located in 4th floor without a lift. Also in the same county Kapkaren primary is inaccessible to PWDs as there is no ramp to access the rooms with stairs entrances.
- In Kisumu County, the following polling stations had entrances that were too narrow for a PWD with a wheelchair to access; Obwolo Primary School,
Mamboleo Market, Chiga Primary School, Manyatta “B” Center, Kassagam Secondary School, Nyalenda “A” Community Hall, Dago Nursery, Nyamasaria Primary School, Ogango Primary School and Tido Primary School.

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

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

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

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

Photo 22: DEB Gilgil Primary School Polling Center, in Nakuru County, Gilgil Constituency showing steep stairs at the entrance of polling center. (Photo courtesy: KNCHR 2017)
II. Women

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

INCIDENCE 1

On Friday 23rd June 2017, at around 5:00 p.m., a Mr. Laurence Mokosu, an MCA candidate in Kinyoro Ward, Saboti constituency in Trans Nzoia county while campaigning at Chepkui area uttered the following words ‘Wamama hawafai wang'ang'anie viti yenye ilitengewa wanawe’…. Women should not vie for seats that have been reserved for men…. which were directed against Ms. Milka Psiwa, a female candidate on KANU ticket for the same seat. As a result, the youth supporters of the female candidate were infuriated and started pelting stones at the dais. In the process, four (4) people sustained varied degree of injuries and were rushed to Kitale County hospital.
INCIDENCE 2

In Bungoma County, the KNCHR documented an incidence where a businessman was killed by unknown gunmen at his home. Two members of his family were violently attacked. During the burial of the businessman, a scuffle arose between the supporters of two gubernatorial candidates in the County and in the process, one child was injured and a woman hit by blunt object on the head.

INCIDENCE 3

On Tuesday 25th July 2017, at Kibingo in Kirinyaga at around 5:30p.m. and 6:00p.m., one of the gubernatorial aspirants Anne Waiguru held a meeting with her supporters whereupon her departure a team of about 80 men who were in Toyota cabin and bodabodas arrived at the venue and begun attacking one of the vehicles (Toyota surf-) that was carrying Anne waiguru’s campaign meeting public address system. This caused Waiguru’s supporters and the coordinator of the campaign team to intervene by ensuring that the vehicle which was being targeted for destruction was surrounded. In the process 3 men were injured among them was the campaign coordinator Moses Waweru who sustained serious injuries to his finders, ribs and legs while the other two had minor injuries.

Moses was rushed to the hospital where he was admitted. The police were called to deal with the security situation and were able to shoot in the air and successfully dispersed the crowds. Waiguru’s supporters later on reported the matter to the police station and also 2 key witnesses were able to record their statements, that is, Moses Waweru and Millicent a member of Waiguru’s campaign team. The two stated that Ann Waiguru had also recorded a separate statement with the police on the issue. Further, they stated that, the attackers were using vehicles (pick-ups) which had stickers written Ngirici and sons. As a result of this incidence, a group of about 100 women stormed the Kirinyaga County commander (CCPO) demanding an assurance from the police on the security of women in the county.

INCIDENCE 4

In Kisumu County, the KNCHR documented an incidence where Hon. Farida Salim alleged that she was slapped in the county assembly by Hon. Edwin Anayo of Milimani market ward, who harassed her by telling her that since she is a Muslim, she should step down for a male colleague who was contesting in the same seat of Kisumu central Constituency.
INCIDENCE 5

Women candidates were also subjected to media harassment and social media bullying. In Nakuru, for instance, the Nakuru County senatorial aspirant Hon. Speaker Susan Kihika was the subject of a story on the media that there was a male sponsor behind her campaigns. According to the aspirant this was not the case as she got the campaign funds from her friends. These issues violate the aspirant’s right to human dignity which should be protected and respected.

INCIDENCE 6

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

INCIDENCE 7

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

Photo 24: A video grab showing women scampering for safety during the meeting that was disrupted. (Photo courtesy of NTV)

https://www.youtube.com/watch?v=9Xg2h2u6gQA
III. Children

During the political campaign period, the Commission noted with concern the increase in the participation of children in political activities, despite the fact that they do not form part of the electorate. The said campaigns took part when schools were open and learning was disrupted in some instance so as to allow political activities to take place.

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

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

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

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

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

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

Despite the directives, the Commission noted with concern the continued use of School grounds, buses and children in political campaigns by some political
Teachers employed by the Teachers’ Service Commission and education officials are public officers and are thus expected to maintain their professional competence and ethics. They are also to maintain political neutrality and not to conduct themselves in a manner that is likely to suggest that they can be improperly influenced.

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

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

**INCIDENCE 1**

On 13th June 2017, students of Makutano Primary School in West Pokot were caught up in the disruption that ensued during a rally that resulted to some students being beaten and teargassed by police officers after a crowd of youth surged in an attempt to get closer to one of the Presidential candidates who was campaigning near their school grounds. The injured students were taken to Lilyon Nursing home for treatment.
INCIDENCE 2

On 5th June 2017, in Nyamira County, North Mugirango constituency at Ekerenyo stadium grounds, students of Kebabe Primary School and St. Charles Lwanga Academy Primary School were allowed to move out of class and leave the school compound to attend a political rally.
INCIDENCE 3

On 2nd June 2017, students of Nyandarua Boarding primary school in Nyahururu left class under instruction from teachers when one of the Presidential candidates, his entourage and supporters came to campaign in the area.36

INCIDENCE 4

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

Photo 27: Namang’ofulo Secondary School Bus ferrying supporters to a campaign rally at Posta Grounds in Kanduyi in Bungoma County. (Photo courtesy: KNCHR 2017)

INCIDENCE 5

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

36As reported by Standard Media Group on 2 Jun 2017 while covering the campaign trail of President Uhuru Kenyatta in Nyandarua and Laikipia counties https://www.youtube.com/watch?v=J7VydDBs viewed on 3rd June 2017
INCIDENCE 6

On the 12th July 2017, learning was disrupted at Tendere primary school after ODM campaigns were held at a place immediately adjacent to the school that led to having children sent home.
INCIDENCE 7

On 23rd June 2017, Students of Kapsokwony D.E.B primary School were seen attending a NASA rally in Kimilili town, Bungoma County.

Photo 30: Students attending rally in Kimilili Constituency, in Bungoma County. (Photo courtesy: KNCHR 2017)

INCIDENCE 8

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

Photo 31: Children actively participating in a Jubilee rally at Kizingitini Island, Kizingitini ward, Lamu East Constituency in Lamu County. (Photo courtesy: KNCHR 2017)
While children are to be encouraged to nurture their talents, political rallies should not be used as platforms to showcase the talents of these students to the amusement of politicians and their supporters and at the expense of the time that these students would otherwise spend learning in their classrooms. On 24th June 2017, several Jubilee candidates from Baringo including Kiptis for Governor, Chelugui for senator, Susan Chesyna for women representative and David Kerich alias “Dawa” held a campaign rally at Kabarnet Boys, Baringo Central Constituency, Baringo County which is a boy’s boarding school. The rally interrupted activities of the students because there was a lot of noise hence students could not concentrate on studies. Also students had to forego sporting activities for the day.
KNCHR is also of the view that school routines and programmes should not be disrupted when politicians are in the vicinity, holding their campaign rallies as this disadvantage the students who are supposed to preoccupy themselves with learning. The Ministry of Education should bar the holding of political rallies both in school and in locations that are close to schools so as to not disrupt the ongoing process of learning in schools.

That teachers and school heads are not to expose their students to risks that are associated with political rallies especially when the rallies are disrupted and turn violent.

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

KNCHR also recommended that in support of the directives of the Cabinet Secretary, the Ministry of Education and the Teachers Service Commission issue circulars to all education boards and school heads regarding the conduct of teachers and education officials, the use of public school property and the use of students during the period of political campaigns.
The Commission made internal preparations to monitor the compliance of the various actors with the set law.
CHAPTER 4

The General Election Polling Day Findings

THE COMMISSION DEVELOPED A POLLING-DAY TOOL THROUGH WHICH IT TRAINED AND OBTAINED ACCREDITATION FOR ITS MONitors AND STAFF BEFORE IT DEPLOYED THEM TO MONITOR THE PROCESS IN ONE THOUSAND TWO 1,218 POLLING CENTRES IN 436 WARDS, ONE 191 CONSTITUENCIES LOCATED IN 43 COUNTIES.

4.0 Introduction

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

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

KNCHR set out to monitor the following parameters. Conduct of IEBC officials, party agents and voters from the onset of opening the polling stations counting, collating, tallying, transmission and announcement of results at the various polling stations and tallying centres.

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

4.1 Security on Polling Day

A secure environment guarantees the potential voters safety while engaging with the electoral process. The provision of security is a key responsibility of the National Police Service (NPS) who are mandated to work in collaboration with the Independent Electoral and Boundaries Commission to secure electoral materials and staff, venues and voters guided by the NPS standing orders. The security role was complimented by other state agencies such as the National Youth Service.

KNCHR witnessed the physical presence of Police Officers in all the polling and tallying centres monitored with each Polling Station having at least one officer. However, there were some reported incidences that pointed to breaches of security that in one way or the other interfered with the right to political participation in respect to peace and tranquillity at the polling stations and voters’ participation. The Commission through its continuous engagement with NPS on polling day intervened to redress incidences that threatened to interfere with the voting and tallying process.
INCIDENCE 1

In Nairobi City County\textsuperscript{57}, Ruaraka Constituency, Utalii Ward at Drive in Primary School Polling Centre\textsuperscript{58}, rowdy youths attempted to storm into the polling station. There was a scuffle at the school gate but order was restored by the police officers present.

INCIDENCE 2

In Nairobi City County, Ruaraka Constituency, Lucky Summer Ward at Tiba Junior Academy Polling Centre\textsuperscript{59}, violence erupted when a rowdy youth attempted to break the school gate. The incidence was as a result of some members of the public who didn’t want to queue. The situation was handled by police officers in civilians’ clothes.

INCIDENCE 3

In Nairobi City County, Ruaraka Constituency, Mathare North Ward, Mathare South Social Hall and Embakasi East Constituencies, Matopeni Spring Valley Ward at the Soweto Social Hall and Embakasi Ward at the Embakasi Social Hall Polling Centres respectively. The youth attempted to disrupt the queues due to the very large number of people awaiting to cast their votes. The police managed to control the situation before it escalated further.

INCIDENCE 4

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

\textsuperscript{57} No. 047
\textsuperscript{58} No. 1402. Polling Centre Code No. 007. Registered voters 6,361 with 10 Polling Stations
\textsuperscript{59} Code No. 01404, Polling Centre Code No. 014. Registered voters 6,391 with 10 Polling Stations
\textsuperscript{60} County No. 001
\textsuperscript{61} Code No. 0023, Polling Centre Code No. 014. Registered voters 6,656 with 10 Polling Stations
INCIDENCE 5

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

4.2 Electoral Environment

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

The Presiding and Returning Officers work together with the NPS and the rest of the IEBC staff, especially the clerks, to remove, stop or reduce any irregularities that are obvious to them before and during the polling.

The Commission observed the following incidences that had a negative impact on the prevailing electoral environment;

1. Campaign materials in the form of posters within polling stations
2. Individual candidates and supporters campaigning at the polling stations
3. Voter bribery
4. Interferences or hindrances in accessing the polling station
5. Ferrying of voters
6. Restive crowds and long queues

62No. 0030, Polling Centre Code No. 054. Registered voters 1,897 with 3 Polling Stations
**4.2.1 Campaigns in and around the Polling Centres**

Sections 14 of the Elections Offences Act and Section 5 of the electoral Code of Conduct, outlaws campaigning at or around the polling centres. Out of the 1,218 polling stations monitored, the Commission documented cases of campaign activities in 55(45%) polling stations where candidates were directly asking people to vote for them, interacting with the voters along the queues while issuing notes or directions on who to vote for, presence of advertising materials through posters, branding, campaign regalia or persons wearing campaign materials and donning party-coloured attires at or around the polling stations.

The Commission observed and documented the following;

**INCIDENCE 1**

In Busia County at Ministry of Public Works Polling Centre, Ag’orom Ward, Teso South Constituency, Busia County the banner of candidates Captain Ali Noor was mounted closer to the polling centre.

**INCIDENCE 2**

In Migori County, Central Sakwa Ward at Sony Complex Nursery Polling Centre, leaflets were littered on the ground calling on people to vote for ODM’s MCA candidate Gershom Owi.

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63 County No. 40  
64 Code No. 01127, Polling Centre Code No. 005. Registered voters 906 with 2 Polling Stations  
65 Code No. 1268, Polling Centre Code No. 071. Registered voters 1,033 with 2 Polling Stations
INCIDENCE 3

In Nairobi City County, Woodley/Kenyatta Golf Course Ward, Kibra Constituency at Upper Hill Secondary School Polling Centre, free copies of The People Daily which had the headlines ‘VOTE WISELY’ and a photo of the Presidential candidate Uhuru Kenyatta and his deputy William Ruto on the front page were distributed.

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

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66Code No. 1389, Polling Centre Code No. 011. Registered voters 1,980 with 3 Polling Stations
67Code No. 0602, Polling Centre Code No. 013. Registered voters 5,264 with 8 Polling Stations
INCIDENCE 4

In Nairobi City County, Starehe Constituency, Ngara Ward, Parklands Primary School\(^{68}\) Polling Centre, posters of the MCA candidate Joel Baite Ikiungu were stuck on the floor entrance and the fence leading to the Polling Centre. A similar incident was witnessed at Embakasi East Constituency, Embakasi Ward on the main road leading to both Embakasi Primary School\(^{69}\) and Embakasi Social Hall.

\(^{68}\)Code No. 1440, Polling Centre Code No. 009. Registered voters 1,560 with 3 Polling Stations
\(^{69}\)Code No. 1423, Polling Centre Code No. 006. Registered voters 9,101 with 14 Polling Stations
INCIDENCE 5

In Mombasa County, Changamwe Constituency, Chaani Ward, Mikadini Primary School[70] Polling Centre, campaign posters for the Independent candidate Elias Fondo were mounted at the entrance gate. Another Independent candidate Ali Bwenge who vied for MCA in the same Chaani Ward was campaigning at the same Polling Centre.

Photo 35: Campaign posters Mombasa County, Nyali Constituency, Ziwa la Ng’ombe Ward at National Industrial Training Authority[71] Polling Centre. (Photo courtesy: KNCHR 2017)

INCIDENCE 6

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

[70] Code No. 0005, Polling Centre Code No. 023 Registered voters 3,880 with 6 Polling Stations
[71] Code No. 0017, Polling Centre Code No. 008 Registered voters 3,564 with 8 Polling Stations
[72] Code No. 0016, Polling Centre Code No. 001 Registered voters 5,138 with 8 Polling Stations
INCIDENCE 7

In Kwale County, Msambweni Constituency, Gombato Bongwe Ward, Jogoo Football Grounds Polling Centre, Gombato Bongwe Ward, the MCA candidate Tumaini Mwachauga was witnessed campaigning at the Polling Centre.

INCIDENCE 8

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

INCIDENCE 9

In Marsabit County, Saku Constituency, Sagante/Jalde Ward at St. Peter’s Primary School Polling Centre, voters were issued with small pieces of paper with names indicating who to vote for. These papers had the names of candidates; Mohamud Mohamed Ali, Gido Ali Raso, Godana Hargura, Sofia Sheikh Adan and Sofa Katelo.

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

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

INCIDENCE 10

In Machakos County, Mavoko Constituency, Syokimau/Mlolongo at Syokimau borehole Polling Centre campaign posters with images of candidates were pinned on the walls of the Polling Station with the IEBC banner was placed directly above the posters.
4.2.2 Interference at Polling Centres

KNCHR monitored and documented incidences at various polling stations that hindered accessibility which further affected the right to vote. The following are sample incidences observed and documented:

**INCIDENCE 1**

In Nairobi City County, Mathare Constituency, Ngei Ward at Lions Health Clinic\(^\text{a}\) Polling Centre, at around 4:30 p.m. some youths who had congregated at the gate, prevented vehicles from accessing the Polling Centre. In the process IEBC driver and officer were barred from accessing the venue by the rowdy youth. The driver was assaulted by the youths but the Police Officers intervened to calm the situation.

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\(^{a}\)Code No. 1448, Polling Centre Code No. 007 Registered voters 13,054 with 19 Polling Station
INCIDENCE 2

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

Photo 37: Party agents crowding over an assisted voter at Muslim Primary School, Mumias Central ward, Mumias West Constituency, Kakamega County. (Photo courtesy: KNCHR 2017)

INCIDENCE 3

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

84County No. 37
85Code No. 1020, Polling Centre Code No. 007 Registered voters 2,227 with 4 Polling Station
86County No. 11
87Code No. 0242, Polling Centre Code No. 015 Registered voters 2,076 with 3 Polling Station
INCIDENCE 4
In Isiolo County, Isiolo South Constituency, Kinna Ward at Bibi Water Supply Polling Centre, the supporters of the MCA candidate Fayo Abduba were sending a person to accompany particular voters to make sure that they voted for the aspirant. They were also seen displaying his photograph to voters while on the queue asking them to vote based on the displayed photograph.

INCIDENCE 5
In Kirinyaga County, Ndia constituency, Kiine Ward at Kibirigwi Primary School Polling Centre, one of the chief campaigners of the gubernatorial candidate, Anne Waiguru was spotted wearing a red jacket with a Jubilee logo on the front right side. He was seen moving from one queue to another spreading the message on whom he was representing in that station.

INCIDENCE 6
In Kiambu County, Kiambu Constituency, Ting'ang'a Ward at Ting'ang'a Model Primary School Polling Centre, some of the IEBC Jubilee accredited agents who were supposed to be inside the Polling Station were seen outside with the voters on the queues campaigning for the party.

INCIDENCE 7
In Laikipia County, Laikipia North Constituency, Sosian Ward at Mathenge Farm Polling Centre, in two Polling Stations, the accredited party agents were allowed to inform the voters whom they should vote for. At this point, the Commission’s monitoring officer raised this issue as a matter of concern thereby prompting the Presiding Officer to order that no party agent would be allowed to talk inside the Polling Station again.

88Code No. 0249, Polling Centre Code No. 028 Registered voters 900 with 2 Polling Station
89County No. 20
90Code No. 0510, Polling Centre Code No. 035 Registered voters 1,688 with 3 Polling Station
91Code No. 0582, Polling Centre Code No. 003 Registered voters 3,271 with 5 Polling Station
92County No. 31
93Code No. 0822, Polling Centre Code No. 015 Registered voters 4,410 with 7 Polling Station
INCIDENCE 8

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

INCIDENCE 9

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

4.2.3 Bribery and Inducement

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

The Commission monitored and documented the following cases of bribery:

INCIDENCE 1

In Busia County, Nambale Constituency, Nambale Township Ward at Nambale Youth Polytechnic Polling Centre, two party agents for the MCA candidates Mwajuma Toloi and a Mr. Odongo were observed bribing voters at the gate to the Polling Centre. They were issuing voters with KES 50 notes. However, when they saw the Commission’s monitoring officer, they fled the scene.
INCIDENCE 2

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

Photo 38: The party agent (left) for MCA Suset Kagwi at Maua Police Station after being arrested for issuing bribes at Kabukuru Primary School Polling Centre in Igembe Central Constituency, Meru County. (Photo courtesy: KNCHR 2017)

INCIDENCE 3

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

\textsuperscript{99}County No. 12
\textsuperscript{100}Code No. 0257, Polling Centre Code No. 035 Registered voters 708 with 2 Polling Station
\textsuperscript{101}County No. 4
\textsuperscript{102}Code No. 0090, Polling Centre Code No. 057 Registered voters 3,059 with 5 Polling Station
INCIDENCE 4

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

INCIDENCE 5

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

INCIDENCE 6

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

4.2.4 Ferrying of Voters

The Commission documented cases where there was an apparent direct link between ferrying of voters with specific candidates. According to the elections offences act, ferrying of voters is considered as a form of inducement and motivation for the voters to reciprocate and vote for the candidates facilitating their movement to the polling centres. Some of these cases documented were:

103 Code No. 0100, Polling Centre Code No. 072 Registered voters 1,831 with 3 Polling Station
104 Code No. 0242, Polling Centre Code No. 012 Registered voters 3,653 with 6 Polling Station
105 County No. 28
106 Code No. 0742, Polling Centre Code No. 030 Registered voters 1,003 with 2 Polling Station
INCIDENCE 1

In Laikipia County, Laikipia North Constituency, Sosian Ward at Mathenge Farm Polling Center\(^\text{107}\), there was mass voter transportation from different locations organised by the gubernatorial candidate Nderitu Mureithi and the Laikipia North MP candidate Dr. James Lowassa.

INCIDENCE 2

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

4.2.5 Restive crowds and long Queues

Section 38A of the Election Act 2011, provides that for purposes of providing efficient and effective conduct of elections, the number of voters per polling station shall not exceed 700. This law was amended in 2016 due to the lessons drawn from the 2013 General Election that was characterized by very long queues and uncontrollable crowds thereby clogging the voting process.

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

\(^{107}\) Code No. 0822, Polling Centre Code No. 015 Registered voters 4,410 with 7 Polling Station

\(^{108}\) Code No. 0249, Polling Centre Code No. 025 Registered voters 1,180 with 2 Polling Station
These scenarios were witnessed in the following areas;

**INCIDENCE 1**

In Nairobi City County, Kibra Constituency, in Sarangombe Ward at Olympic Primary School\(^{109}\) Polling Centre, there were large numbers of people that queued to access the Polling Centre with a lot of difficulties.

A similar situation was also witnessed at Embakasi Social Hall\(^{110}\) Polling Centre in Embakasi East Constituency and Kariokor Social Hall\(^{111}\) Polling Centre in Ziwani/Kariokor, Starehe Constituency. In these two polling centres, there where more than 15 polling Stations which were crammed in one hall with one common entrance. This caused confusion in terms of locating one’s actual Polling Station. Equally the ventilation was poor and some people even missed to vote because by the time they located their Polling Station they were already late and fatigued.

**INCIDENCE 2**

In Nairobi City County, Dagoretti North Constituency, Kabiro Ward at St. Anthony’s Mixed High School\(^{112}\) Polling Centre, the Commission noted that by 7:45 a.m. the crowds had become extremely long and unmanageable due to the layout of the Polling Centre. It had a very narrow entrance to the Polling Stations. This slowed down the voting process and by 8:00 a.m. the voters had started getting unruly. This led to a lorry full of National Police Service Officers from the GSU to be deployed to quell the situation. Unfortunately, women with children and the older members of society were caught up in the melee.

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\(^{109}\) Code No. 1390, Polling Centre Code No. 021 Registered voters 7,896 with 12 Polling Station

\(^{110}\) Code No. 1423, Polling Centre Code No. 005 Registered voters 14,292 with 21 Polling Station

\(^{111}\) Code No. 1442, Polling Centre Code No. 017 Registered voters 13,404 with 20 Polling Station

\(^{112}\) Code No. 1375, Polling Centre Code No. 020 Registered voters 6,103 with 9 Polling Station
Photo 39: Long queues witnessed at ACK Kahawa Sukari Polling Centre in Kahawa Sukari Ward, Ruiru Constituency in Kiambu County. (Photo courtesy: KNCHR 2017)

**INCIDENCE 3**

In Nairobi City County, Embakasi North Constituency, Dandora Ward at Tom Mboya Primary\(^\text{113}\) Polling Centre, the voters’ queues were quite long in the morning thereby overwhelming the IEBC Clerks. The voters started storming into the Polling Stations uncontrollably and that also overwhelmed the Presiding Officers and their Clerks.

**INCIDENCE 4**

In Machakos County, Mavoko Constituency, Athi River Ward at Athi River Social Hall\(^\text{114}\) Polling Center, there was little space for voters to queue within the polling centre and thus they had to queue outside along the streets.

\(^\text{113}\)Code No. 1414, Polling Centre Code No. 010 Registered voters 13,943 with 20 Polling Station

\(^\text{114}\)Code No. 0394, Polling Centre Code No. 005 Registered voters 2,092 with 3 Polling Station
INCIDENCE 5

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

\(^{115}\)Code No. 1422, Polling Centre Code No. 004 Registered voters 19,399 with 28 Polling Station
INCIDENCE 6

In Thigio Primary School\textsuperscript{16} in Limuru Constituency, Kiambu County\textsuperscript{17}, Soweto and Embakasi Social Halls in Matopeni and Embakasi Wards respectively, Ruaraka and Embakasi East Constituencies in Nairobi City County the IEBC line management clerks were overwhelmed by the number of voters. In Ruaraka and Embakasi East, the use of the Social Halls demarcated into a number of polling stations was highly inappropriate due to poor ventilation and no physical barriers or markings to ensure that the same was made more orderly. Further, it took the intervention of additional Police Officers to ensure that the large number of voters were more manageable in the Social Halls.

INCIDENCE 7

In Laikipia County, Laikipia East Constituency, Thingithu Ward at Railway Club\textsuperscript{18} Polling Centre, long queues were witnessed moving towards a makeshift tent that was the Polling Station.

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{photo41.png}
\caption{Long queues of voters at Railway Club Polling Center, Thingithu Ward, Laikipia East constituency, Laikipia County. (Photo courtesy: KNCHR 2017)}
\end{figure}

\textsuperscript{16}Code No. 0603, Polling Centre Code No. 026. Registered voters 2,338 with 4 Polling Stations
\textsuperscript{17}County No. 22
\textsuperscript{18}Code No. 0819, Polling Centre Code No. 053 Registered voters 2,673 with 4 Polling Station
INCIDENCE 8

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

Photo 42: Long queues of voters at Matopeni Primary School Polling Centre, Biashara Ward, Ruiru Constituency in Kiambu County.

INCIDENCE 9

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

Code No. 0503, Polling Centre Code No. 090 Registered voters 6,53413 with 10 Polling Station
Code No. 027
Code No. 0703, Polling Centre Code No. 042 Registered voters 544 with 1 Polling Station
INCIDENCE 10

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

Photo 43: The deplorable state of the Polling Station at the Mtwapwa Chief’s Office in Shimo la Tewa Ward, Kilifi South Constituency, Kilifi County

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122County No. 003
123Code No. 0060, Polling Centre Code No. 028 Registered voters 12,524 with 18 Polling Station
The long queues and overcrowding had an impact on voters in that they had to wait for long hours before casting their vote, others returned home and never cast their votes which led to disenfranchisement.

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

The Commission also noted that in some precincts, IEBC lacked the proper signage and labelling of Polling Stations and that would have easily assisted and

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124 Code No. 0726, Polling Centre Code No. 057 Registered voters 3,072 with 5 Polling Station
guided the voters to their appropriate Polling Stations. A printout of the register should have been affixed at the entrance or another proximate area to the Polling Station to ease the congestion. The IEBC’s SMS verification system and the public portal was an appropriate system.

4.3 Polling, Counting and Results Transmission Process

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

4.3.1 Commencement of Voting

The election regulations provide that voting commences from 6:00a.m. The Commission undertook to monitor a number of polling stations country-wide to ascertain this compliance. Prior to the opening of the polling stations, the Presiding Officer (PO) briefed all present specifically the IEBC clerks, party agents and observers on how the process was to begin and proceed throughout the day. The PO displayed to those present the 6 ballot boxes to confirm they were empty. The boxes were then sealed and the seal numbers recorded.
The Commission observed that in most polling stations IEBC officials had all election materials. Further there was orderly flow of voters and the Presiding Officers adhered to the opening time and carried out the laid down opening procedures including the opening up of the KIEMS kits. Appropriate measures had been put in place to ensure easy accessibility by PWDs, the sick, expectant women and the older members of society. However, a few polling stations experienced some delays for instance:

**INCIDENCE 1**

In Kericho County\(^{125}\), Ainamoi Constituency, Kipchebor Ward at Kericho Boarding Primary School\(^ {126}\) Polling Centre, a Polling station opened at 7:50a.m since the PO was unable to unlock the KIEMS kit. The problem was later sorted out by the IEBC ICT clerk who came from the Constituency office.

\(^{125}\)County No. 35
\(^{126}\)Code No. 0947, Polling Centre Code No. 054 Registered voters 1,524 with 3 Polling station
INCIDENCE 2

In Kajiado County, Kajiado North, Ngong Ward at Ngong Township Primary School Polling Centre, a Polling Station opened at 7:20 a.m. because the KIEMS kit malfunctioned.

INCIDENCE 3

In Nakuru County, Rongai Constituency, Visoi Ward, Lengenet FCS Stores Polling Station opened on time but the voting began at 7:07 a.m., as the KIEMS kit kept switching on and off before it was rectified.

INCIDENCE 4

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

INCIDENCE 5

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

INCIDENCE 6

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

127Code No. 0915, Polling Centre Code No. 032 Registered voters 3,151 with 5 Polling station
128County No. 32
129Code No. 0862, Polling Centre Code No. 067 Registered voters 604 with 1 Polling station
130Code No. 0603, Polling Centre Code No. 026 Registered voters 2,338 with 4 Polling station
131Code No. 1034, Polling Centre Code No. 036 Registered voters 637 with 1 Polling station
132Code No. 1040, Polling Centre Code No. 056 Registered voters 674 with 1 Polling station
In Kirinyaga County, Kirinyaga Central Constituency, Kerugoya Ward at St Joseph’s Kerugoya Boys Polling Centre and Kaitheri Youth Polytechnic Polling Centre, there was delay because party agents were late and therefore the Presiding Officer could not start the process without them.

The Commission noted that some of the reasons for late opening at some Polling Stations was as a result of the Presiding Officers having difficulties in logging into the KIEMS kit, lack of some voting materials e.g. indelible ink, non-responsiveness of the KIEMS kit and late arrival of party agents.

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

4.3.2 The Kenya Integrated Elections Management System (KIEMS)

The identification of voters using the KIEMS kit was the first step in determining whether voters were able to cast their ballot at the polling stations. The Presiding Officer (PO) was the key person charged with the responsibility of unlocking the kit using a specific and individualized password and the barcode of the ballot papers issued. This was to be done in the presence of the all election officials and observers present to enhance transparency of the process.

Out of 1,218 polling stations monitored by KNCHR, the findings on the efficiency of the KIEMS showed that majority of the IEBC officers were able to access the system. Where there were challenges, the Commission recorded a delay of a maximum 10 minutes. There were a few recorded cases where the POs forgot the passwords and had to go for a reset at the tallying centre or call for assistance.

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

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

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

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

One of the anomalies identified was that Form 32A were not sufficient in numbers. Where the original forms ran out, some POs made photocopies which were not serialized, making them difficult to account for. The other anomaly was that Form 32A were unevenly distributed from one polling station to another. The Commission recorded a few cases where voters were turned away because the form was not availed to the PO as part of the electoral material. KNCHR further recorded incidences where POs agreed with the party agents available to allow persons with ID but who could not be identified by use of the three steps to still cast their ballot. In other cases, the voters did not even fill Form 32A. Where voters who were not identified through the three steps but their names were on the manual register pinned at the Polling Centre, the POs issued them with Form 32A and allowed them to vote. In some Polling Centres, when voters missed to be identified using their fingerprints, the PO did not proceed to alphanumeric or ID scan and thus did not appropriately apply the use of Form 32A despite having them.

It is clear that the POs in various Polling Stations had a different understanding of the use of Form 32A and how to administer it. It is important to note that if a voter cannot be identified in the KIEMS kit then it means that they cannot equally be found in the printed manual register because the latter is supposed to be a duplicate of the KIEMS.
2. Domestic, Regional and International Observers and Monitors

A General Election is not only a national exercise with but one with varied interests regionally and globally. Thus Election observers and monitors are crucial in electoral processes.

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

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

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

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

**Domestic Observers**

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

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

**Regional Observers**

African Union (AU), South African High Commission and Uganda High Commission.

**International Observers**

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

The role of observers was very critical as it acted as a deterrent to any electoral malpractices. Further the presence of observers also forestalled, stopped or reduced any political pressure that would have impacted on the role of Presiding Officers or the Returning Officers during opening, voting, closing, counting and transmission.

**INCIDENCE: OBSERVATION.**

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

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135 Code No. 1427, Polling Centre Code No. 003 Registered voters 14,963 with 22 Polling Station
The Commission noted that there were no major incidences hindering the election observer’s work either by IEBC or the security agents present.

II. Political Party and Independent Agents

The Elections Act 2011 provides for the accreditation of political party and independent candidates’ agents. The agents are appointed by the respective political parties or independent candidates to monitor the electoral process and ensure their interests are protected all through. Unlike observers, agents are more actively engaged in the electoral process and IEBC is obligated to ensure that any issues raised is considered, clarified and a decision made. The Political Parties and independent candidates are expected to submit the agents’ names and details to IEBC for accreditation. The agent’s role among others includes: confirmation of the integrity of all electoral material before polling starts, observe the voting, assisting voters where need be and closing, confirming counting, collating and tallying of votes and transmission and escorting the sealed ballot boxes to the Constituency Tallying Centres.

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

The Commission observed that in most of the Polling Centres there was at least an agent and in instances where they were more than one, the Presiding Officer asked them to re-distribute themselves accordingly to other Polling Stations. In some instances, there were queries regarding the agent’s identification documents. Some agents had only Political Parties’ or Independent candidates’ letters of appointment, while others had badges from IEBC. Despite this disparity, only few cases resulted in the political agents being prevented from accessing the Polling Stations.
The Commission noted a number of issues that impacted directly on the capacity and role of the Political Parties and independent candidates’ agents. It was apparent that many agents had not received any or quality training and were thus operating from their previous knowledge and engagement in past General Elections. Indeed, many of them had no digital training and did not understand the use of the KIEMS kit requirements.

III. Assisted voters

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

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

The Commission was concerned about the violation of the right to privacy for persons who required assistance at polling centres. The presence of agents witnessing the voter’s choice of candidate is not representative of the secrecy of the ballot. This was further aggravated by the plight visually or hearing impaired voters who had to shout the name of their preferred candidate. It is the responsibility of IEBC to ensure that there are ballot papers written in Braille at the bear minimum.
The Commission also noted that in many Polling Stations, there were either one or two booths for the voters. In Polling Centres where KNCHR monitored there were no special booths for persons with disabilities, the older persons, sick or people of shorter physique due to the height of the ordinary booth. It is worth noting that the appropriate booths were available at the Constituency and County warehouses but were not utilized.
Table 2: Select KIEMS related incidences

<table>
<thead>
<tr>
<th>Issue</th>
<th>Polling Station Occurrence</th>
<th>County</th>
<th>Constituency</th>
<th>Ward</th>
<th>Polling Station/Centre</th>
</tr>
</thead>
<tbody>
<tr>
<td>KIEMS</td>
<td>The system malfunctioned for 1hr 20 minutes. Manual backup was not used as the PO immediately contacted the IEBC ICT Officer who gave the necessary assistance.</td>
<td>Kajiado</td>
<td>Kajiado North</td>
<td>Ngong</td>
<td>Ngong Township Primary School¹³⁶</td>
</tr>
<tr>
<td></td>
<td>The system malfunctioned but the PO was able to sort out the problem within 30 minutes.</td>
<td>Kisumu¹³⁷</td>
<td>Kisumu Central</td>
<td>Market</td>
<td>Kisumu Social Center (Tents)¹³⁸</td>
</tr>
<tr>
<td></td>
<td>The system malfunctioned and voting started later in the afternoon. The system started working after the memory card was removed and replaced.</td>
<td>Kiambu</td>
<td>Githunguri</td>
<td>Komothai</td>
<td>Gathiruini Primary School¹³⁹</td>
</tr>
<tr>
<td></td>
<td>The system did not work for 40 minutes but was later restored by the IEBC Officers.</td>
<td>Nandi¹⁴⁰</td>
<td>Nandi Hills</td>
<td>Ol’ Lessos</td>
<td>Ol’Lessos ACK Church¹⁴¹</td>
</tr>
<tr>
<td>Names missing in KIEMS</td>
<td>The voters who could not be identified using the system were referred to IEBC Constituency Tallying Centre to be assisted by the IEBC officers.</td>
<td>Kisumu</td>
<td>Kisumu East</td>
<td>Kajulu</td>
<td>Mamboleo Market¹⁴²</td>
</tr>
<tr>
<td></td>
<td>16 elderly voters were turned away because their names were missing from the system.</td>
<td>Kitui¹⁴⁴</td>
<td>Kitui East</td>
<td>Nyalenda ‘A’</td>
<td>Kassagam Secondary School¹⁴³</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Imale Primary School¹⁴⁵</td>
</tr>
</tbody>
</table>

¹³⁶Code No. 0915, Polling Centre Code No. 032 Registered voters 3,151 with 5 Polling Station
¹³⁷County No. 42
¹³⁸Code No. 0581, Polling Centre Code No. 051 Registered voters 671 with 1 Polling Station
¹³⁹Code No. 0233, Polling Centre Code No. 002 Registered voters 613 with 1 Polling Station
¹⁴⁰County No. 29
¹⁴¹Code No. 0763, Polling Centre Code No. 077 Registered voters 1,111 with 2 Polling Station
¹⁴²Code No. 1186, Polling Centre Code No. 009 Registered voters 3,988 with 6 Polling Station
¹⁴³Code No. 1189, Polling Centre Code No. 032 Registered voters 2,391 with 4 Polling Station
¹⁴⁴County No. 15
¹⁴⁵Code No. 0362, Polling Centre Code No. 085 Registered voters 438 with 1 Polling Station
<table>
<thead>
<tr>
<th>Issue</th>
<th>County</th>
<th>Constituency</th>
<th>Ward</th>
<th>Polling Station/Centre</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Presiding Officers in 2 Polling Stations sent away voters who could not be identified using the system.</td>
<td>Kitui</td>
<td>Kitui Central</td>
<td>Kyangwithya</td>
<td>Ngwani Market&lt;sup&gt;146&lt;/sup&gt;</td>
</tr>
<tr>
<td>The voters whose names could not be identified using the KIEMS were asked to leave and therefore could not vote.</td>
<td>Meru</td>
<td>Igembe North</td>
<td>Amwathi</td>
<td>Kamweline Primary School&lt;sup&gt;147&lt;/sup&gt;</td>
</tr>
<tr>
<td>The Manual Register was used to identify the voters whose names were missing in the KIEMS.</td>
<td>Siaya</td>
<td>Bondo</td>
<td>West Sakwa</td>
<td>Bondo County Council Hall&lt;sup&gt;148&lt;/sup&gt;</td>
</tr>
<tr>
<td>The PO would send a message to the IEBC systems to get a verification code to ensure that the person being assisted was in the system. This would be done when the person was identified in the register but their fingerprints would not be read by the system.</td>
<td>Kajiado</td>
<td>Kajiado North</td>
<td>Ngong</td>
<td>Ngong Township Primary</td>
</tr>
<tr>
<td>The voters whose names could not be picked using biometric, used the manual register and their names crossed out after voting.</td>
<td>Kiambu</td>
<td>Kikuyu</td>
<td>Kikuyu</td>
<td>Kikuyu Township Primary School&lt;sup&gt;149&lt;/sup&gt;</td>
</tr>
<tr>
<td>The PO refused to use the Manual Register to check voters' names which were missing. They were instead referred to the Constituency Returning Officer.</td>
<td>Kisumu</td>
<td>Kisumu East</td>
<td>Nyalenda 'A'</td>
<td>Kassagam Secondary School</td>
</tr>
<tr>
<td></td>
<td>Nakuru</td>
<td>Bahati</td>
<td>Lanet/Umaja</td>
<td>KamFam Trading Centre&lt;sup&gt;150&lt;/sup&gt;</td>
</tr>
</tbody>
</table>

<sup>146</sup>Code No. 0358, Polling Centre Code No. 143 Registered voters 743 with 2 Polling Station

<sup>147</sup>Code No. 0265, Polling Centre Code No. 078 Registered voters 379 with 1 Polling Station

<sup>148</sup>Code No. 1179, Polling Centre Code No. 081 Registered voters 1,333 with 2 Polling Station

<sup>149</sup>Code No. 0599, Polling Centre Code No. 034 Registered voters 11,889 with 17 Polling Station

<sup>150</sup>Code No. 0868, Polling Centre Code No. 071 Registered voters 2,215 with 4 Polling Station
4.4 Close of Polling

The Elections (General) Regulation, 2012 provides the time for closing the polling station to be 5 p.m. The law permits the presiding officer to extend time based on the minutes or hours lost if the polling station opening time was interrupted for valid reasons and therefore opened later than 6:00a.m. The extended duration is based on the amount of time lost during the opening of the Polling Station. This scenario is announced at the beginning or at the time when that interruption occurs and is rectified and therefore known to all interested persons in that particular polling station. Moreover, any person who is on the queue for intent and purpose of voting before this time is allowed to vote despite the fact that voting time may extend past 5:00 p.m.

The Commission observed that various IEBC officials in the polling stations, complied with the laid down regulations and where there was a variance, reasons were given for early or late closure of the polling stations and the same recorded. The Commission’s monitoring parameters as far as closure of polling

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Photo 48: IEBC Officials using mobile phones as torch-light at Ogango Primary School Polling Center, Kolwa Central Ward, Kisumu East Constituency, in Kisumu County at the closure of the Polling Station. (Photo courtesy: KNCHR 2017)
was concerned included the following: “Whether polling stations closed at 5:00 p.m., if not the reasons given by the PO” and “whether there were any voters on the queue and if so were they allowed to vote?”

The Commission observed that Moipei Primary School Polling Centre, Ildamat Ward, Kajiado Central Constituency, Kajiado County closed at 4:00 p.m. which was earlier than the prescribed time and contrary to the provisions in law. The reason given by IEBC was that there were no more voters left on the queue. The Regulations provide that a polling station is to be closed at 5:00 p.m. irrespective of whether there are voters on the queue. This should be contrasted with HGM Kinoo Primary School Polling Centre, Kinoo Ward, Kikuyu Constituency, Kiambu County which by 4:00 p.m. had no one on the queue in any of its polling stations but the polling centre remained opened.

Further at Embakasi Social Hall Polling Centre, Embakasi Ward, Embakasi East Constituency in Nairobi City County, the common gate to the Polling Centre was closed at exactly 5:00 p.m. despite the fact that there were many polling stations which had opened at different times and some were still open a few minutes after 5:00 p.m. The Police Officers at the gate refused the voters entry stating that they were late. While this may have been so, they were each going to different polling stations and therefore at that time not all polling stations were closed. The other reason advanced for polling stations closing past the prescribed time of 5:00 p.m. Include:

I. Delayed opening of polling stations

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

Code No. 0917, Polling Centre Code No. 011 Registered voters 875 with 2 Polling Station
Code No. 0600, Polling Centre Code No. 035 Registered voters 2,953 with 5 Polling Station
Code No. 1423, Polling Centre Code No. 005 Registered voters 14,292 with 21 Polling Station
INCIDENCES

- Onyalo Primary School and Migori Muslim Primary Polling Centres both in Suna Central Ward, Suna East Constituency, Migori County closed at 5:30 p.m.

- Kathome Trading Centre Polling Centre, Mua Ward, Machakos Town Constituency, Machakos County, closed at 7:30 p.m.

- Samoei Nursery School Polling Centre, Nandi Hills Ward, Nandi Hills Constituency, Nandi County, closed at 6:10 p.m.

- Eldume Primary School Polling Centre Polling Station 001, Ilchamus Ward, Baringo South Constituency, Baringo County, closed at 5:51 p.m.

- Parkarin Primary School in Marigat Ward, Sandai Primary School, Cheploch Primary School, Chepkotoyan Primary School Polling Center all in Mochongoi Ward, Baringo South Constituency, Baringo County, closed at 5:30 p.m.

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

The Commission observed that ten (10) polling stations experienced malfunctioning of KIEMS kit which interfered with and/or caused delay during the voting process. However, additional time was given to allow voters to exercise their right to vote and this resulted in these stations closing after 5:00p.m. The following are specific cases:

**INCIDENCES**

- At Namaondo Primary School\(^{168}\) Polling Centre, Mukunyuni Ward, Kabuchai Constituency, Bungoma County\(^{169}\), closed at 6:00p.m. since the process had stopped for one hour;
- At Kihunguro Primary School\(^{170}\) Polling Centre, Kakuzi/Mitumbiri Ward, Gatanga Constituency, Muranga County\(^{171}\), closed at 5:40p.m. due to failure of KIEMS kit at the commencement of the process;
- At St. Joseph Kerugoya Boys Primary School Polling Centre, Polling Station No. 005, Kerugoya Ward, Kirinyaga Central Constituency, Kirinyaga County;
- At Igoji Boys Secondary School Polling Station\(^{172}\), Igoji East Ward, South Imenti Constituency, Meru County, closed at about 9:00 p.m;
- At Mororo Primary School Polling Station No. 002, Madogo Ward, Bura Constituency, Tana River County;
- At Imani Primary School\(^{173}\) Polling Center, Kaloleni Ward, Kaloleni Constituency, Kilifi CountyAt Shariff Nassir Secondary School\(^{174}\) Polling Centre, Tononoka Ward, Mvita Constituency, Mombasa County, delayed closing by 3 hours to compensate for the technical hitches experienced with the KIEMS;

\(^{168}\)Code No. 1088, Polling Centre Code No. 065 Registered voters 807 with 2 Polling Stations
\(^{169}\)County No. 39
\(^{170}\)Code No. 0546, Polling Centre Code No. 021 Registered voters 1,179 with 2 Polling Stations
\(^{171}\)County No. 21
\(^{172}\)Code No. 0291, Polling Centre Code No. 027 Registered voters 572 with 1 Polling Station
\(^{173}\)Code No. 0065, Polling Centre Code No. 039 Registered voters 684 with 1 Polling Station
\(^{174}\)Code No. 0028, Polling Centre Code No. 027 Registered voters 1,093 with 2 Polling Stations
At Diemo Primary School Polling Centre\textsuperscript{175}, Central Seme Ward, Seme Constituency, Kisumu County;

At Misikhu Girls Boarding Primary School\textsuperscript{176} Polling Centre, Ndivisi Ward, Webuye East Constituency, Bungoma County, closed at 5:20 p.m. because the KIEMS machine went off due to lack of power and charged batteries; and

At Kathome Trading Centre Polling Centre, Polling Station No.001, Mua Ward, Machakos Town Constituency, Machakos County, closed at 7:30p.m., due to KIEMS failure. The process was delayed by 2 hours.

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

**INCIDENCES**

- Uhuru Primary School\textsuperscript{177} Polling Centre, Nakuru Town West Ward, London Constituency, Nakuru County;
- Mukhonje Primary School\textsuperscript{178} Polling Centre, Isukha West Ward, Shinyalu Constituency, Kakamega County;
- Embakasi Social Hall Polling Centre, Polling Station No. 005, Embakasi Ward, Embakasi East Constituency, Nairobi City County; and
- Ringa Primary School\textsuperscript{179} Polling Station, Kedowa/Kimugul Ward, Kipkelion East Constituency, Kericho County.

\textsuperscript{175}Code No. 1203, Polling Centre Code No. 028 Registered voters 1,322 with 2 Polling Stations
\textsuperscript{176}Code No. 1105, Polling Centre Code No. 023 Registered voters 1,761 with 3 Polling Stations
\textsuperscript{177}Code No. 0871, Polling Centre Code No. 011 Registered voters 762 with 2 Polling Stations
\textsuperscript{178}Code No. 1046, Polling Centre Code No. 082 Registered voters 750 with 2 Polling Stations
\textsuperscript{179}Code No. 0937, Polling Centre Code No. 032 Registered voters 671 with 1 Polling Station
The Commission noted that some voters were turned away because they had queued in the wrong polling stations and by the time they made their way to the correct queues, their respective polling stations had already closed. This was particularly so in the polling centres that had huge voter turnout and the voting venues were not properly organised such as social halls. This was the case in Gilgil DEB Primary School Polling Centre, Gilgil Ward, Gilgil Constituency in Nakuru County, Embakasi Social Hall, Embakasi Ward, Embakasi Constituency in Nairobi City County and at Water Kiosk Polling Centre, Bulla Pesa Ward, Isiolo North Constituency in Isiolo County.

Despite the foregoing, the Commission notes that IEBC officials complied with the law in respect to voters who arrived at a polling station/centre after 5:00 p.m. (or the extended time) which was the official closure time. Such voters were not permitted to vote and were instead turned away to their disappointment as witnessed at:

**INCIDENCES**

- Bahawani Primary School Polling Centre, Kadzandani Ward, Nyali Constituency, Mombasa County;
- Makutano Market Polling Centre, Municipality Ward, North Imenti Constituency, Meru County;
- Ilkarian Primary School Polling Centre, Polling Station No. 001, Loigorion Ward, Kilgoris Constituency, Narok County;
- Busara Primary School Polling Centre, Umoja II Ward, Embakasi West Constituency, Nairobi City County;
- Mwembe-Tayari Public Health Polling Centre, Tononoka Ward, Mvita Constituency, Mombasa County; and
- Mwijo Primary School Polling Centre, Kayafungo Ward, Kaloleni Constituency, Kilifi County.

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<table>
<thead>
<tr>
<th>Code No.</th>
<th>Polling Centre Code No.</th>
<th>Registered voters</th>
<th>Polling Stations</th>
</tr>
</thead>
<tbody>
<tr>
<td>0844</td>
<td>006</td>
<td>4,326</td>
<td>7</td>
</tr>
<tr>
<td>0020</td>
<td>024</td>
<td>2,028</td>
<td>3</td>
</tr>
<tr>
<td>0276</td>
<td>018</td>
<td>2,563</td>
<td>4</td>
</tr>
<tr>
<td>0886</td>
<td>110</td>
<td>2,377</td>
<td>4</td>
</tr>
<tr>
<td>1427</td>
<td>024</td>
<td>13,018</td>
<td>19</td>
</tr>
<tr>
<td>0028</td>
<td>024</td>
<td>3,334</td>
<td>5</td>
</tr>
<tr>
<td>0064</td>
<td>025</td>
<td>1,077</td>
<td>2</td>
</tr>
</tbody>
</table>
In conclusion, the Commission observed that most of the polling centres it monitored complied with the Regulations on closing of polls. Polling Stations that had voters still on the queue at closing time were allowed to exercise their democratic right to vote and in a few instances where voters turned up after the official closing of the polling stations, they were turned away.

4.5 Counting, Collating and Tallying Process

The Commission noted that before the commencement of the counting, collating and tallying process, the POs supported by the clerks sorted and verified all the votes cast beginning with those of Presidential candidates. The Presiding Officers (POs) and Clerks rearranged the Polling Stations to ensure visibility of all the ballot boxes and allow ample counting space to ensure transparency. This was followed by the PO confirming and recording the serial number of the seals before breaking them open in the presence of the agents and observers. The ballot papers were to be sorted by only the IEBC clerks while the POs counted them according to the specific candidate, vote’s validity and invalid vote’s categories. The Commission observed that each candidate’s vote was counted separately, while tallying the rejected votes distinctly. After the entire process all bundles labelled before were returned to each of the respective empty IEBC ballot box. Each ballot box was then resealed and the seals recorded in the presence of the agents and observers.
The Commission documented 43 incidences where sorting, verification and counting of ballots cast was stopped or interrupted for various reasons including: power blackout, IEBC officials taking rest breaks, disparities of the KIEMS data and ballots cast, consensus seeking regarding the counting process especially on what constituted invalid, rejected or disputed votes, disagreements between various political parties or independent agents, interruption by candidates accompanied by rowdy supporters or agents and disagreements between the candidates agents and the POs on how to sort the ballot papers or the miscalculation of the valid votes. The Commission documented a number of Incidences relating to the sorting, verification and counting of ballots cast, which included:

188 Code No. 0635, Polling Centre Code No. 080 Registered voters 760 with 2 Polling Station
INCIDENCES

- At Muthangene Primary School Polling Centre, Abothuguchi West Ward, Central Imenti Constituency in Meru County the counting of votes was stopped for 30 minutes to enable the IEBC officials to rest after having worked for long hours;

- At St. Matthews Hall Polling Centre in Starehe Constituency, Nairobi City County, the counting of votes was stopped twice to allow the IEBC clerks and party agents to rest due to exhaustion after working for long hours;

- At Busara Primary School Polling Centre, Umoja II Ward, Embakasi West Constituency, Nairobi City County, the counting was stopped for some time when it was interrupted by some agent of Jubilee Party who were drunk and disorderly;

- At St. Dominic Primary School Polling Centre, Mwiki Ward, Kasarani Constituency, Nairobi City County, the counting stopped when an ODM agent who was outside, tried to access a Polling Station claiming that there was no agent inside that particular Polling Station representing the NASA coalition;

- At Bomu Primary School Polling Centre, Polling Station No. 014, Port Reitz Ward, in Changamwe Constituency, Mombasa County, the PO requested for a break of five minutes for the IEBC officials and agents to rest. However, the break lasted for about 30 minutes;

- At Star of the Sea Primary School Polling Centre in Mji Wa Kale/Makadara Ward, Mvita Constituency, Mombasa County, the counting stopped when a chief agent from Jubilee Party, interrupted the process complaining that the PO had allowed for the counting of the gubernatorial votes while they were to be counted last as had been agreed by all parties present;

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189Code No. 0287, Polling Centre Code No. 052 Registered voters 1,550 with 3 Polling Stations
189Code No. 1397, Polling Centre Code No. 008 Registered voters 11,883 with 17 Polling Stations
189Code No. 0001, Polling Centre Code No. 001 Registered voters 9,625 with 14 Polling Stations
189Code No. 0026, Polling Centre Code No. 004 Registered voters 1,932 with 3 Polling Stations
- At Karangi Primary School Polling Centre, Laikipia West Ward, Laikipia Constituency, Laikipia County, the counting was stopped because a KANU agent monitoring the senatorial seat wanted to force himself into the Counting hall without the necessary documentation;

- At Uriri Primary School\textsuperscript{193} Polling Centre, Polling Station 3, South Kanyamkago Ward, Uriri Constituency, Migori County, the counting was stopped for some time, due to chaos caused by some of the drunk agents;

- At Nado-Enterit Primary\textsuperscript{194} Polling Station in Keekonyokie Ward, Kajiado West Constituency, Kajiado County, the counting of votes was stopped because some agents complained that the IEBC clerks were not audible when counting forcing them to repeat the entire counting;

- At Ongata Rongai Open Air Market\textsuperscript{195} Polling Centre, Polling Station No. 022 in Ongata Rongai Ward, Kajiado North Constituency, Kajiado County, the exercise was stopped when some ODM agents were dissatisfied with the IEBC approach on sorting out the ballot papers. They demanded the PO to repeat the process and ensure that they displayed all the ballot papers as they sort them out. The interruption caused a lot of tension between the IEBC officials and the agents present. The Police Officers were called in and the PO agreed to start the whole process all over again. Despite this, no discrepancies were found;

- At Moipei Primary School Polling Center, in Ildamat Ward, Kajiado North Constituency, Kajiado County, the vote counting was stopped at the presidential tallying when the candidate Raila Odinga votes were not adding up. After the recount, the discrepancies were noticed and rectified and counting continued on well;

\textsuperscript{193}Code No. 1280, Polling Centre Code No. 067 Registered voters 1,796 with 3 Polling Stations
\textsuperscript{194}Code No. 0926, Polling Centre Code No. 024 Registered voters 692 with 1 Polling Station
\textsuperscript{195}Code No. 0912, Polling Centre Code No. 017 Registered voters 17,392 with 25 Polling Stations
At Kimumu Secondary School\textsuperscript{196} Polling Centre, Polling Station No. 005, Kimumu Ward, Moiben Constituency, Uasin Gishu County, the counting stopped due to a dispute by some agents regarding whether or not to reject two presidential ballot papers that bore a symbol that was not earlier contemplated as acceptable. The voters had marked the portrait of the Presidential candidate instead of the box provided in the ballot paper;

At Kilusu Primary School\textsuperscript{197} Polling Centre, Ilmotiok Ward, Narok West Constituency, Narok County, the vote counting was stopped because the voter turnout contained in the KIEMS was 366 while the votes cast were 401 thus the numbers and votes were not tallying; and

At Kacheliba Mix Primary School\textsuperscript{198} Polling Centre, Suam Ward, Kacheliba Constituency, West Pokot County\textsuperscript{199}, the counting stopped when a case was reported on discrepancy of the figures contained in the KIEMS and the actual number of votes cast.

Photo 50: At Londiani township primary school, Kedowa/Kimugul Ward, Kipkelion East Constituency, Kericho County, poor lighting was witnessed during the counting of the votes. (Photo courtesy: KNCHR 2017)

\textsuperscript{196}Code No. 0718, Polling Centre Code No. 093 Registered voters 4,345 with 7 Polling Stations
\textsuperscript{197}Code No. 0182, Polling Centre Code No. 010 Registered voters 1,105 with 2 Polling Stations
\textsuperscript{198}Code No. 0651, Polling Centre Code No. 003 Registered voters 1,049 with 2 Polling Stations
\textsuperscript{199}County No. 24
4.5.1 Tabulation, Announcement and Signing off the Final Results

The Commission observed that the results at the polling stations were tabulated and keyed into the IEBC statutory Form depending on the six electoral levels that is Member of County Assembly\textsuperscript{200}, Member of Parliament\textsuperscript{201}, County Woman Representative\textsuperscript{202}, Senator\textsuperscript{203}, Governor\textsuperscript{204} and President\textsuperscript{205}. The Commission further observed and documented the tabulation for each candidate’s results in their respective statutory forms. After tabulation, the PO announced the results immediately at the Polling Station and the Constituency Returning Officer at the Constituency Tallying Centre.

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

**INCENTINES**

- At Kamiti Main Prison\textsuperscript{206} Polling Station, Nairobi City County, the forms were not signed by agents as there were none. The PO was innovative and obtained the signatures from the prisoners who voted to sign-off in the statutory forms;
- At Shimo La Tewa Women\textsuperscript{207} Prison Polling Station, Mombasa County, there were no party agents at the centre to sign the forms;
- At Naivasha Main\textsuperscript{208} Prison Polling Station, Nakuru County, at the...
point of signing, there were no political party agents to sign the forms and therefore their sections were marked with a dash as opposed to leaving them blank; and

- At Naivasha Women Prison Polling Station, Nakuru County, the Presiding officer signed the statutory forms without the presence of any party agents.

4.5.2 Issuance and Displaying the Final Results at Polling Stations

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

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

INCIDENCES

- At Segero Trading Centre Polling Station, Segero/Barsombe Ward, Soy Constituency, Uasin Gishu County, the PO did not display the results in a conspicuous place at the end of polling. This was because the Polling Station was a tent which was later pulled down after the voting exercises was concluded;

- At Kagio Primary School Polling Centre, Mutithi Ward, Mwea Constituency, Kirinyaga County, the PO did not display the results in a conspicuous place at the end of polling. He instead read out the results to all present;

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209 Constituency Code 292, Code No. 1451, Polling Centre Code No. 075 Registered voters 4
210 Code No. 0704, Polling Centre Code No. 094 Registered voters 667 with 1 Polling Station
211 Code No. 0496, Polling Centre Code No. 001 Registered voters 2,794 with 4 Polling Stations
At Nakeel Primary School Polling Centre\textsuperscript{212}, Polling Station No. 001, Nkaimurunya Ward, Kajiado North Constituency, Kajiado County and YMCA Hall\textsuperscript{213} and Naivasha Municipal Park\textsuperscript{214} Polling Centres, Viwandani Ward, Naivasha Constituency, Nakuru County and at Nyamataro Market\textsuperscript{215} and Nyakoe TBC\textsuperscript{216} Polling Centres, Kitutu Central Ward, Kitutu Chache South Constituency, Kisii County\textsuperscript{217}, the POs also read out the results to those present and they were not displayed;

At Umoja 2 Trading Center\textsuperscript{218} Polling Centre, Lanet/Umoja Ward, Bahati Constituency, Nakuru County, the PO did not display the results in a conspicuous place at the end of counting because polling station was inside the compound of a mosque. The PO was not allowed by the Sheikh to pin up the results.

At Kapsowar Primary School\textsuperscript{219} Polling Centre, Kapsowar Ward, Marakwet West Constituency in Elgeyo/Marakwet County, the PO did not display the results in a conspicuous place at the end of polling exercise. Instead the results were taken to the Constituency Tallying Center; and

At Soweto Social Hall Polling Centre, Lower Savannah Ward, Embakasi East Constituency, Nairobi City County, out of the twenty-eight (28) Polling Stations, only one (1) PO displayed the results in a conspicuous place after the counting and announcement of results.

4.5.3 Transmission of Results

The Elections Act and Election (Technology) Regulations of 2017, Section 44 requires IEBC to tally, tabulate, announce and transmit the final results electronically using the various statutory forms at Polling Stations simultaneously,

\textsuperscript{212}Code No. 0913, Polling Centre Code No. 018 Registered voters 9,849 with 15 Polling Stations
\textsuperscript{213}Code No. 0843, Polling Centre Code No. 084 Registered voters 3,125 with 5 Polling Stations
\textsuperscript{214}Code No. 0843, Polling Centre Code No. 083 Registered voters 5,596 with 8 Polling Stations
\textsuperscript{215}Code No. 1344, Polling Centre Code No. 046 Registered voters 1,489 with 3 Polling Stations
\textsuperscript{216}Code No. 1346, Polling Centre Code No. 034 Registered voters 1,536 with 3 Polling Stations
\textsuperscript{217}County No. 45
\textsuperscript{218}Code No. 0686, Polling Centre Code No. 003 Registered voters 1,149 with 2 Polling Stations
\textsuperscript{219}Code No. 0739, Polling Centre Code No. 110 Registered voters 1,083 with 2 Polling Stations
to the Constituency Tallying Centre, County Tallying Centre and to the National Tallying Centre.

The IEBC deployed the use of the Results Transmission System (RTS) to transmit all the results at the four levels. IEBC contracted internet service providers to provide the network coverage and ensure that there is effective functioning all the time for the RTS system. However, on 2nd August 2017, the IEBC stated that out of the forty thousand eight hundred and eighty three (40,883) Polling Stations, eleven thousand one hundred and fifty-five (11,155) Polling Stations (27%) were not within the 3G or 4G GSM network coverage. IEBC would therefore look for alternatives and also use the Satellite phones which were issued to each Constituency without coverage. However, no further breakdown of these specific Polling Stations was provided even when the Commission sort for specificity.

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

https://www.iebc.or.ke/resources/?Non_3G_Network_Polling_Stations
Table 3: Polling Centres impacted by the lack of 3G and 4G network

<table>
<thead>
<tr>
<th>Issue</th>
<th>Polling Station/Centre</th>
</tr>
</thead>
<tbody>
<tr>
<td>Disparity in the number of ballots cast and the number of voters in the KIEMS</td>
<td>Kacheliba Mixed Primary School Polling Center, Suam Ward, Kacheliba Constituency, West Pokot County</td>
</tr>
<tr>
<td></td>
<td>National Industrial Training Authority Polling Centre, Ziwa la Ng’ombe Ward, Nyali Constituency, Mombasa County</td>
</tr>
<tr>
<td></td>
<td>Muthangene Primary School Polling Center, Abothuguchi Ward, Central Imenti Constituency, Meru County</td>
</tr>
<tr>
<td></td>
<td>Utangwa HGM Primary School Polling Centre, Polling Station No. 002, Kithungo/Kitundu Ward, Mbooni Constituency, Makueni County</td>
</tr>
<tr>
<td></td>
<td>Ifwetere Primary School Polling Centre, South Kabras Ward, Malava Constituency, Kakamega County</td>
</tr>
<tr>
<td></td>
<td>Frere Town Primary School Polling Centre, Frere Ward, Nyali Constituency, Mombasa County</td>
</tr>
<tr>
<td></td>
<td>Ola Yaa Nur School Polling Centre, Sagante/Jaldesa Ward, Saku Constituency, Marsabit County</td>
</tr>
<tr>
<td></td>
<td>The KIEMS were not used to transmit the results due to the lack of 3G or 4G network connectivity at the Polling Centres</td>
</tr>
</tbody>
</table>

4.5.4 Transportation of the Electoral Materials

Section 44(5) of the Elections Act (amendment), 2017, provides among other things; information security, data availability, accuracy, integrity, confidentiality and retention of the voting materials for a period of three (3) years following the elections. Further the Constitution under Article 86(d) and the Elections Act

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221 Code No. 0017, Polling Centre Code No. 008 Registered voters 3,564 with 6 Polling Stations  
222 Code No. 0413, Polling Centre Code No. 092 Registered voters 917 with 1 Polling Station  
223 County No. 17  
224 Code No. 1008, Polling Centre Code No. 096 Registered voters 1,025 with 2 Polling Stations  
225 Code No. 0016, Polling Centre Code No. 004 Registered voters 6,057 with 9 Polling Stations  
226 Code No. 0233, Polling Centre Code No. 007 Registered voters 116 with 1 Polling Station
Section 2 and Regulation 93(1) provides that; all election materials, including ballot boxes, ballot papers, counterfoils, information technology equipment for voting, seals and other materials, are to be retained in safe custody by the Returning Officers after the results of the election have been declared.

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

4.6 Prisoners Right to Political Participation

Since independence in 1963, Kenyans have participated in General Elections with the exception of persons deprived of their liberty, held in 117 prisons. Since the 1990’s and especially in the agitation for a new Constitution in 1997 and 2010, civil society organisations together with KNCHR maintained the view that prisoners too have rights and should be able to participate not only in referendums but also in the General Elections. On 14th December 2012, Kituo cha Sheria filed another Public Interest Litigation (PIL) petition227 which was premised on the provisions of Articles 22(2) and 258(2) of the Constitution 2010. The petition sought the enforcement of and the realization of the rights of prisoners to be registered as voters and their right to political participation on the 4th March 2013 General Election, other future elections and referenda. The High Court agreed with the petitioners that prisoners too had a right to political participation under Article 38, of Constitution 2010. However, IEBC submitted that there was not adequate time to prepare for prisoners to participate in the March 2013 elections, hence prisoners did not participate in the election. On 31st January 2017 IEBC, Gazetted the 118 prisons as Registration Centres and Polling Stations for the prisoners. During the registration period, between 20th and 27th February 2017

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227Petition 574 of 2012; Kituo cha Sheria v Independent Electoral and Boundaries Commission & another (2013) eKLR;
a total of 5,528 prisoners were registered to vote. These voters were gazetted to vote for the Presidential candidates only. The following had the highest number of registered voters (more than 100 prison voters).

**Table 4: Polling stations with more than 100 prison voters**

<table>
<thead>
<tr>
<th>No.</th>
<th>Name of Polling Station</th>
<th>County</th>
<th>No. of Voters</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Kamiti Main Prison</td>
<td>Nairobi City</td>
<td>653</td>
</tr>
<tr>
<td>2</td>
<td>Shimo La Tewa Main Prison</td>
<td>Mombasa</td>
<td>324</td>
</tr>
<tr>
<td>3</td>
<td>Meru Main Prison</td>
<td>Meru</td>
<td>237</td>
</tr>
<tr>
<td>4</td>
<td>Naivasha Main Prison</td>
<td>Nakuru</td>
<td>236</td>
</tr>
<tr>
<td>5</td>
<td>Embu Main Prison</td>
<td>Embu</td>
<td>234</td>
</tr>
<tr>
<td>6</td>
<td>Kisumu Main Prison</td>
<td>Kisumu</td>
<td>206</td>
</tr>
<tr>
<td>7</td>
<td>Nyeri Main Prison</td>
<td>Nyeri</td>
<td>177</td>
</tr>
<tr>
<td>8</td>
<td>Kakamega Main Prison</td>
<td>Kakamega</td>
<td>171</td>
</tr>
<tr>
<td>9</td>
<td>Kamiti Medium Prison</td>
<td>Nairobi City</td>
<td>160</td>
</tr>
<tr>
<td>10</td>
<td>Manyani Prison</td>
<td>Taita Taveta</td>
<td>157</td>
</tr>
<tr>
<td>11</td>
<td>Malindi Prison (B)</td>
<td>Malindi</td>
<td>148</td>
</tr>
<tr>
<td>12</td>
<td>Kibos Main Prison (B)</td>
<td>Kisumu</td>
<td>141</td>
</tr>
<tr>
<td>13</td>
<td>Nanyuki Prison</td>
<td>Laikipia</td>
<td>130</td>
</tr>
<tr>
<td>14</td>
<td>Makueni Prison (B)</td>
<td>Makueni</td>
<td>124</td>
</tr>
<tr>
<td>15</td>
<td>Machakos Women Prison</td>
<td>Machakos</td>
<td>124</td>
</tr>
<tr>
<td>16</td>
<td>Langata Women Prison</td>
<td>Nairobi City</td>
<td>114</td>
</tr>
</tbody>
</table>

IEBC mapped out all the prisons and gave them a national code No. 049. These Polling Stations were to be distinct from the other prison community Polling Stations. This meant that these Polling Stations were reserved only for prisoners. The prison staff and the neighbouring community were to have their own and separate Polling Stations.
The Commission also focused on the rights of prisoners to political participation with particular focus on their right to vote. This monitoring was undertaken in two phases; voter registration exercise and voting as follows;

4.6.1 Registration of Prisoners

The Commission mapped out and monitored 29 prisons in respect to how IEBC with the support of the Kenya Prison Services (KPS) undertook the registration process. This was particularly important for the Commission as it was the first-time prisoners being a special and vulnerable category, were being registered to participate in the General Election. Further, under the Persons Deprived of Liberty Act, 2016, the Commission has a special mandate to inspect and monitor
compliance of places of detention with Human Rights principles; and receive complaints from the prisoners\textsuperscript{228}. The following observations were made;

I. Identification Card

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

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

II. Registration and Self-Incrimination

The Commission observed that many prisoners also feared to register as voters because they feared revealing their ‘true’ identity and also feared that the biometric registration system would be linked to the Directorate of Criminal Intelligence (DCI) database for criminal records. It was revealed that some prisoners who were arrested without any identification documents would use other names to hide their identity.

III. Registration period

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

\textsuperscript{228}Section 27(8)
Further, this registration period also meant that prisoners who were being processed for transfer to other prisons were locked out of the registration process in their current location and in the prison of transfer due to other competing prison priorities like security and transport. The Commission held discussions with the KPS together with other non-state actors to ensure that no prisoners were transferred unnecessarily as this would disenfranchise those already registered.

IV. Voter Education and Dignity

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

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

The prisoners who finally managed to vote felt dignified that their pleas to participate in matters of national importance had been heard. They felt that by exercising their right to vote, they had now begun the rehabilitation process and could now see themselves contributing positively for the development of the nation.
It is important to note again that, the Commission together with the Prisons Reform Working Group (PRWG) have agitated for substantive prison reforms within the correctional facilities to facilitate rehabilitation, reintegration and observance of human rights. The participation of prisoners in the Tuesday 8th August 2017 elections was a major milestone in the realization of the rights and freedoms of prisoners not only in Kenya but also in Africa and the rest of the world. The Officers in Charge (OIC) in the various prisons expressed their delight and impact on the reforms in the prisons and country as a whole. They stated that the right to vote for prisoners was a positive move which aimed at appreciating the prisoners as human beings and who are part of the Republic. They noted that this participation of prisoners would impact positively in the long run in the welfare of the state. While echoing similar sentiments, the Commissioner General of Prisoners, Mr. Isaiah Osugo intimated that no prisoner had been coerced or persuaded to vote for a particular candidate.
4.6.2 Monitoring the Polling Process in Prisons

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

I. Security and the Environment

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

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

II. Opening of the Polling Stations

The Commission lauds the IEBC for ensuring that all the materials were dispatched and delivered in good time in the prisons. IEBC opened the Polling Station at 6:00a.m., however, the prison regulations and routine demand that prisons are opened between 8.00a.m., and 9:30a.m. after the head count. This was an issue that the Officers in Charge or their representatives had communicated with the POs because these operational procedures were fundamental to the running of prisons and therefore could not be flaunted, despite the importance of the voting exercise. The POs had no option but to conform to the Prison Regulations and wait for the prisoners to be released and escorted to their specific Polling Station.
Photo 53: Opening of the KIEMS at Naivasha Maximum Prison. (Photo courtesy: KNCHR 2017)

Photo 54: The KIEMS kit at Naivasha Main Prison. (Photo courtesy: KNCHR 2017)
The voting exercise finally kicked off with the Welfare Officer together with the wardens on duty escorting the voters in bunches to ensure security. This process went on smoothly due to the fact that despite the strict security procedures the numbers were few in each Polling Station. Inmates who had registered in the prisons but had since been released were allowed to come back inside the prisons to vote.

The Commission commends the Commissioner General of Prisons who had issued instructions to all Officers in Charge to oversee the exercise and ensure that all registered voters in prison voted according to the IEBC requirements. It was also noted that the Welfare Officers played a critical role in preparing both the voter with information on how the process was to take place on 8th August and also in keeping safely the voters ID card which they were given just before they moved out of the prison block to vote.
The Commission and other observers including the media were given unlimited access into the Polling Station, interaction with the prisoners who were voting and also with the IEBC officers conducting the polls. The IEBC officials were also accorded a secure space, facilities and an adequate environment to conduct the process.

However, the Commission noted with concern that in the prisons there were no party agents available. Some of the IEBC procedures were very specific and required the presence of party agents and their absence made for awkward situations for the POs to undertake and resolve. However, they were innovative and they relied on the available observers to ensure that there was integrity in the process and they could move on. This was especially so in the opening, application of Form 32A, closing counting and transmission of results. Therefore, though the POs proceed according to the law and regulations, confirmation of the ballot boxes and sealing before voting and other process were done but not signed for by the party agents. In many Polling Stations, there were neither observers nor agents.
The Commission observed that there were prisoners who had registered as voters but had since been transferred to another prison. KPS had not made any prior arrangements to have these prisoners transported back to vote in their respective Polling Stations which led to a number of prisoners feeling aggrieved for being disenfranchised. However, in Nakuru Main Prison Polling Station, Nakuru County, after discussions between the PO, Officer in Charge and the prisoners, KPS allowed the prisoners to be transported to Naivasha Main Prison Polling Station Nakuru County to exercise their right to vote. However, due to logistical challenges, those who were in Naivasha Prisons and were supposed to vote in Nakuru Main Prison Polling Station did not make it on time as they found the Polling Station closed and they were turned away.
Photo 58: A former prisoner casting her vote at Naivasha women’s prison. (Photo courtesy: KNCHR 2017)

Photo 59: A prisoner casts his vote at Nyeri Main Prison, Polling Station, Nyeri County (Photo courtesy: KNCHR 2017)

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Constituency Code No. 292 Code No. 1451, Polling Centre Code No. 043 Registered voters 177
At Kamiti Main Prison\textsuperscript{235} Polling Station, Nairobi City County, they received prisoners who had been transferred to other prisons and they were allowed to vote before being taken back to their respective prisons.

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

The Commission noted voting in prisons ended early because of few number of registered voters in prisons (prisoners). However, PO had to wait until 5:00 p.m. when the Polling Station was closed. The ballots were counted and the final results processed accordingly without any problem. However, it is not clear how these results were treated, whether on their own as Prison Code No. 049 or within their respective counties once transmitted to the National Tallying Centre. This has continued to cause confusion because these results are hardly mentioned unlike Diaspora Code No. 048 nor form part of the record in Form 34C which was used to declare the Presidential winner.

**4.6.3 Issues arising out of Prisons Polling Stations**

The Commission observed a number of issues of concerns;

**I. Civilians voting along with prisoners**

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

However, the Commission noted that in some prisons, civilians were allowed to vote together with the prisoners. At Nakuru Women\textsuperscript{236} Prison, Polling Station, in Nakuru County, where three (3) Prison Warders voted, and at Kingorani Prison (B)\textsuperscript{237} Mombasa County, the prisoners and the general public were all allowed

\textsuperscript{235}Constituency Code No. 292 Code No. 1451, Polling Centre Code No. 113 Registered voters 1653
\textsuperscript{236}Constituency Code No. 292 Code No. 1451, Polling Centre Code No. 077 Registered voters 9
\textsuperscript{237}Constituency Code No. 292 Code No. 1451, Polling Centre Code No. 005 Registered voters 31
to vote within the same polling station. The registration of civilians in these two Polling Stations was in clear contravention of the law and regulations.

II. Transition from Prisoner to Voter

The Commission observed that though the Polling Station opened at 6:00 a.m., the prisoners were slow to be released to vote due to the strict prison processes of access and headcount. The head count is undertaken daily and at certain intervals in the day, which returns must be submitted daily to the Prisons Headquarters which caused further delay. However, once these processes began the same was laced with minimal interruptions.

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

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

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Constituency Code No. 292 Code No. 1451, Polling Centre Code No. 104 Registered voters 50
Photo 61: Migori Prison (B) 239 Polling Station, Migori County, where prisoners were allowed to vote for all the 6 electoral positions. (Photo courtesy: KNCHR 2017)
This was unlike in Naivasha Main Prison, Nakuru County where all the six ballot boxes were displayed, sealed and 5 of them closed because the prisoners were only going to vote for the Presidential candidate only. When the PO was asked why he had displayed and sealed the ballot boxes, he indicated that he had been supplied with all boxes and therefore he had to use them accordingly. Further he noted that he did not have any ballot papers for the other 5 positions and therefore there would be no ballots.

In Conclusion, the Commission noted that despite the few challenges, the voting by prisoners was transparent and it was worth the investment by the various stakeholders. It is an opportunity that needs to be expanded to all prisoners and more elaborate mechanisms developed to ensure that prisoners vote whether they are transferred or released from prison.

It is interesting to note that in the United States of America (USA), Belgium, Germany and Iceland have disenfranchisement laws which vary based on specific factors, such as the felon’s state of residence or the type of crime committed. It should be observed that the state laws, not federal laws, govern felon voting in the USA. These varied applications of prisoner’s right to vote has necessitated the listing of these 45 countries into four categories to show the global trends. It is therefore clear that Kenya is the pace setter in Africa and also in other jurisdictions.

KNCHR received numerous observations and complaints on alleged human rights violations from its 259 monitors and members of public.
CHAPTER 5
Post-Election Findings

5.0 Introduction

Kenya’s chequered history of post-election violence makes the announcement of the Presidential results a critical moment in the electoral cycle. The announcement of the Presidential results has always been marked by controversy and heightened tension in the country. With reference to the 2017 General Election, this Chapter focuses on the period between 9th and 15th August 2017 during which KNCHR documented incidences of unrest, protests, loss of lives, assault and destruction of property in some parts of the country that were directly related to the election.

Notably, KNCHR was cognisant of the possible scenarios after the 8th August General Election based on past experience and the hotspots it had mapped. In response, it took proactive measures by engaging with relevant stakeholders that play a vital role towards the realisation of the right to vote and be voted for.
The 2017 General Election generated intense interest and high stakes from various political actors who contested for the various elective positions. It is against this background that as early as the time of vote tallying at the constituency level, KNCHR noted that there were heightened tensions in regions perceived as opposition strongholds, in anticipation of the outcome especially of the Presidential results.

KNCHR received numerous observations and complaints on alleged human rights violations from its 259 monitors and members of public. Pursuant to its Constitutional and Statutory mandate stipulated under Article 59(2) of the Constitution and Section 8 (b) (d) & (f) of the KNCHR Act, the Commission proceeded to conduct investigations with the aim of taking appropriate steps to address these violations. Notably, the Commission further invoked its investigative powers under Section 12 of The Prevention of Torture Act 2017 that specifically stipulates the Commission’s mandate with regard to investigating cases of torture, cruel, inhuman and degrading treatment.

In this regard, it was inherent and imperative upon the Commission to document and maintain an accurate record of the violations that occurred during the post-election period as the basis of securing accountability and seeking redress for the violations. The Commission documented incidences of civil unrest, protests, arbitrary arrests, excessive use of force by police and killings attributed to both civilians and the police in several parts of the country including Nairobi City County - Mathare, Dandora, Kibera, Baba Dogo, Kawangware; Kisumu County - Nyalenda, Kondele, Obunga and Manyatta, Migori, Homabay, Siaya, Garissa, Tana River and Elgeyo Marakwet counties.

5.1 Strategy and Methodology

The KNCHR enhanced its Elections Monitoring System (EMS) and developed specific tools tailor-made to respond to the post-election scenarios to facilitate accurate and verifiable data collection, as well as timely response to the reports received.

KNCHR deployed rapid response teams to the affected areas who interviewed and recorded statements from victims and key witnesses. The teams also
conducted site visits to key places such as morgues, hospitals, police stations and scenes where the violations had occurred for purposes of gathering and collating evidence. The teams further held interviews with experts including doctors, observed various post-mortems being undertaken and also obtained the requisite documents including medical and post-mortem reports.

The KNCHR noted that the National Police Service had an elaborate election security strategy to deploy approximately 180,000 officers to provide security during the election period. The personnel were to be drawn from other security agencies including Kenya Wildlife Service, Kenya Forest Service, Kenya Prison Service and the National Youth Service among others.

In the foregoing, KNCHR’s concern was that many of the officers from auxiliary agencies are not ordinarily specialised in crowd management control and civilian protests. As part of its advisory role, KNCHR held 10 regional training workshops, where 450 senior security actors were empowered on how to uphold human rights and specifically the right to assembly and crowd management. KNCHR further developed and disseminated an educational video and IEC materials for sensitization of both the public and the security actors on their role and obligations when exercising the right to assembly and undertaking public order management. This was compounded by an advisory issued to the Inspector General and the Cabinet Secretary, Ministry of Interior and Coordination of National Government.

KNCHR worked closely with key partners from various agencies, human rights defenders (HRDs) and the media to augment its interventions in the post-poll period.

5.2 Key Findings

5.2.1 Right to Life

The Constitution of Kenya, 2010 guarantees all citizens the right to life under Article 26; which further enumerates that an individual shall not be deprived of the same intentionally. The perpetration of offences against this right can be from state, civilians or external aggression.
Elections in Kenya have increasingly been marked with periods of tension that often lead to polarization along ethnic and political lines, the 2017 polls not being an exception. While the polls are an opportunity for citizens to exercise their constitutionally guaranteed right to vote and be voted for, there have been trends that threaten the tenets of democracy, democratic practices and the respect for the rule of law.

These trends exist despite continuous efforts that target to strengthen laws and policies that govern the conduct of key election actors, top among them being the Independent Electoral Boundaries Commission (IEBC), political parties, candidates, Security agencies and other stakeholders.

A majority of electoral reviews entrenched in recent times were informed by borrowed lessons especially from the 2007/2008 post-election violence which marked the darkest post-colonial moment in Kenya. The key highlight of the violence was the massive loss of life witnessed when violence broke out after the announcement of the presidential results.

Since then, security in all its facets remained one of the focal areas of the Country’s election cycle in a bid to safeguard the right to life which is now entrenched in the Bill of Rights under Chapter 4 of the Constitution of Kenya.

KNCHR, through its 2017 election monitoring project undertook to document the post-election demonstrations in parts of the country which led to the unfortunate loss of life. A majority of the fatalities were as a result of excessive use of force by security agents while only two were recorded to have been as a result of civilian aggression. These documented cases only tabulate those who died between 9th and 15th August 2017.

KNCHR documented 38 deaths between 9th and 15th August, 2017. Most of the fatalities were recorded in Kawangware, Mathare, Kibra, Lucky Summer, Baba Ndogo and Huruma all in Nairobi City County; Kondele, Manyatta, Nyamasaria, Nyalenda in Kisumu County; Siaya town and Ugunga in Siaya County; and Rangwe in Homa Bay County.

Sadly, seven of the victims were minors; three girls and four boys. The youngest was a 6-months-old baby who succumbed to injuries in hospital after being
beaten while at home under the care of her mother. The other minors, all aged between seven and eighteen years died from gunshot wounds.

The commission also observed that 30 of the victims were youths and middle-aged persons between the ages of 20 and 45 years; 28(93%) of whom were male and two (7%) females. Except for two cases attributed to civilians, the rest were allegedly a result of excessive use of force by police.240

While the Commission was not able to determine whether the action to use force by security agents was predetermined and targeted, it is clear from our analysis that majority of the victims were from one ethnic community and from informal settlements.241

There may be more fatalities which the Commission may not have received information at the time of writing this report. KNCHR will continue to receive and document complaints as they shall be reported to it.

KNCHR aims at conducting intensive investigations to facilitate avenues of redress and accountability for the victims and survivors through legally provided channels, key among them being filing of a public interest litigation case as per Article 22 of the Constitution.

240Sixth Schedule (Section 61(2)) - National Police Service Act No. 11A of 2011
241Informal settlements can be defined (United Nations, 2015; UN-Habitat, 2015b) as residential areas where: 1) inhabitants have no security of tenure vis-à-vis the land or dwellings they inhabit, with modalities ranging from squatting to informal rental housing, 2) the neighbourhoods usually lack, or are cut off from, basic services and formal city infrastructure and 3) the housing may not comply with current planning and building regulations, is often situated in geographically and environmentally hazardous areas, and may lack a municipal permit.
Table 5: Complaint as per location

<table>
<thead>
<tr>
<th>Location of Incident</th>
<th>Alleged Perpetrator</th>
<th>Complaint</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>NAIROBI CITY COUNTY</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dandora Phase IV</td>
<td>Police</td>
<td>On 11th August 2017, a police officer popularly known by the area residents as “Rasta” allegedly shot a 27-year-old male civilian. The victim was taken to Kenyatta National Hospital where he died at the ICU where he was recuperating after an operation. The post-mortem on the deceased revealed that he died from excessive bleeding following a bullet wound on the left side of the abdomen which exited from the right buttock.</td>
</tr>
<tr>
<td>Dandora Phase IV</td>
<td>Police</td>
<td>On 12th August 2017, at about 9:00 p.m. a youth aged 23 years old, was shot by the police shortly after the announcement of the Presidential results. He suffered a gunshot wound in the abdomen. He was rushed to hospital where he died. The body was moved to the Kenyatta National Hospital Mortuary by Medicines Sans Frontiers (MSF). KNCHR witnessed the post-mortem carried out on the deceased.</td>
</tr>
<tr>
<td>Dandora Phase IV</td>
<td>Police</td>
<td>On 12th August 2017, a 36-year-old male civilian was shot by police while in his compound. He sustained a gunshot wound to the chest and was rushed to Brother Anore Medical Centre where he was confirmed dead on arrival. His body was moved to City Mortuary.</td>
</tr>
<tr>
<td>Kasabuni, Baba Dogo</td>
<td>Police</td>
<td>On 11th August 2017, at round 10:00p.m., police officers who had been deployed to control protests in Baba Dogo shot a male civilian, aged 19 years as he was coming from work. They shot him three times in the stomach, chest and arm. His body was taken to City Mortuary.</td>
</tr>
<tr>
<td>Kasabuni, Baba Dogo</td>
<td>Police</td>
<td>On 11th August 2017, police officers shot a 17-year old Form 3 student from Baba Dogo High School. The police officers who had been deployed in the area following protests shot the victim while on his way to assist his mother at her grocery store in Kasabuni. He was in the company of his friend who was also shot dead. Their bodies were taken to the City Mortuary.</td>
</tr>
<tr>
<td>Kasabuni, Baba Dogo</td>
<td>Police</td>
<td>On 11th August 2017, a police officer shot a 16-year old Form 2 student from Usenge High School who had accompanied his friend to their grocery store. They were stopped by police officers deployed in the area to quell protests at the time. Their bodies were taken to the City Mortuary.</td>
</tr>
<tr>
<td>Location of Incident</td>
<td>Alleged Perpetrator</td>
<td>Complaint</td>
</tr>
<tr>
<td>----------------------</td>
<td>--------------------</td>
<td>-----------</td>
</tr>
<tr>
<td>Kawangware</td>
<td>Police</td>
<td>On 9&lt;sup&gt;th&lt;/sup&gt; August 2017, a male civilian adult aged 45-year-old was carrying on with his ordinary duties at Kawangware Stage 2 when police officers lobbed a teargas canister which hit the deceased and exploded. The teargas affected him and he was rushed to KNH where he died on 16&lt;sup&gt;th&lt;/sup&gt; August 2017. No post-mortem was done.</td>
</tr>
<tr>
<td>Kawangware</td>
<td>Police</td>
<td>On 10&lt;sup&gt;th&lt;/sup&gt; August 2017, at 9:00 p.m., a 30-year-old male civilian was in the company of his friend at Kawangware Stage 2 when the police lobbed tear gas canisters to disperse the crowd that had gathered in the area. The deceased was reported to have had a history of respiratory problems and was affected by the tear gas. He was rushed to KNH where he later died. No post-mortem was carried out.</td>
</tr>
<tr>
<td>Kawangware</td>
<td>Police</td>
<td>On 10&lt;sup&gt;th&lt;/sup&gt; August 2017, at about 5:30 p.m. a 43-year-old female civilian was on her way home from work in the company of her son when they were accosted by police officers engaging protestors at Stage 56. The police lobbed teargas canisters and used water cannons to spray the protesters with water. The deceased was hit by one of the canisters which then exploded. The deceased developed breathing complications and died while on the way to hospital. No post-mortem was carried out. She was later buried in Langata cemetery on 17th August 2017.</td>
</tr>
<tr>
<td>Kawangware</td>
<td>Police</td>
<td>On the evening of 11&lt;sup&gt;th&lt;/sup&gt; August 2017, a male civilian aged 34 years old was hit by a bullet that had penetrated through the iron sheet wall of his house. It is suspected that the bullet was aimed at another male civilian who was found outside the deceased’s house writhing in pain with a gunshot wound. The victim succumbed to his injuries while undergoing treatment in the ICU at KNH. The other victim was admitted and was recuperating in hospital. The matter was reported to Muthangari Police Station.</td>
</tr>
<tr>
<td>Kawangware</td>
<td>Police</td>
<td>On 11&lt;sup&gt;th&lt;/sup&gt; August 2017, at about 6:30 p.m. a male civilian aged 27 years old from Kawangware No. 56 informed his brother-in-law that he was leaving to buy groceries. The deceased was accosted by police officers who were firing shots to disperse a crowd that had gathered outside. His brother-in-law heard the shots being fired and went outside to find the deceased had been shot at the back of his head. He was rushed to KNH where he was admitted at the ICU until 23&lt;sup&gt;rd&lt;/sup&gt; August 2017, when he succumbed to his injuries. A post-mortem was carried out but KNH had not released the report to the family at the time of writing this report.</td>
</tr>
<tr>
<td>Location of Incident</td>
<td>Alleged Perpetrator</td>
<td>Complaint</td>
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</tr>
<tr>
<td>Kawangware</td>
<td>Police</td>
<td>On 11th August 2017, at around 6:00 p.m. a female civilian aged 30 years old had gone to the market in Kangemi to buy food. On her way back, at Stage 56, she was accosted by a contingent of police engaging youths in running battles. Police lobbed teargas and started shooting indiscriminately. The deceased was shot and died. Her husband went to the scene but the police denied him access to the body. He traced her body at KNH the following day.</td>
</tr>
<tr>
<td>Kibra</td>
<td>Police</td>
<td>On 10th August 2017, a male civilian, aged 34 years old was accosted by police officers as he headed to his house from his workplace and shot. He died instantly and his body was moved to Kenyatta National Hospital mortuary. No post mortem was carried out on the deceased.</td>
</tr>
<tr>
<td>Kibra</td>
<td>Police</td>
<td>On 11th August 2017, a 22-year-old male civilian was shot outside his house. The family and neighbours made no attempt to move the body from the scene as they feared leaving their homes. It is not clear who moved the body and the family was yet to trace the body at the mortuaries.</td>
</tr>
<tr>
<td>Kibra, Kianda Area</td>
<td>Police</td>
<td>On 12th August, 2017 a male civilian, aged 43 years old was coming from hospital after dressing an old wound when he was accosted by police officers at Bombolulu Area. They inflicted actual body injuries to his ribs and joints. A friend carried him home and his situation worsened. He was rushed to Ushirika Dispensary in Kianda and then transferred to Hospital. He died while undergoing treatment in hospital on 13th August 2017. No post-mortem was carried out.</td>
</tr>
<tr>
<td>Mathare 10, Mabatini Ward Administration police</td>
<td>On 9th August 2017, a police officers who were dispersing protesters in Mathare Area 10 shot a 24-year-old male civilian. The police lobbed teargas canisters to scare aware the residents and fired live bullets. The body of the deceased was taken to City Mortuary by the police. A post-mortem was conducted and the deceased was buried on 15th August 2017.</td>
<td></td>
</tr>
<tr>
<td>Mathare, No 10</td>
<td>Police</td>
<td>On 9th August 2017, a 42-year old male civilian was caught up in protests while on his way home in Mathare No. 10. He was shot by police and died. The Police took his body was taken to City Mortuary.</td>
</tr>
<tr>
<td>Mathare 4A</td>
<td>Administration Police</td>
<td>On 9th August 2017, as youths from Mathare protested following the Presidential election results announcement, officers from Mathare sub-county Administration Police Camp who had been deployed to quell the situation shot to death a 24-year-old male civilian. The body was then taken away by the same police officers to City Mortuary.</td>
</tr>
<tr>
<td>Location of Incident</td>
<td>Alleged Perpetrator</td>
<td>Complaint</td>
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<tr>
<td>Mathare , Area 4A</td>
<td>Police</td>
<td>On 11th August 2017, in Mathare Area 4A, a 7-year-old boy was killed after being hit by a police bullet while playing on the streets in the evening. The body was collected by the police the following morning. The family of the child eventually managed to trace his body and he was buried at Langata Cemetery.</td>
</tr>
<tr>
<td>Mathare North</td>
<td>Police</td>
<td>On the morning of 12th August 2017, in Mathare Area 4, next to Mathare North Primary School/ Social Hall, an 8-year-old child was shot and killed by the police while at the balcony of her parents’ house. The body lay at the balcony for some time as the residents refused the OCS to collect the body alleging that the police were not reporting the killings. The residents however relented and the police took the body away.</td>
</tr>
<tr>
<td>Mathare 3C, Bondeni</td>
<td>Police</td>
<td>On 12th August 2017, a 28-year-old male civilian was shot by police at his area of residence. This was after an alleged fire break-out. Neighbours moved out screaming and shouting to raise alarm. The police shot live bullets and the deceased was killed in the commotion. No structure was set ablaze and it was believed to have been a ploy to get residents to vacate their houses.</td>
</tr>
<tr>
<td>Mathare 3C, Bondeni</td>
<td>Police</td>
<td>On 12th August 2017, a 31-year-old male civilian was shot following a purported report of a fire break-out in his area of residence. The neighbours moved out of their houses screaming and shouting to raise alarm only for the police to shoot live bullets at them. The deceased fell victim to a police bullet which hit him in the neck.</td>
</tr>
<tr>
<td>Mathare Area 4A</td>
<td>Police</td>
<td>On 12th August 2017, GSU officers forcefully entered the house and beat up an 18-year old form Four student from Boarding High School in Alego, Siaya County. The deceased was first rushed to Blue House Hospital and later admitted at Kenyatta National Hospital. He died on 13th August, 2017 while in the ICU. A post-mortem was carried out on the deceased.</td>
</tr>
<tr>
<td>Mathare North</td>
<td>Administration Police</td>
<td>On 12th August 2017, during the protests that followed the announcement of the Presidential election results, an Administration Police Officer allegedly from Mathare North Chiefs Camp shot a 23-year-old male civilian on the right leg and stomach, killing him instantly.</td>
</tr>
<tr>
<td>Mathare</td>
<td>Civilian</td>
<td>On 13th August 2017, a 25-year-old male civilian was hacked to death when NASA supporters allegedly clashed with their political opponents. He had earlier been taken to Kenyatta National Hospital by police from Muthaiga Police Station. Unfortunately, he succumbed to his injuries. His body was taken to City Mortuary and traced by next of kin. A post-mortem was carried out on the deceased in the presence of an independent pathologist.</td>
</tr>
<tr>
<td>Location of Incident</td>
<td>Alleged Perpetrator</td>
<td>Complaint</td>
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<tr>
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</tr>
<tr>
<td>Mathare North Area 4A</td>
<td>Police</td>
<td>On 13&lt;sup&gt;th&lt;/sup&gt; August 2017, GSU officers shot a male civilian aged 32 years on the neck, killing him instantly. This was after Raila Odinga’s visit to Mathare.</td>
</tr>
<tr>
<td>Mathare/Bondeni</td>
<td>Police</td>
<td>On 13&lt;sup&gt;th&lt;/sup&gt; August 2017, following the announcement of the Presidential election results, police officers forcefully entered into the house of a male civilian and assaulted him. He sustained injuries and he was taken to Kenyatta National Hospital where he later died.</td>
</tr>
<tr>
<td>Ngomongo, Korogocho</td>
<td>Police</td>
<td>On 12&lt;sup&gt;th&lt;/sup&gt; August 2017, a police officers who had gone to quell protests at Ngomongo in Korogocho shot and killed an adult male civilian as he was trying to put out a fire that had engulfed his sister’s kiosk.</td>
</tr>
<tr>
<td><strong>KISUMU COUNTY</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dago Market, Nyahera, Kisumu West</td>
<td>Police</td>
<td>On 11&lt;sup&gt;th&lt;/sup&gt; August, 2017 a police shot and killed an adult male civilian who was also an election observer from the Elections Observation Group (ELOG). He died on the spot and his body was taken to Masaba Hospital Mortuary.</td>
</tr>
<tr>
<td>Nyalenda</td>
<td>Police</td>
<td>On 12&lt;sup&gt;th&lt;/sup&gt; August 2017, police officers forcefully entered the residence of the parents of a six-month old infant where they proceeded to beat the mother and hit the baby on the head. She was rushed to Oasis Hospital near Nyalenda and the doctors immediately referred the family to Aga-Khan Hospital where the baby was admitted in the ICU. Unfortunately, she succumbed to the injuries on 15&lt;sup&gt;th&lt;/sup&gt; August 2017.</td>
</tr>
<tr>
<td><strong>SIAYA COUNTY</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Siaya- Bondo Road</td>
<td>Police</td>
<td>On 11&lt;sup&gt;th&lt;/sup&gt; August 2017, immediately after the announcement of the Presidential election results, police shot an adult male civilian on the chest, killing him instantly. The body was taken to Siaya Referral Hospital.</td>
</tr>
<tr>
<td>Ugunja Town</td>
<td>Police</td>
<td>On 12&lt;sup&gt;th&lt;/sup&gt; August, 2017, police officers while dispersing a crowd of youths, who were demonstrating within Ugunja Town, beat up a male adult civilian and left him for dead. Well-wishers came to his aid and tried to resuscitate him to no avail. His body was taken to Sega Mission Hospital Mortuary.</td>
</tr>
</tbody>
</table>
### Location of Incident

<table>
<thead>
<tr>
<th>Location of Incident</th>
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<th>Complaint</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>HOMABAY COUNTY</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rangwe</td>
<td>Police</td>
<td>On 13&lt;sup&gt;th&lt;/sup&gt; August 2017, police officers who were trying to manage the post-election protests at Rangwe Trading Center shot an adult male civilian. The bullet hit the deceased on the left side of the chest and exited from the back. Police collected the body and took it to Homabay County Referral Hospital.</td>
</tr>
<tr>
<td><strong>TANA RIVER COUNTY</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hola Secondary School</td>
<td>Civilian</td>
<td>On 9&lt;sup&gt;th&lt;/sup&gt; August 2017, one adult male civilian was stabbed and died following an invasion by five armed men who disrupted the counting of votes at Hola Secondary School which was the Constituency tallying center in Galole Constituency, Tana-River County. The attackers invaded the tallying center following the difference in votes counted for the two gubernatorial aspirants.</td>
</tr>
<tr>
<td>Hola Secondary School, Galole Constituency</td>
<td>Police</td>
<td>On 9&lt;sup&gt;th&lt;/sup&gt; August 2017, five armed men invaded Hola Secondary School, which was a tallying centre in Galole Constituency. Two men out of the five were killed by police officers while the others managed to escape. The attack disrupted the counting of votes as the IEBC officials fled the scene.</td>
</tr>
<tr>
<td><strong>ELGEYO MARAKWET COUNTY</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Chesoi Tallying Center, Marakwet East</td>
<td>Police</td>
<td>On 9&lt;sup&gt;th&lt;/sup&gt; August 2017, police officers while dispersing a crowd that had gathered, expressing their displeasure at the delay in announcing the election results, shot and killed a 15-year old girl.</td>
</tr>
<tr>
<td><strong>UNKNOWN</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Usoma Beach, Lake Victoria, Kisumu County</td>
<td>Unknown</td>
<td>On 23&lt;sup&gt;rd&lt;/sup&gt; August 2017, a male body was found in a body bag, in Usoma Beach with two bullet holes on the chest. The deceased is believed to be a victim of the protests in the county following the announcement of the Presidential election results. The body was moved by the police to Jaramogi Oginga Odinga Teaching and Referral Hospital Mortuary.</td>
</tr>
</tbody>
</table>
Photo 63: Body of a victim shot and killed by police officers during protests at Rangwe Trading Center, Homa Bay Town on 13th August 2017. (Photo courtesy: KNCHR 2017)

Photo 64: Body of a victim killed at Hola Secondary School, Galole Constituency- Tana-River County during the attack on 9th August 2017. (Photo courtesy: KNCHR 2017)
Photo 65: Body of a victim killed at Hola Secondary School, Galole Constituency, Tana-River County during the attack on 9th August 2017. (Photo courtesy: KNCHR 2017)

Photo 66: 15-year-old girl killed by police at Chesoi Tallying Center, Marakwet East, Elgeyo Marakwet County on 9th August 2017. (Photo courtesy: KNCHR 2017)
5.3 Right to freedom and security of the person

Prior to the announcement of the Presidential election results, there was heavy presence of security agents and apparatus deployed in areas perceived as opposition strongholds, in anticipation of the ripple effect of the results announcement. Immediately the declaration was made that the incumbent President had retained his seat, sporadic cases of insecurity begun to erupt.

Article 29 of the Constitution guarantees each Kenyan the right to freedom and security of the person. This right complements the rights under Article 25 of the constitution on non-derogable rights. It includes the right not to be subjected to:

1. Any form of violence from either public or private sources;
2. Torture in any manner, whether physical or psychological and
3. Treatment that is cruel, inhuman or degrading.

Further, Article 37 of the Constitution provides for the right to peaceful assembly that must be carried out within the confines of the law. The law enforcement agencies are required to provide the necessary environment and should not act as a hindrance to the provision of this Article.

The KNCHR field reports point to a worrying trend of violations, meted out to the protesters by police officers deployed to quell the demonstrations. The violations highlighted under this section include the grave and minor injuries sustained by the members of the public. Other violations included sexual and gender based violence (SGBV).
The grave injuries include gunshot wounds to the chest, arms, thighs, legs; and broken ribs caused by blunt objects. The injuries point to the use of excessive force that did not comply with the principles of necessity and proportionality as per the Sixth Schedule of the National Police Service Act. Out of the 126 documented cases, only 3 constituted cases of civilian-to-civilian confrontation. A majority of the reported cases were as a result of police aggression towards civilians. Further, there were 6 reported cases of sexual violence against women and girls including
rape which were perpetrated by civilians and police. Cases of physical injuries were also meted on the elderly, youth and children. Thirty-one cases of physical injuries involved females and 95 involved males.

Photo 69: A man from Kajulu, Kisumu County who sustained injuries during the crackdown by police. (Photo courtesy: KNCHR 2017)

Photo 70: A thirteen-year-old child from Nyalenda assaulted by police officers on the 11th of August 2017 at around 11:00 p.m. He was at home with his parents at the time of the assault. He reported that police officers stormed into their house and started beating everyone in the house. (Photo courtesy: KNCHR 2017)
Photo 71: A male victim shot in the neck by police officers on 11th August 2017 in Ogango as he was heading home from his brother’s house at 11:00 p.m. (Photo courtesy: KNCHR 2017)

Photo 72: A female victim from Dandora area Nairobi City County with injuries sustained after Police brutality on 12th August 2017. She was caught up in a confrontation between police and demonstrators. (Photo courtesy: KNCHR 2017)
### Table 6: Incidences of violations of right to freedom and security of the person

<table>
<thead>
<tr>
<th>Location Of Incident</th>
<th>Alleged Perpetrator</th>
<th>Complaint</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>NAIROBI CITY</strong></td>
<td></td>
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</tr>
<tr>
<td>Kiambu</td>
<td>Military officer</td>
<td>On 11&lt;sup&gt;th&lt;/sup&gt; August 2017, a male civilian was shot by Moi Air Base military officer from a watchtower. He was on his way home from watching a football game. He was injured on the buttocks and another bullet lodged itself in his right thigh. He was hospitalized at Kenyatta National Hospital (KNH).</td>
</tr>
<tr>
<td>Mathare Area 4A</td>
<td>Police</td>
<td>On 9&lt;sup&gt;th&lt;/sup&gt; August 2017, a male civilian was shot and injured on the palm by police officers who were dispersing demonstrators. He was treated and discharged at Kenyatta National Hospital.</td>
</tr>
<tr>
<td>Mathare Area 4A</td>
<td>Police</td>
<td>On 12&lt;sup&gt;th&lt;/sup&gt; August 2017, police forcefully entered into a house of a female civilian aged 29 years old and assaulted her using truncheons and guns. Her husband and their two children aged 4 and 10 years old witnessed the assault. The husband was also assaulted and suffered injuries to the shoulders, knees and elbow. He suffered joints dislocations and had to seek medical attention.</td>
</tr>
<tr>
<td>Mathare Area 4A</td>
<td>Police</td>
<td>On 12&lt;sup&gt;th&lt;/sup&gt; August 2017, the General Service Unit (GSU) officers forcefully entered into a house of a male civilian aged 25 years old. The officers assaulted the victim and his friend.</td>
</tr>
<tr>
<td>Mathare Area 4A</td>
<td>Police</td>
<td>On 12&lt;sup&gt;th&lt;/sup&gt; August 2017, a female civilian, aged 50 years old was beaten by police officers for offering shelter to male civilian demonstrators who sought refuge in her house.</td>
</tr>
<tr>
<td>Mathare Area 4</td>
<td>Police</td>
<td>On 12&lt;sup&gt;th&lt;/sup&gt; August 2017, at around 5pm, regular police officers accompanied by the GSU personnel assaulted a female civilian using truncheons while she was out of her house buying charcoal. The police hit her at the backside, injuring her legs. The officers hit her repeatedly and she was left unconscious. The Kenya Red Cross team gave her first aid before she sought further treatment.</td>
</tr>
<tr>
<td>Kiambiu</td>
<td>Police</td>
<td>On 11th August 2017, a male civilian was shot by Moi Air Base military officer from a watchtower. He was on his way home from watching a football game. He was injured on the pelvis. He was hospitalized at Kenyatta National Hospital (KNH).</td>
</tr>
<tr>
<td>Mradi, Mathare 4A</td>
<td>Police</td>
<td>On 12&lt;sup&gt;th&lt;/sup&gt; August 2017, a police officer in civilian outfit shot a minor aged 12-year-old. He was injured on the thighs by the bullet. He was later hospitalized at Kenyatta National Hospital.</td>
</tr>
<tr>
<td>Location Of Incident</td>
<td>Alleged Perpetrator</td>
<td>Complaint</td>
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<tr>
<td>Dandora</td>
<td>Police</td>
<td>On 12th August 2017, the police forcefully entered into a house of a male civilian. The officer assaulted him before taking him and others to Wendo area. The victims were later released upon the arrival of the area Officer Commanding Station (OCS). The victims went to hospital for treatment.</td>
</tr>
<tr>
<td>Dandora Phase 4 near Kinyago primary school</td>
<td>Police</td>
<td>On 12th August 2017, the police broke into a compound of a male civilian and assaulted him, his wife and children. The Kenya Red Cross administered first aid to the victims.</td>
</tr>
<tr>
<td>Dandora</td>
<td>Police</td>
<td>On 12th August 2017, the police forcefully entered into a residential plot, harassed and assaulted tenants. The police forcefully removed about 30 men from their houses. They were assaulted, loaded in trucks and driven away. The area Member of County Assembly (MCA) and Dandora Officer Commanding Station (OCS) intervened and they were later released. The victims were treated at KNH.</td>
</tr>
<tr>
<td>Kawangware</td>
<td>Police</td>
<td>On 10th August 2017, at around 7am, the GSU officers broke into a house of a male civilian aged 45 years. The officers assaulted him using truncheons, injuring his head, arm and ribs.</td>
</tr>
<tr>
<td>Kawangware Stage 2 towards 56 &amp; Muslim Katina</td>
<td>Police</td>
<td>On 12th August 2017, the police officers forcefully entered into a house of a male civilian. The officers shot him on the chest and assaulted his son.</td>
</tr>
<tr>
<td>Kawangware</td>
<td>Police</td>
<td>On 11th August 2017, a44-year-old male civilian was shot in the right leg by police officers deployed in the area. He was taken to KNH where he was admitted for treatment.</td>
</tr>
<tr>
<td>Location Of Incident</td>
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<tr>
<td>Kangemi</td>
<td>Police</td>
<td>On 12th August 2017, a male civilian was hit by a bullet discharged from a police gun. The police were engaging protesters in running battles around Mau Mau area. The victim was rushed to Eagles Nursing Home, where he received first aid before being transferred to Kenyatta National Hospital (KNH) for specialized treatment.</td>
</tr>
<tr>
<td>Kibra</td>
<td>Police</td>
<td>On 11th August 2017, at around 2:00 a.m., a male civilian was hit by a rubber bullet fired by the police as they were dispersing demonstrators. He suffered soft tissue injury and was treated at Wanga Hospital in Langata and later referred to KNH for specialized treatment.</td>
</tr>
<tr>
<td>Kibra</td>
<td>Police</td>
<td>On 12th August 2017, police officers who were dispersing demonstrators using tear gas and live bullets shot a male civilian on the hand as he ran away from them. He was treated at Kenyatta National Hospital.</td>
</tr>
<tr>
<td>Kibra</td>
<td>Police</td>
<td>On 12th August 2017, a male civilian was shot in the chest by the police while opening his shop. His son aged between 28 years was called to rescue his father and upon arrival he was confronted and assaulted by the police. The Kenya Red Cross team rushed the two victims to Nairobi Women hospital. The son was later transferred to Alliance Hospital for specialized treatment.</td>
</tr>
<tr>
<td>Kibra</td>
<td>Police</td>
<td>On 12th August 2017, a young man was shot by police on his thigh while alighting from a motorbike. The Kenya Red Cross team took him to Nairobi Women Hospital for treatment.</td>
</tr>
<tr>
<td>Kibra</td>
<td>Police</td>
<td>On 12th August 2017, at around 3:00 a.m., four police officers accosted a male civilian aged 20-year-old, beat him using truncheons and he sustained a fractured arm. He received first aid from the Kenya Red Cross. He sought treatment at the Kenyatta National Hospital.</td>
</tr>
<tr>
<td>Kibra</td>
<td>Police</td>
<td>On 12th August 2017, a male civilian was at a hotel when police officers came in and started assaulting him. They broke his arm. He was treated at Ushirika Clinic and later referred to Kenyatta National Hospital for specialized treatment.</td>
</tr>
<tr>
<td>Location Of Incident</td>
<td>Alleged Perpetrator</td>
<td>Complaint</td>
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</tr>
<tr>
<td>Kibra</td>
<td>Police</td>
<td>On 12&lt;sup&gt;th&lt;/sup&gt; August 2017, police officers assaulted a male civilian. He suffered actual body injuries to his back and ribs.</td>
</tr>
<tr>
<td>Kibra</td>
<td>Police</td>
<td>On 12&lt;sup&gt;th&lt;/sup&gt; August 2017, at around 11:00a.m., police officers shot a female civilian with a rubber bullet, injuring the right side of her chest.</td>
</tr>
<tr>
<td>Kibra</td>
<td>Police</td>
<td>On 12&lt;sup&gt;th&lt;/sup&gt; August 2017, at around 10:00a.m., four police officers forcefully entered into a house of a male civilian, assaulted him resulting in a fractured arm. He received first aid from the Kenya Red Cross who later took him to Kenyatta Hospital for treatment.</td>
</tr>
</tbody>
</table>

**KISUMU COUNTY**

<p>| Nyalenda | Civilian | On 11&lt;sup&gt;th&lt;/sup&gt; August 2017, in the evening hours a female civilian was assaulted by her neighbours because her husband is from the Kikuyu tribe. Her house was set ablaze. By the time of recording her statement, she had not sought medical attention. |
| Nyalenda | Police   | On 11&lt;sup&gt;th&lt;/sup&gt; August 2017, the police officers forcefully entered into a house of a male civilian. They assaulted him, his parents and other siblings. One of his sons sustained three deep cuts on the head. He was treated at Jaramogi Oginga Odinga Teaching and Referral Hospital. |
| Nyalenda | Police   | On 11&lt;sup&gt;th&lt;/sup&gt; August 2017, police officers forcefully entered into a house of a male civilian and assaulted him. He suffered actual body injuries. By the time of recording his statement, he had not sought medical attention. |
| Nyalenda | Police   | On 11&lt;sup&gt;th&lt;/sup&gt; August 2017, police officers forcefully entered into a house of a 35-year-old male civilian, assaulted him and stole his phone. By the time of recording his statement, he had not sought medical attention. |
| Nyalenda | Police   | On 11&lt;sup&gt;th&lt;/sup&gt; August 2017, police officers forcefully entered into the house of a male civilian, assaulted him and destroyed his motorbike. By the time of recording his statement, he had not sought medical attention. |</p>
<table>
<thead>
<tr>
<th>Location Of Incident</th>
<th>Alleged Perpetrator</th>
<th>Complaint</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nyalenda</td>
<td>Police</td>
<td>On 12th August 2017, at around 10:00 a.m., an estimated eight (8) Administrative Police Officers forcefully entered into a house of a male civilian aged 37 years old, assaulted him using truncheons. He was injured on both legs and treated at an undisclosed local hospital. The Administrative Police Officers also stole his Samsung phone and Ksh 5,000.</td>
</tr>
<tr>
<td>Nyalenda</td>
<td>Police</td>
<td>On 12th August 2017, at around 11:00 a.m., a group of police officers forcefully entered into a house of a male civilian aged 27 years old and assaulted him using truncheons. He sustained injuries on both hands and left leg. He was later taken to Jaramogi Oginga Odinga Teaching and Referral Hospital by Kenya Red Cross officers. The police officers also destroyed the windows of his landlady’s house, who is disabled.</td>
</tr>
<tr>
<td>Nyalenda</td>
<td>Police</td>
<td>On 12th August 2017, close to 20 Police Officers in civilian attire at the Western Junction in Nyalenda forced a male civilian aged 35-year-old and others to remove stones used by demonstrators to barricade the road. The officers assaulted the male civilian using truncheons.</td>
</tr>
<tr>
<td>Nyalenda</td>
<td>Police</td>
<td>On 12th August 2017, a young man was forcefully taken away by the police officers, and returned later with his leg injured from the police assault. At around 8pm the same day, the Kenya Red Cross officers took the victim to Jaramogi Oginga Odinga Teaching and Referral Hospital where he was hospitalized for a day.</td>
</tr>
<tr>
<td>Nyalenda</td>
<td>Police</td>
<td>On 12th August 2017, at around noon, six administration police officers assaulted a female civilian, aged 40 years old at Oboch Market. She sustained actual body injuries. By the time of recording the statement, she had not sought medical attention.</td>
</tr>
<tr>
<td>Nyalenda</td>
<td>Police</td>
<td>On 12th August 2017, at around 11:00 a.m., police officers forcefully entered into the house of a 30-year-old female civilian, assaulted her and forced the husband to give them Kshs. 100 or be taken to police custody. Red Cross officials took them to Jaramogi Oginga Odinga Teaching and Referral Hospital.</td>
</tr>
<tr>
<td>Location Of Incident</td>
<td>Alleged Perpetrator</td>
<td>Complaint</td>
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<tr>
<td>Nyalenda B</td>
<td>Police</td>
<td>On 12&lt;sup&gt;th&lt;/sup&gt; August 2017, at 8:00p.m., a 40-year-old female civilian was on her way home from her business when she met policemen. They asked her where she was from and then assaulted her. She sustained actual body injuries to her teeth, head and mouth.</td>
</tr>
<tr>
<td>Nyalenda</td>
<td>Police</td>
<td>On 12&lt;sup&gt;th&lt;/sup&gt; August 2017, at 10:00p.m., a 38-year-old male civilian was having dinner at a hotel, three police officers walked in, and two of them assaulted him and other diners with truncheons and guns. They also lobbed teargas canisters at them and left. The victim was hit on the chest and head. By the time of recording his statement, he had not sought medical attention.</td>
</tr>
<tr>
<td>Nyalenda</td>
<td>Police</td>
<td>On 12&lt;sup&gt;th&lt;/sup&gt; August 2017, a 23-year-old male civilian was beaten by police officers when they forcefully entered into his house. They took his Infinix phone and wallet containing Kshs 4,800. Kenya Red Cross officers came the following day and took him to Jaramogi Oginga Odinga Teaching and Referral Hospital.</td>
</tr>
<tr>
<td>Nyalenda</td>
<td>Police</td>
<td>On 12&lt;sup&gt;th&lt;/sup&gt; August 2017, a 42-year-old male boda boda rider met seven (7) police officers at Obunga Junction. The police officers took his passenger’s phone away and destroyed his motorbike. The rider and his pillion passenger received first-aid administered by Kenya Red Cross officers.</td>
</tr>
<tr>
<td>Nyalenda</td>
<td>Police</td>
<td>On 12&lt;sup&gt;th&lt;/sup&gt; August 2017, at 11:00 a.m., police officers forcefully entered into a house of a male civilian and assaulted him. His ankle and elbows were injured. They also stole his phone. He received medical attention at Jaramogi Oginga Odinga Teaching and Referral Hospital.</td>
</tr>
<tr>
<td>Nyalenda</td>
<td>Police</td>
<td>On 12&lt;sup&gt;th&lt;/sup&gt; August 2017, police officers forcefully entered into the house of a male civilian and assaulted him. By the time of recording the statement, he had not sought medical attention.</td>
</tr>
<tr>
<td>Nyalenda</td>
<td>Police</td>
<td>On 12&lt;sup&gt;th&lt;/sup&gt; August 2017, police officers forcefully entered into a house of a male civilian and assaulted him. They also stole Kshs 3,800 and his Huawei phone. By the time of recording the statement, he had not sought medical attention.</td>
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<tr>
<td>Location Of Incident</td>
<td>Alleged Perpetrator</td>
<td>Complaint</td>
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<tr>
<td>Nyalenda</td>
<td>Police</td>
<td>On 12th August 2017, at around 9:00 a.m, police officers forcefully entered the house of a female civilian and assaulted her. They stole her phone. By the time of recording the statement, she had not sought medical attention.</td>
</tr>
<tr>
<td>Nyalenda</td>
<td>Police</td>
<td>On 12th August 2017, police officers forcefully entered the house of a 32-year-old male civilian and assaulted him. In the process, they also stole Kshs. 25,650 from him. By the time of recording the statement, he had not sought medical attention.</td>
</tr>
<tr>
<td>Nyalenda</td>
<td>Police</td>
<td>On 12th August 2017, police officers forcefully entered into the house of a 28-year-old male civilian and assaulted him. By the time of recording the statement, he had not sought medical attention.</td>
</tr>
<tr>
<td>Nyalenda</td>
<td>Police</td>
<td>On 12th August 2017, at around 10:30 a.m. a 35-year-old male civilian was in a hotel when three (3) police officers entered the hotel and started assaulting him and other diners with truncheons. They also lobbed teargas canisters inside the hotel and left. He sustained actual bodily injuries. By the time of recording the statement, he had not sought medical attention.</td>
</tr>
<tr>
<td>Nyalenda</td>
<td>Police</td>
<td>On 12th August 2017, a 40-year-old male civilian was assaulted by police officers. He sustained actual body injuries to the elbows, legs and head. He received treatment at Jaramogi Oginga Odinga Teaching and Referral Hospital.</td>
</tr>
<tr>
<td>Nyalenda</td>
<td>Police</td>
<td>On 12th August 2017, police officers forcefully entered into a house of a 24-year-old male civilian assaulted him causing actual serious body injuries to his hands, ribs, legs and thighs. He was attended to by the Kenya Red Cross officers.</td>
</tr>
<tr>
<td>Nyalenda B</td>
<td>Police</td>
<td>Police were chasing unknown people who had looted a supermarket. They sought refuge at a compound of a female civilian aged 64 years old. Police lobbed teargas canisters to eject them with resultant negative effects to the diabetic old lady. By the time of recording the statement, she had not sought medical attention.</td>
</tr>
<tr>
<td>Location Of Incident</td>
<td>Alleged Perpetrator</td>
<td>Complaint</td>
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<tr>
<td>Nyalenda B</td>
<td>On 12&lt;sup&gt;th&lt;/sup&gt; August 2017, the police forcefully entered into a house of a male civilian aged 65 years old and started assaulting his son. When he sought to know what was happening to his son he was also assaulted by the police officers which left him with actual body injuries on his left hand. He reported the matter to the police. By the time of recording the statement, he had not sought medical attention.</td>
<td></td>
</tr>
<tr>
<td>Nyalenda</td>
<td>Police</td>
<td>On 12&lt;sup&gt;th&lt;/sup&gt; August 2017, an administration police officers forcefully entered into a house of a female civilian. The officers assaulted her and forcefully took away her phone. The officers took her inside her bedroom and raped her. They also stole Ksh 2,500, three packets of milk and her phone. By the time of recording the statement, she had not sought medical attention.</td>
</tr>
<tr>
<td>Obunga</td>
<td>Police</td>
<td>On 9&lt;sup&gt;th&lt;/sup&gt; August 2017 police officers forcefully entered into house of a male civilian aged 28 years old and assaulted him. He sustained actual body injuries on his hands and elbow. By the time of recording the statement, he had not sought medical attention.</td>
</tr>
<tr>
<td>Obunga</td>
<td>Police</td>
<td>On 11&lt;sup&gt;th&lt;/sup&gt; August 2017, a security officer aged 37 years old encountered police officers who lobbed tear-gas canisters at demonstrators and shot in the air. Police pursued him to his house and assaulted him using truncheons. He sustained actual body injuries. He didn’t seek medical attention due to the heavy presence of security officers within the area. By the time of recording the statement, he had not sought medical attention.</td>
</tr>
<tr>
<td>Obunga</td>
<td>Police</td>
<td>On 11&lt;sup&gt;th&lt;/sup&gt; August 2017, a female civilian was assaulted by administration police officers who forcefully entered into her house. The police officers destroyed her television set and radio. By the time of recording the statement, she had not sought medical attention.</td>
</tr>
<tr>
<td>Location Of Incident</td>
<td>Alleged Perpetrator</td>
<td>Complaint</td>
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<tr>
<td>Obunga</td>
<td>Police</td>
<td>On 11th August 2017, at around 1:00a.m., police officers forcefully entered into the house of a 56-year-old female civilian and assaulted her. Police officers stole two cartons of fish worth Kshs. 2,700 and Ksh 8,270 in cash. She sustained leg injuries. By the time of recording the statement, she had not sought medical attention.</td>
</tr>
<tr>
<td>Obunga</td>
<td>Police</td>
<td>On 12th August 2017, at around 3:00a.m., a group of Administration Police officers and National Youth Service officers forcefully entered into a house of a male civilian aged 28 years old. They assaulted him causing actual body harm to his chest, joints and neck. They left him bleeding. The Kenya Red Cross officers took him to Jaramogi Oginga Odinga Teaching and Referral Hospital where he was admitted. During the incidence, the police also destroyed his motorbike.</td>
</tr>
<tr>
<td>Obunga</td>
<td>Police</td>
<td>On 12th August 2017, police officers forcefully entered into a house of a male civilian aged 23 years old, assaulted him leaving him with actual body injuries on the head, hands and knees. By the time of recording the statement, he had not sought medical attention</td>
</tr>
<tr>
<td>Obunga</td>
<td>Police</td>
<td>On 12th August, 2017 at around 9:45 p.m., a male civilian, aged 37 years old broke his arm when the police officers forced themselves into a hall in Dago Market where he and others were assaulted. By the time of recording the statement, he had not sought medical attention due to lack of money.</td>
</tr>
<tr>
<td>Obunga</td>
<td>Police</td>
<td>On 12th August 2017, at around 3:00a.m., about 5 Administration Police officers forcefully entered into a house of a male civilian. They assaulted him using truncheons. The victim was treated at Jaramogi Oginga Odinga Teaching and Referral Hospital.</td>
</tr>
<tr>
<td>Obunga</td>
<td>Police</td>
<td>On 12th August 2017, a female civilian aged 34 years old, while on her way home was accosted by Administration Police officers who lobbed a tear gas canister at her and assaulted her using truncheons. She lost her bag and phone and received actual body injuries on her thigh and leg. She was taken to Jaramogi Oginga Odinga Teaching and Referral Hospital for medical attention by Kenya Red Cross officers.</td>
</tr>
<tr>
<td>Location Of Incident</td>
<td>Alleged Perpetrator</td>
<td>Complaint</td>
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<tr>
<td>Obunga</td>
<td>Police</td>
<td>On 12th August 2017, a male civilian was assaulted by Administration Police officers while taking his friend to hospital. He sustained actual body injuries on arms, legs and waist. By the time of recording the statement, he had not sought medical attention.</td>
</tr>
<tr>
<td>Obunga</td>
<td>Police</td>
<td>On 12th August 2017, a female civilian aged 45 years was assaulted by the police officers at a shop where she had sort refuge. Police caused actual body harm on her leg. By the time of recording the statement, she had not sought medical attention.</td>
</tr>
<tr>
<td>Obunga</td>
<td>Civilian</td>
<td>On 12th August 2017, unknown people forcefully entered into the shop of a 23-year-old male civilian assaulted him and stole everything. The matter was reported to Obunga police post. By the time of recording the statement, he had not sought medical attention.</td>
</tr>
<tr>
<td>Obunga</td>
<td>Police</td>
<td>On 12th August 2017, police officers forcefully entered into the house of a 23-year-old male civilian and assaulted his friend and stole Kshs. 7,200 and two packets of milk. By the time of recording the statement, he had not sought medical attention.</td>
</tr>
<tr>
<td>Obunga</td>
<td>Police</td>
<td>On 12th August 2017, a male civilian was assaulted by police officers at around 8:30p.m. He sought medical attention at the district hospital. The matter was reported at Obunga Police Post.</td>
</tr>
<tr>
<td>Obunga</td>
<td>Police</td>
<td>On 12th August 2017, police officers forcefully entered into a house of a 50-year-old widow and started asking her to bring out those people who were throwing stones and then lobbed tear gas canister at her affecting her eyes and chest. In the process she sustained back injuries. She received medical assistance from Kenya Red Cross officers.</td>
</tr>
<tr>
<td>Obunga</td>
<td>Police</td>
<td>On 12th August 2017, police officers forcefully entered into a house of a female civilian aged 60 years while reportedly searching for demonstrators. In the process, they lobbed tear gas canister in her house and she developed chest complications from the gas inhalation. She reported the matter to the police station. By the time of recording the statement, she had not sought medical attention.</td>
</tr>
<tr>
<td>Location Of Incident</td>
<td>Alleged Perpetrator</td>
<td>Complaint</td>
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<tr>
<td>Obunga</td>
<td>Police</td>
<td>On 12th August 2017, the police officers forcefully entered into a house of a female civilian. The officers assaulted her using truncheons. She sustained back injuries. By the time of recording the statement, she had not sought medical attention.</td>
</tr>
<tr>
<td>Obunga</td>
<td>Police</td>
<td>On 12th August 2017, police officers forcefully entered into a house of a female civilian. They lobbed teargas canister inside her house. The inhalation of the teargas affected her. She reported the matter to the police. By the time of recording the statement, she had not sought medical attention.</td>
</tr>
<tr>
<td>Obunga</td>
<td>Police</td>
<td>The police forcefully entered into the house of a female civilian aged 35 years old and ordered her husband to remove his clothes. She screamed and the officers assaulted her. She sustained actual body injury on her neck. She reported the incidence to the police. By the time of recording the statement, she had not sought medical attention.</td>
</tr>
<tr>
<td>Manyatta</td>
<td>Police</td>
<td>On 9th August 2017, a 28-year-old male civilian was accosted by police officers who assaulted him and also shot his leg. He received treatment at Jaramogi Oginga Odinga Teaching and Referral Hospital.</td>
</tr>
<tr>
<td>Manyatta</td>
<td>Police</td>
<td>On 10th August, 2017, a 24-year-old male civilian was assaulted by seven (7) police officers on his way home. He sustained actual body injuries to his head and legs. He was treated at a clinic in Manyatta area.</td>
</tr>
<tr>
<td>Manyatta</td>
<td>Police</td>
<td>On 11th August 2017, at about 9:00.p.m. a 21-year-old male civilian was shot at his waist by police officers pursuing demonstrators. The Kenya Red Cross officers took him to Jaramogi Oginga Odinga Teaching and Referral Hospital.</td>
</tr>
<tr>
<td>Manyatta</td>
<td>Police</td>
<td>On 11th August 2017, police officers accosted a 35-year-old male by the road side at night and assaulted him causing actual body harm to his hips. He received treatment at Jaramogi Oginga Odinga Teaching and Referral Hospital.</td>
</tr>
<tr>
<td>Manyatta</td>
<td>Police</td>
<td>On 12th August 2017, a group of Administration Police officers forcefully entered into a house in Manyatta area and assaulted a minor, aged 14 years old causing actual body injury on his laps. By the time of recording the statement, he had not sought medical attention.</td>
</tr>
<tr>
<td>Location Of Incident</td>
<td>Alleged Perpetrator</td>
<td>Complaint</td>
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<tr>
<td>Manyatta Police</td>
<td>On 15&lt;sup&gt;th&lt;/sup&gt; August 2017, at around 9:00p.m., about 4 Administration Police officers forced themselves into a house of a 34 years old female civilian and assaulted her using truncheons and also stole her phone, Ksh 4,000 in cash, television set, woofer, plates, bed sheet and gas cylinder. By the time of recording the statement, she had not sought medical attention. She reported the incidence at Kondele Police Station.</td>
<td></td>
</tr>
<tr>
<td>Manyatta Police</td>
<td>On 12&lt;sup&gt;th&lt;/sup&gt; August 2017, the police officers shot a female civilian in the pelvic. The bullet lodged in her body and she was hospitalized at Jaramogi Oginga Odinga Teaching and Referral Hospital. The matter was reported at Kondele Police Station</td>
<td></td>
</tr>
<tr>
<td>Mowlem Police</td>
<td>On 10&lt;sup&gt;th&lt;/sup&gt; August 2017, a female civilian aged 19 years old was accosted by Administration Police officers who were dispersing protesters. One of the officers assaulted her by hitting her on the face using his boots. By the time of recording the statement, she had not sought medical attention.</td>
<td></td>
</tr>
<tr>
<td>Mowlem Police</td>
<td>On 12&lt;sup&gt;th&lt;/sup&gt; August 2017, police officers forcefully entered into a house of a male civilian and assaulted him. He suffered a dislocation on his left hand. The officers abducted him and later dumped him at Rabuor. By the time of recording the statement, he had not sought medical attention.</td>
<td></td>
</tr>
<tr>
<td>Kondele Civilian</td>
<td>On 16&lt;sup&gt;th&lt;/sup&gt; August 2017, at around 8:00p.m., a male civilian, aged 35 years old was assaulted by a man well known to him for having not supported their preferred Presidential candidate- Raila Odinga. He caused him actual body injury on the cheek and ear. He sought medical attention at the Kisumu District Hospital. He reported the incidence at Kondele Police station.</td>
<td></td>
</tr>
<tr>
<td>Otonglo Police</td>
<td>On 9&lt;sup&gt;th&lt;/sup&gt; August 2017, police officers forcefully entered into the house of a female civilian and assaulted her causing actual body injuries to her ribs. They also stole Kshs 500 and a phone battery from her. By the time of recording the statement, she had not sought medical attention.</td>
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<tr>
<td>Location Of Incident</td>
<td>Alleged Perpetrator</td>
<td>Complaint</td>
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<tr>
<td>Otonglo</td>
<td>Police</td>
<td>On 12th August 2017, at around 11.00am, the Administration Police officers assaulted a female civilian, aged 34 years old causing actual body injury to her and also stole Ksh 700 from her.</td>
</tr>
<tr>
<td>Otonglo</td>
<td>Police</td>
<td>On 12th August 2017, at 2:30p.m, about five (5) Administration Police officers forcefully entered into a house of a female civilian aged 25 years old and assaulted her using truncheons causing actual body harm on her legs. They also stole her phone battery and Ksh 500. By the time of recording the statement, she had not sought medical attention.</td>
</tr>
<tr>
<td>Nyamasaria</td>
<td>Police</td>
<td>On 11th August 2017, police officers forcefully entered into the compound of a male civilian and assaulted tenants and the landlord. The latter suffered a cut on his head. He was treated at Kisumu District Hospital.</td>
</tr>
<tr>
<td>Nyamasaria</td>
<td>Police</td>
<td>On 11th August 2017, police officers accosted a male civilian riding his bike resulting in a fall by the roadside bonfire and consequently burnt his hands. He was treated at Mama Moraa Dispensary.</td>
</tr>
<tr>
<td>Nyamasaria</td>
<td>Police</td>
<td>On 11th August 2017, at around 10:00 p.m the brother to a 31-year-old male civilian was shot in the neck by police officers. Kenya Red Cross officers took him to Jaramogi Oginga Odinga Teaching and Referral Hospital.</td>
</tr>
<tr>
<td>Nyamasaria</td>
<td>Police</td>
<td>On 12th August 2017, a 28-year-old female civilian was assaulted by police while washing her dishes. By the time of recording the statement, she had not sought medical attention.</td>
</tr>
<tr>
<td>Nyamasaria</td>
<td>Police</td>
<td>On 12th August 2017, the police officers forcefully entered into the house of a male civilian and assaulted him. By the time of recording the statement, he had not sought medical attention.</td>
</tr>
<tr>
<td>Nyamasaria</td>
<td>Police</td>
<td>On 12th August 2017, at around Noon, police officers forcefully entered the house of a male civilian and assaulted him causing actual body injuries to his head, knee and arms. By the time of recording the statement, he had not sought medical attention.</td>
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<tr>
<td>Location Of Incident</td>
<td>Alleged Perpetrator</td>
<td>Complaint</td>
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<tr>
<td>Nyamasaria</td>
<td>Police</td>
<td>On 12th August 2017, a 26-year-old male civilian was assaulted by police officers causing actual body injuries to his hands and the back. He was treated at St. Georges Hospital.</td>
</tr>
<tr>
<td>Nyamasaria</td>
<td>Police</td>
<td>On 12th August, 2017 police officers forcefully entered into the house of a 36-year-old male civilian and assaulted him. By the time of recording the statement, he had not sought medical attention.</td>
</tr>
<tr>
<td>Nyamasaria</td>
<td>Police</td>
<td>On 12th August 2017, at about 10:00a.m, police officers forcefully entered the house of a male civilian and assaulted him causing actual body injuries to his shoulders, ribs and hands. By the time of recording the statement, he had not sought medical attention.</td>
</tr>
<tr>
<td>Nyamasaria</td>
<td>Police</td>
<td>On 15th August 2017, a 41-year-old male civilian was assaulted by police officers causing actual body injuries to his left arm and chest. By the time of recording the statement, he had not sought medical attention.</td>
</tr>
<tr>
<td>Railways</td>
<td>Police</td>
<td>On 9th August 2017, a 30-year-old male civilian reported that a young man was assaulted by police. He was taken to Jaramogi Oginga Odinga Teaching and Referral Hospital for treatment and reported the matter to the Police Station.</td>
</tr>
<tr>
<td>Railways</td>
<td>Police</td>
<td>On 11th August 2017, police officers assaulted and injured a minor on his head following confrontations with demonstrators. By the time of recording the statement, he had not sought medical attention.</td>
</tr>
<tr>
<td>Mamboleo</td>
<td>Police</td>
<td>On 11th August 2017, a 28-year-old male civilian was accosted by five (5) police officers on his way home assaulted and sustaining actual body injuries on his legs and stomach. He received treated at Consolata Hospital.</td>
</tr>
<tr>
<td>Mamboleo</td>
<td>Police</td>
<td>On 12th August 2017, at around 3:00 p.m. a 32-year-old male civilian fell off a motorbike while being chased by police officers. He broke his hand and was treated at Jaramogi Oginga Odinga Teaching and Referral Hospital.</td>
</tr>
<tr>
<td>Migosi</td>
<td>Police</td>
<td>On 12th August 2017, a male civilian aged 42 years old was accosted by estimated eight (8) police officers at Obunga junction. He was assaulted with truncheons causing actual body injury to his left leg and spinal cord. By the time of recording the statement, he had not sought medical attention.</td>
</tr>
<tr>
<td>Location Of Incident</td>
<td>Alleged Perpetrator</td>
<td>Complaint</td>
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<tr>
<td>Migosi</td>
<td>Police</td>
<td>On 12&lt;sup&gt;th&lt;/sup&gt; August 2017, a 20-year-old asthmatic male civilian suffered the effects of teargas lobbed by the police officers. He was hospitalized at Avenue Hospital. The matter was reported to the police.</td>
</tr>
<tr>
<td>Kotetni</td>
<td>Police</td>
<td>On 9&lt;sup&gt;th&lt;/sup&gt; August 2017, a male civilian aged 35 years old was assaulted by police officers who forcefully entered into his house and lobbed teargas canister in the presence of his children. He was assaulted and sustained actual body injury on his ribs legs and head. He was treated at Jaramogi Oginga Odinga Teaching and Referral Hospital.</td>
</tr>
<tr>
<td>Kotetni</td>
<td>Police</td>
<td>On 9&lt;sup&gt;th&lt;/sup&gt; August 2017, police officers forcefully entered the house of a male civilian. They lobbed teargas canister at his children and caused actual body injury to his hands. He also suffered injuries on the legs and head from the police assault. By the time of recording the statement, he had not sought medical attention.</td>
</tr>
<tr>
<td>Riat</td>
<td>Police</td>
<td>On 10&lt;sup&gt;th&lt;/sup&gt; August 2017, a male civilian, aged 31 years old was accosted by four Administration Police Officers dispersing protesters, during which he was assaulted by the officers causing actual body injury to his face and mouth losing a tooth. He was treated at undisclosed hospital in Kiboswa. By the time of recording the statement, he had not sought medical attention. The officers also stole his Tecno L2 phone and Ksh 4,500 in his possession.</td>
</tr>
<tr>
<td>Tom Mboya</td>
<td>Police</td>
<td>On 11&lt;sup&gt;th&lt;/sup&gt; August 2017, a male civilian aged 34 years old was accosted by police officers dispersing demonstrators at Ogango bridge. He was shot by the police in the shoulder and the bullet went through the neck. The police took his wallet containing money of unknown amount. He was hospitalized at Jaramogi Oginga Odinga Teaching and Referral Hospital.</td>
</tr>
<tr>
<td>Kibos</td>
<td>Police</td>
<td>On 11&lt;sup&gt;th&lt;/sup&gt; August 2017, a 42-year-old male civilian was assaulted by prison officers from Kibos GK prison on patrol using truncheons causing actual body injury to his arms and shoulder. He fell unconscious and woke up in a structure under construction. He later went home and received medical assistance from a medical practitioner.</td>
</tr>
<tr>
<td>Location Of Incident</td>
<td>Alleged Perpetrator</td>
<td>Complaint</td>
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<tr>
<td>Katuoro</td>
<td>Police</td>
<td>On 12&lt;sup&gt;th&lt;/sup&gt; August 2017, a male civilian was assaulted by police officers who had forcefully entered into his house. He sustained actual body harm on his lips, knee and leg. By the time of recording the statement, he had not sought medical attention.</td>
</tr>
<tr>
<td>Oyugis</td>
<td>Police</td>
<td>On 12&lt;sup&gt;th&lt;/sup&gt; August 2017, at around 10:00a.m. The brother to a 27 years old male civilian was shot on the knee by police and as a result the leg was amputated.</td>
</tr>
<tr>
<td>Buoye</td>
<td>Police</td>
<td>On 12&lt;sup&gt;th&lt;/sup&gt; August 2017, police officers forcefully entered into the house of a 29-year-old male civilian and assaulted him and his family members. By the time of recording the statement, they had not sought medical attention.</td>
</tr>
<tr>
<td>Kanyamedha</td>
<td>Police</td>
<td>On 12&lt;sup&gt;th&lt;/sup&gt; August 2017, the police officers assaulted a male civilian, during a confrontation with demonstrators. The victim suffered chest injuries from the police assault. By the time of recording the statement he had not sought medical attention.</td>
</tr>
<tr>
<td>Nyalenda</td>
<td>Police</td>
<td>On the night of 11&lt;sup&gt;th&lt;/sup&gt; August 2017, police officers forcefully entered the house of 24-year-old male civilian and assaulted him. He sustained actual body injury to his back and arm, and treated at Jaramogi Oginga Odinga Teaching and Referral Hospital. His 4-year-old son was also injured during the assault. He reported the incidence, but the police refused to record the incidence. The police also confiscated his phone.</td>
</tr>
<tr>
<td>Nyalenda</td>
<td>Police</td>
<td>On 12&lt;sup&gt;th&lt;/sup&gt; August 2017, at around 11:30 a.m., six police officers forcefully entered into the house of a 20-year-old male civilian and assaulted him leading to actual body injury to his knee, head and shoulder. He sought medical treatment at Jaramogi Oginga Odinga Teaching and Referral Hospital. The police also stole money from him.</td>
</tr>
<tr>
<td>Nyalenda</td>
<td>Police</td>
<td>On 12&lt;sup&gt;th&lt;/sup&gt; August, 2017 at around 11:00 a.m. police officers forcefully entered into the house of a 30-year-old male civilian and assaulted him causing actual body injuries on his hands and legs. He was attended to at Jaramogi Oginga Odinga Teaching and Referral Hospital.</td>
</tr>
<tr>
<td>Location Of Incident</td>
<td>Alleged Perpetrator</td>
<td>Complaint</td>
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</tr>
<tr>
<td>Nyalenda</td>
<td>Police</td>
<td>On 12th August, 2017 police officers forcefully entered into the house of a 37-year-old male civilian and assaulted him. He sustained actual body injuries on his legs and shoulders. By the time of recording the statement, he had not sought medical attention.</td>
</tr>
<tr>
<td>Kondele</td>
<td>Police</td>
<td>On 9th August 2017, at around 7:00 p.m, a male civilian aged 32-year-old, was accosted by police officers who assaulted him causing actual body injuries to his knees and elbows. He sought treatment at a clinic at Car Wash and reported the matter to the police.</td>
</tr>
<tr>
<td>Kondele</td>
<td>Police</td>
<td>On 12th August 2017, at about 11:00 a.m, Administration Police officers forcefully entered into a house of a female civilian. They assaulted her by stripping her naked and one officer raped her. The police officers also stole from her Ksh 1,000. By the time of recording the statement, she had not sought medical attention.</td>
</tr>
<tr>
<td>Kondele</td>
<td>Police</td>
<td>On 12th August 2017, between 5:00 to6:00 p.m, GSU officers descended on a 30-year-old deaf and dumb male civilian as he was walking to his home. He sustained actual body injuries on his legs, eyes, back and right hand. He was treated at Jaramogi Oginga Odinga Teaching and Referral Hospital. The matter was reported to the police.</td>
</tr>
</tbody>
</table>

**HOMABAY COUNTY**

<table>
<thead>
<tr>
<th>Location Of Incident</th>
<th>Alleged Perpetrator</th>
<th>Complaint</th>
</tr>
</thead>
<tbody>
<tr>
<td>Homabay Town</td>
<td>Police</td>
<td>On 11th August 20117, at around 11pm, about five police officers while dispersing demonstrators shot and injured a male civilian aged 17. The victim sustained actual body injury on the left arm. He was taken to St. Paul's Mission Hospital and was later referred to Homabay county referral hospital for specialized treatment and removal of the bullet.</td>
</tr>
<tr>
<td>Homabay Town</td>
<td>Police</td>
<td>On 12th August 2017, a male civilian operating as a boda boda rider was accosted and assaulted by police officers. He sustained actual body injury to his left arm and right leg. By the time of recording the statement, he had not sought medical attention.</td>
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<tr>
<td>Location Of Incident</td>
<td>Alleged Perpetrator</td>
<td>Complaint</td>
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</tr>
<tr>
<td><strong>MIGORI COUNTY</strong></td>
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<tr>
<td>Migori</td>
<td></td>
<td>On 12&lt;sup&gt;th&lt;/sup&gt; August 2017, police officers shot and injured a female civilian on her upper left thigh. She underwent surgery at Akidiva Hospital to remove the bullet.</td>
</tr>
<tr>
<td>Onyalo Primary School</td>
<td>Civilian</td>
<td>On 10&lt;sup&gt;th&lt;/sup&gt; August 2017, a group of people assaulted a male civilian with machetes. The victim ran and hid inside a classroom in a nearby school. The assailants tried breaking into the classroom but the police who were called in intervened by dispersing the crowd. They also confiscated the weapons that were in the possession of the assailants. Several assailants were arrested and their crude weapons confiscated. By the time of recording the statement, the victim had not sought medical attention.</td>
</tr>
<tr>
<td><strong>SIAYA COUNTY</strong></td>
<td></td>
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<tr>
<td>Siaya</td>
<td>Police</td>
<td>On 12&lt;sup&gt;th&lt;/sup&gt; August 2017, the police forcefully entered into a house of a male civilian in search of demonstrators. They assaulted him and a group of three women. By the time of recording the statement, the victim had not sought medical attention.</td>
</tr>
<tr>
<td>Siaya</td>
<td>Police</td>
<td>On 12&lt;sup&gt;th&lt;/sup&gt; August 2017, police officers assaulted a male civilian using truncheons, destroying a motorbike given to him by a friend. By the time of recording the statement, he had not sought medical attention.</td>
</tr>
<tr>
<td>Siaya</td>
<td>Police</td>
<td>On 12&lt;sup&gt;th&lt;/sup&gt; August 2017 the police officers broke into a house of a male civilian in Ugunja town following confrontations between the police and demonstrators. By the time of recording the statement he had not sought medical attention.</td>
</tr>
<tr>
<td>Siaya</td>
<td>Police</td>
<td>On 12&lt;sup&gt;th&lt;/sup&gt; August 2017, at around 7:30a.m, a police officer forcefully entered the house of a male civilian aged 70 years old and ordered him to get outside to a place where close to 20 police officers were standing next to burning tyres. The officers ordered him to put it out and when he declined, five officers returned to his house with him, assaulted him and injured his private parts. The officers also assaulted his grandchild. He was treated at Yala Hospital, then referred for specialized treatment at a private hospital where he was admitted for two days. Upon his discharge, he reported the matter to the police station, but the police officers at the front desk refused give him P3 form.</td>
</tr>
<tr>
<td>Location Of Incident</td>
<td>Alleged Perpetrator</td>
<td>Complaint</td>
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</tr>
<tr>
<td><strong>SEXUAL AND GENDER BASED VIOLENCE</strong></td>
<td></td>
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<tr>
<td><strong>KISUMU COUNTY</strong></td>
<td></td>
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<tr>
<td>Nyalenda</td>
<td>Police</td>
<td>On 12th August 2017, three Administration Police officers forcefully entered into a house of a 30-year-old female civilian. They assaulted her by slapping her and demanded money and her phone. She was dragged into her bedroom and raped by one of the officers. The officers also stole Ksh 2,500 three packets of milk and her phone. By the time of recording the statement, she had not sought medical attention.</td>
</tr>
<tr>
<td>Mowlem</td>
<td>Police</td>
<td>On 12th August, 2017 about five (5) police officers forcefully entered into the house of two sisters. They asked if there were men within and they confirmed there were none. The police slapped and ordered one of them out of the house. They also forced her to give one of them “one shot” (literal meaning of having sexual intercourse) upon which she refused. One of the officers dragged her outside and ordered her to crawl on the road and while doing so one of police officer ordered her to roll in the mud. As she was rolling they assaulted her by kicking and hitting her. The second sister was also assaulted and dragged outside while being beaten. She was ordered to collect stones that were on the road. While doing so, she was being assaulted repeatedly. One officer asked her if her buttocks were real. She was too distressed to talk, she was ordered to start singing and dancing which she could not and as a result they repeatedly beat her in the buttocks. The victims felt greatly harassed and threatened by the police. By the time of recording the statement, they had not sought medical attention.</td>
</tr>
<tr>
<td>Location Of Incident</td>
<td>Alleged Perpetrator</td>
<td>Complaint</td>
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</tr>
<tr>
<td><strong>NAIROBI CITY COUNTY</strong></td>
<td></td>
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</tr>
<tr>
<td>Dandora Civilian</td>
<td>On 11th August 2017, two unknown assailants forcefully entered into a house of a female civilian. They demanded, her to direct them to house of “Wanjiru”. One of the assailants left for Wanjiru’s house, while the other remained behind, assaulted her and eventually raped her. She took a shower, and then went to the hospital for check-up on the likely infections resulting from the rape incidence. She did not report the incidence to the police because she couldn’t identify the assailants.</td>
<td></td>
</tr>
<tr>
<td>Dandora Civilian</td>
<td>After the announcement of the Presidential election results on 11th August 2017, two men forcefully entered into a house of a female civilian. They assaulted her and one of the assailants raped her. She went to the hospital to take PEP and did not report the matter to the police.</td>
<td></td>
</tr>
<tr>
<td>Dandora Police</td>
<td>On 12th August 2017, at around 10:30a.m., a female civilian was buying charcoal and was caught up in a confrontation between police and demonstrators. She lay down as she couldn’t run away and was then singled out by a male police officer who dragged her towards other police officers who were armed with truncheons. Her pleadings to the officers that she wasn’t part of demonstrators were unheeded. She was brutally beaten by the police officers. She sought medical attention at Aga Khan hospital.</td>
<td></td>
</tr>
</tbody>
</table>
5.4 Disruption of Access to Essential Goods and Services

Immediately after the voting process, some business entities and shops within the areas monitored, remained closed as Kenyans awaited the announcement of the Presidential election results. During the period preceding the elections, some Kenyans had begun to stock up food stuff and other amenities of sustenance due to a perceived impending shortage of essential commodities. This was accentuated by a perceived or actual tension, unrest, protests or violence. This was, however, not the case for some families from informal settlement who rely on their daily wages from their casual labour for their daily sustenance.

The KNCHR noted that residents living in informal settlements in the counties of Mombasa, Siaya, Kakamega, Samburu and Migori, were not able to access basic goods and services due to the prevailing circumstances occasioned by the violent protests and security operations in these areas.

Article 43 of the Constitution guarantees the basic needs of all persons which include the right to food, water, shelter, healthcare and education. There were reports of shops being broken into and goods stolen by both civilian and security agents. Other incidences that were reported included police officers forcefully entering into people’s homes and destroying property including stock meant for businesses.

In Mumias, Kakamega County, there was a shortage of fuel as the major suppliers had closed. Supermarkets and retail markets remained closed and those that were opened lacked basic commodities as there were no supplies to meet the demand. The same challenges were reported in other counties with many residents suffering from the effects of the demonstrations and subsequent police crackdown.

The proprietors of the transport companies that normally operate the Kakamega – Nairobi route via Kisumu avoided passing through the lakeside city for fear of attacks.

5.5 Violation of the Right to Property

The KNCHR documented 5 cases relating to unlawful destruction of private and
public property by civilians in various counties after the announcement of the Presidential election results. These cases involved instances in which civilians attacked homes, fuel stations and looted business premises. They include:

**INCIDENCE 1**

On 10th August 2017, at around 11:00 a.m., after the Garissa County gubernatorial results were announced, supporters of the former Governor Nadiif Jamah and Farah Maalim staged violent riots and torched down the Suuq Mugdi market in Garissa town which is an economic hub for the people of Garissa especially for women. About 3000 stalls were torched occasioning destruction of goods, accessories and properties worth millions of shillings.

![Photo 73: A section of the Suuq Mugdi market, Garissa town destroyed by violent protesters on 10th August 2017. (Photo courtesy: KNCHR 2017)](image)

**INCIDENCE 2**

On 14th August 2017, at around 1:00 a.m., in Bondo town, three petrol stations-Galana filling station, Tawakal filling Station and Jumbo Filling Station and 1 supermarket named Kim Matt belonging to a businessman of Somali origin were destroyed. The residents took to the streets to protest against the Presidential results and targeted properties belonging to business people of Somali origin.
INCIDENCE 3

On 11th August 2017, in Kariadudu village in Babadogo ward Mathare constituency, Nairobi, a total of 28 kiosks and 3 structures that housed more than 12 families were destroyed by violent protesters and some, by police officers. The Commission recorded a statement from a witness who revealed that police officers deployed to quell the protests destroyed some kiosks so as to have a clear view of the area of operation in dispersing crowds.
INCIDENCE 4

On 11th August 2017, at around 11:00p.m, Mrs. Florence Okwany’s house in Nyalenda was razed down by people believed to be her neighbours. This was immediately after the release of the Presidential results. In the process, the house and household goods estimated at Kshs. 2 million were destroyed. Reports indicate that the family was targeted on the basis that her husband belongs to the Kikuyu community. The attackers wanted to lynch her and her husband but luckily, they were rescued by other members of the public. She reported the incidence at Nyamasaria Police station vide OB No. 4/12/8/2017 and relocated to her brother’s home together with her family for safety reasons. At the time of the interview, no arrests had been recorded.
INCIDENCE 5

On 12th August 2017, in Kibra Constituency in Nairobi, violent protesters burnt down a clinic established under the Beyond Zero programme after the announcement of the Presidential election results.

Photo 78: The remains of a Beyond Zero clinic in Kibra which was torched on 12th August 2017. (Photo courtesy: KNCHR 2017)

5.6 Harassment and Arbitrary Arrests

The National Police Service is expected to strive for the highest standards of professionalism and discipline, competence and integrity among its members and also to comply with constitutional standards of human rights and fundamental freedoms according to Article 244 of the Constitution. In promotion of democratic policing, officers of the service are to maintain law and order while fostering and promoting relationships with the broader society.

In the deployment of officers to manage public order and crowd control during protests, the police officers are to adhere to the regulations on the use of force and firearms and are expected to exercise restraint in the management of protesting crowds.

It is imperative that the dignity of the individual and the right to privacy should be
The registration of an Association of any kind may not be withheld or withdrawn unreasonably; and if such a move is to be done, there shall be a right to have a fair hearing before a registration is cancelled upheld at all times. Police officers within the service are, therefore, required not to engage with persons that are within their places of abode or to invade homes and assault persons that were not part of the protests. Further, the Constitution guarantees Kenyans the security of all persons and protects them against arbitrary arrest and detention. No person is to be deprived of their liberty without following the due process as prescribed under Article 29 of the Constitution and other legislations. It is expected that anyone who is arrested is supposed to be informed of the reason for his or her arrest and also be informed of any charges that are being levelled against them and anyone detained on any criminal charge, is expected to be brought before a court and charged accordingly within a period of 24 hours.

KNCHR documented cases of harassment, assault and arbitrary arrests of residents following the deployment of police officers in Nairobi specifically Dandora Phase 4, Kisumu (Nyalenda, Ahero, Awasi) and Mombasa at Bokole in Changamwe. From the documented cases, KNCHR noted that majority of these arbitrary arrests were carried out in informal settlements, with the police officers forcefully entering into homes and rounding up men.
### 5.6.1 Arbitrary Arrest Log

<table>
<thead>
<tr>
<th>County</th>
<th>Area of incidence</th>
<th>Complaint</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nairobi City</td>
<td></td>
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<tr>
<td></td>
<td>Dandora Phase 4</td>
<td>Police entered Kamoke A and B plot and took 32 men within these plots and loaded them into lorries. In the same area, the police forcefully entered into residents’ houses and beat up women, men and children. Police entered the compound by breaking windows and smashing doors. The police assaulted all the men they came across and made them lie down saying “Wanatunasa!” and threatened them that they will be executed. They were badly beaten before being taken to Wendo Area. They were released upon the arrival of the OCS. Officers from Kenya Red Cross later came and offered treatment to those who were injured.</td>
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<tr>
<td>Kisumu</td>
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<tr>
<td></td>
<td>Nyalenda</td>
<td>Two gentlemen and a lady were taken away by police officers from their house next to Tosha Petrol Station on the way to Rabuor. They were severely assaulted before the lady was released but the men were not released. One of the police officers told them that they had instructions to finish the people of Kisumu. The young men reported that they were released after being beaten up and received medical care</td>
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</tr>
<tr>
<td></td>
<td>Between Ahero &amp; Awasi</td>
<td>Police officers were moving door to door taking away men. They took at least 5 people, one of them being a 15-year-old. The men were released after being forced to clear the debris that was left on the roads in the aftermath of the protests.</td>
</tr>
<tr>
<td>County</td>
<td>Area of incidence</td>
<td>Complaint</td>
</tr>
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<tr>
<td>3.</td>
<td>Ombeyi</td>
<td>On 11&lt;sup&gt;th&lt;/sup&gt; August 2017, a boy was arrested by Ahero police officers and was later charged with damage of property after he was arraigned at Nyando Law Courts and later remanded at Kodiaga Prison.</td>
</tr>
<tr>
<td>4.</td>
<td>Buonye (Mowlem)</td>
<td>On Saturday 12&lt;sup&gt;th&lt;/sup&gt; August 2017, at about 3:00 p.m. at Buonye, the Police forcefully entered a house and ordered the dwellers to get out. They started assaulting them using truncheons. One of the complainant reported that he was hit until his left hand dislocated. They were then ordered to get into the police vehicle as the police deliberated whether to take them to Ahero police station or Nairobi. On reaching Rabuor, the men were released.</td>
</tr>
</tbody>
</table>

**Mombasa**

| 1.         | Bokole-Changamwe | Police officers came in a Land Cruiser vehicle and arrested seven (7) youths who were seated in vibandas (Wooden stalls) along the road. The police arrested them and told them that they were not supposed to be sitting in crowds. The young men were taken to Changamwe Police station. The HRD who intervened by communicating with the current MP and through their intervention the young men were released within the same day. |
5.7 Civil Society Repression

The Kenyan Constitution under Article 36 gives Kenyans the right to freedom of association, which includes the right to form, join or participate in the activities of an association of any kind. Article 36 (3a & 3b) of the Constitution provides for the protection of Associations in that:

"THE REGISTRATION OF AN ASSOCIATION OF ANY KIND MAY NOT BE WITHHELD OR WITHDRAWN UNREASONABLY; AND IF SUCH A MOVE IS TO BE DONE, THERE SHALL BE A RIGHT TO HAVE A FAIR HEARING BEFORE A REGISTRATION IS CANCELLED."

Civil society organizations in Kenya play a critical role in ensuring that the Kenyan democratic space is expanded through constant vigilance on the rule of law and good governance. This has been maintained through a robust strategy of emboldening the citizens through civic education and facilitation for active participation in governance programmes.

Many stakeholders including local and international observers had a keen interest in Kenya’s 2017 General election. The majority of the local observers were mainly drawn from the civil society groups which have in the past endeared themselves with the promotion and protection of democracy in Kenya.

Many civil society organizations within the country had, prior to the General Election, been actively involved in sensitizing the citizens on the tenets of democracy, their rights and responsibilities in the electoral process. This was capped by the preparations and actual monitoring of the electoral process pre, during and the post polling process. Some of the active institutions observed the process either as independent institutions or as coalitions.

The Kenya National Commission on Human Rights worked and strategically consulted with many civil society actors during the 2017 General Election monitoring project. The KNCHR recorded cases where two main civil society groups, the Kenya Human Rights Commission (KHRC) and the African Center for Open Governance (AfriCOG) had their operations almost grinding to a halt through directives from the NGO Coordination Board.

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242Constitution of Kenya Article 36 (1), (2) (a, b)
243These included Kura Yang Sauti Yangu, ELOG and UWiano Platform
The Kenya Human Rights Commission (KHRC) through a letter dated 14th August 2107, 4 days after the announcement of the Presidential results which the affected CSO’s had strongly questioned, Fazul Mohamed, the CEO of the National NGO Coordination Board ordered their de-registration. The allegations levelled against KHRC, were tax evasion, operation of illegal bank accounts and irregular recruitment of expatriates. KHRC and other stakeholders maintained that the accusations were mere allegations and witch-hunt.

The NGO Coordination on 15th August 2017, wrote to the Directorate of Criminal Investigations (DCI) to investigate AfriCOG for operating without valid registration. It however, later emerged that AfriCOG is registered under the Companies Act as a company limited by guarantee and as a NGO. Consequently, the NGO Coordination Board had no direct mandate to regulate its operations. However, officials from the Kenya Revenue Authority (KRA) raided the AfriCOG offices and attempted to confiscate various equipment and documents before they were blocked by human rights defenders.

Overwhelmingly, the civil society groups, religious institutions and the international

community condemned the actions and cited the link between the past activities by the two bodies which heavily critiqued the electoral process. These included various protests and media activities organized by CSOs. The Kenya National Commission on Human Rights added its voice in the matter through a press conference on 16th August, 2017.

Consequently, the Acting Cabinet Secretary in charge of Internal Security directed the Permanent Secretary, Ministry of Internal Security and Coordination of National Government to form an exclusive and representative committee to work with the NGO coordination Board and review compliance. Action against KHRC and AfriCOG was suspended for three months.

On 20th August 2017, Maina Kiai, the head of InfoAction, a human rights body in Kenya was temporarily denied clearance at the Jomo Kenyatta International Airport in Nairobi. Interestingly, Kiai is not a government official neither was he on government surveillance as confirmed by the director of immigration services, Maj-Gen (Rtd) Gordon Kihalangwa. Based on the assertion made by the immigration department, KNCHR recorded this as a case of harassment which borders on repression of the civil society.

Photo 79: KNCHR Officials including the CEO joined civil actors in defence of the Article 47 of the Constitution (Photo courtesy: KNCHR 2017)

On 20th August 2017, Maina Kiai, the head of InfoAction, a human rights body in Kenya was temporarily denied clearance at the Jomo Kenyatta International Airport in Nairobi. Interestingly, Kiai is not a government official neither was he on government surveillance as confirmed by the director of immigration services, Maj-Gen (Rtd) Gordon Kihalangwa. Based on the assertion made by the immigration department, KNCHR recorded this as a case of harassment which borders on repression of the civil society.
KNCHR reiterates that any action against the CSOs should be in line with Article 47 of the Constitution which calls for fair administrative justice. Equally, KNCHR calls upon the state to fast track the implementation of the Public Benefits Organizations (PBO) Act of 2013 to usher in better coordination of non-state institutions in Kenya.

6.1 Strategic Interventions

KNCHR as the main organ of protecting and promoting human rights and freedoms in the Republic of Kenya set out to undertake various strategic interventions between May, 2016 and August, 2017 that had an impact on various aspects in the electoral cycle in preparation for the 2017 General Elections. The Commission drew its mandate from Section 8 of the KNCHR Act to: monitor state and non-state actors, ensure compliance with national, regional and international laws and policies on human rights standards, review legislation and policy proposals, investigate and redress alleged human rights violations and give advisories to the Kenyan government on various issues that impact negatively on the realisation of human rights culture. The implored strategies included:

- Memoranda on proposed electoral reforms;
- Evidence based advisories with recommendations to key actors;
- High level dialogues with strategic stakeholders;
- Public outreach and campaigns;
- Media advisories on the status of human rights and freedoms;
- Rapid response missions;
- Investigation missions; and
- Public interest litigation.
The following table shows a sample of some the key interventions and their impact on promoting and protecting human rights in the electioneering process.

### I. Protecting the Right to Assembly and Demonstration

The KNCHR has been at the forefront to protect and uphold this fundamental freedom and right under the Constitution, Article 37 that was several times under serious attack by security agencies especially in the clamour for electoral reforms.

#### Table 7: KNCHR key interventions in protecting the right to assembly and demonstration

<table>
<thead>
<tr>
<th>DATE</th>
<th>INTERVENTION</th>
<th>CONTEXT AND IMPACT</th>
</tr>
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<tbody>
<tr>
<td>17th May 2016</td>
<td>Media Advisory on the use of excessive force by the National Police Service in the ongoing anti IEBC protests also known as ‘Teargas Mondays’.</td>
<td>KNCHR rapid response teams monitored these demonstrations and investigated human rights violations against demonstrators in several parts of the Country especially in Nairobi City and Kisumu Counties. The advisory reminded the National Police Service on its Constitution and international human rights obligations: to protect the security of every person and use of reasonable force. The Commission further pointed out: the need for a clear separation of the powers between the Cabinet Secretary in charge of Interior and Coordination of National Government, individual accountability for the atrocities committed by several police officers and the Office of Inspector General as an independent constitutional entity, and a call to the opposition demonstrators to be peaceful and unarmed.</td>
</tr>
<tr>
<td>31st May 2016</td>
<td>Media Advisory on the Right to Assembly under Article 37 of the Constitution</td>
<td>This advisory was necessitated by the government directive through its Spokesperson Mr. Erick Kariahe of cancelling two meetings/rallies citing national security. The Commission reiterated the constitutional provision as related to the right to assembly and an affirmation of the sovereign power of the people in the Constitution, Article 1. The Commission issued key recommendations to the state to desist from issuing such unconstitutional directives and asked the National Police Service to instead avail security to all persons intending to demonstrate. And as a result of this efforts the rallies were able to proceed.</td>
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<tr>
<td>DATE</td>
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<tr>
<td>June 2016</td>
<td>Visit and letter to the Inspector General on various cases of police brutality</td>
<td>KNCHR documented and investigated various cases of police brutality while monitoring the political demonstrations and investigations. KNCHR made a courtesy call and wrote to the Inspector General bringing to his attention the brutalities meted out on civilians by police especially in Kisumu County on 6th June. Fifty (50) cases of civilians were rushed to various hospitals with severe injuries including gunshot wounds: 22 admitted to the Kisumu County Hospital, and 20 admitted at Jaramogi Oginga Odinga Teaching and Referral Hospital. Six (6) of these victims had bullets still lodged in their bodies while two (2) had been severely cut by machetes. The KNCHR asked the IG to commence immediate investigations and prosecutions of responsible police officers.</td>
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<tr>
<td>August 2016</td>
<td>Draft Memorandum of Understanding between the KNCHR and the National Police Service. Draft guidelines on the Use of Force and Firearms by the Police.</td>
<td>Taking note of the critical role of the National Police Service in protecting human rights and freedoms especially during the electioneering period, KNCHR initiated discussions to strategically partner with the National Police Service. A draft MoU was developed together between senior officers from both entities and forwarded to the Inspector General. Despite the fact that the MoU is yet to be signed and operational, it opened and improved the channel of communication and cooperation with the police. This engagement also culminated the development of guidelines on the use of force and firearms that drew inspiration from the Constitution, National Police Service Act, regional and international human rights instruments and minimum standards. The Draft regulations were forwarded to the Attorney General and some of these provisions have been incorporated in the New Police Service Standing Orders.</td>
</tr>
<tr>
<td>24th December 2016</td>
<td>Media Advisory on securing the General Elections</td>
<td>This advisory examined the recent deployments by the National Police Service who in most instance had undertaken violent disruption of assemblies and demonstrations. The Commission urged the police service to operate strictly in the confines of the Constitution and the rule of law.</td>
</tr>
<tr>
<td>July 2017</td>
<td>Advisory to the Inspector General and the IEBC chair on security preparedness in the 2017 General Election</td>
<td>The advisory highlighted the findings from KNCHR monitoring and investigations and made key recommendations on the necessary measures to be taken before the August elections including: mandatory obligation of the deployed police officers to operate within the strict confines of the law, and for the IG to send a communication to this effect to all his officers.</td>
</tr>
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</table>
II. **KNCHR strategies of mainstreaming human rights in the Electoral Reforms**

The calls for electoral reforms especially in the legislative framework were the highlight of 2016. In line with the various advisories, KNCHR provided the following memorandums to the National Assembly and Senate aimed at strengthening the respect for human rights and freedoms. The Commission further issued various advisories with key recommendations to the Independent Electoral and Boundaries Commission and other institutions that played a critical role in the electioneering cycle.

Table 8: KNCHR strategies of mainstreaming human rights in the Electoral Reforms

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<tr>
<th>DATE</th>
<th>INTERVENTION</th>
<th>CONTEXT AND IMPACT</th>
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<tr>
<td>July 2017</td>
<td>Regional dialogues with security actors on the interplay of security and human rights</td>
<td>The KNCHR embarked on enhancing the understanding of the role of security actors in providing security and undertaking public order management in compliance with the Constitution, regional and international human rights instruments and standards. A total of six (6) regional forums were held targeting 450 police officers who dialogued on human rights tensions and policing. 250 booklets were disseminated to police officers in 6 regions as well as IEBC officers. In the 6 regions trained, there have been no cases of police brutality were reported to the commission.</td>
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<tr>
<td>July 2017</td>
<td>A checklist on peaceful assemblies.</td>
<td>The Commission developed and disseminated a checklist booklet and video that highlighted the roles and obligations of police officers and citizens on the promotion and protection of the right to assembly and demonstrations. The video was disseminated through mass media including KTN and NTV stations during the prime time news for 2 days and the radio station infomercials.</td>
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<tr>
<td>August 2016</td>
<td>Memorandum on election reforms presented to the Joint Parliamentary Select Committee (JPSC).</td>
<td>The key recommendations included:</td>
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<td>- IEBC to embark on a mass voter registration, rigorous communication on the voter registration process and avail data of the distribution across the country.</td>
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<td>- The distribution of Biometric Voter Registers (BVR) kits in regions should be proportional to the number of persons with identity cards.</td>
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<td>- Clear timelines on the compilation of the voter register which should be comprehensive, authoritative, disaggregated with accuracy and verifiable.</td>
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<td>- IEBC to put in place measures to ensure that prisoners are registered as voters and able to vote on the material day.</td>
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<td>- Parliament to enact legislation to facilitate expanded Diaspora voting.</td>
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<td>- Better resourcing of voter education by the Government to ensure robust and timely voter education and better coordination between IEBC and civil society in the provision of a structured and comprehensive voter education.</td>
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<td>- Amend the Political Parties Act to obligate political parties to have all their members registered and issued with membership cards. The membership list should be deposited with the registrar of political parties and which should be used when conducting nominations.</td>
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<td>- IEBC in conjunction with stakeholders to conduct the inspection and the pre-testing of all the electronic gadgets so as to guarantee that both the hardware and software of the Voter Identification Kits are functional and appropriate.</td>
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<td>- Need for capping of voters in a polling station to ensure effective management of the voting process.</td>
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<td>- Parliament to enact a mechanism to operationalize and implement the two thirds gender principle.</td>
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<td>- IEBC to put in place measures to ensure voters with disability are adequately facilitated to vote including the provision of braille material.</td>
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An analysis of the October 2016 amendments to the various Electoral laws indicate that most of the above recommendation were incorporated into the law except the 2/3 gender rule. This culminated in an increase in the promotion of human rights and freedoms.
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<tr>
<td>December 2016</td>
<td>Memorandum on the Elections Laws (Amendment) Bill, (National Assembly Bill No. 3 of 2015)</td>
<td>The Commission undertook to present this memorandum following attempts by one side of the political divide to acrimoniously amend the negotiated electoral laws to allow for use of a backup in the failure of technology. The Commission strongly submitted that embracing technology in the electoral management was crucial and critical for the realization of a free, fair and credible 2017 general Elections. The Kriegler Inquiry recommended the use of technology. The need to follow to the latter the Elections Act, Section 44 specifically on the step by step requirements and preparations on testing the devices at least 60 days before the Election.</td>
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| January 2017 | Memorandum to the Independent Electoral and Boundaries Commission             | The Commission held high level consultative meeting with the IEBC Chair and Commissioners and shared key concerns and recommendation to be addressed before the polls including the following:  

- Urgent need to share the records of shared identification number and any anomaly discovered in the voter register  
- IEBC to address the allegations of infiltration of the IEBC data base by immediately embarking on cleaning the voter register in an open and transparent manner.  
- Investigation cases of mass voter transfer and voters being in the register without having identity cards.  
- Immediate reinstatement of the free SMS verification code to allow members of the public to widely participate  
- IEBC to take stringent action on political actors engaging in electoral malpractices that is violence, hate speech and incitement as they had the potential to violence.  
- Develop a communication strategy and recruit a senior officer.  

IEBC responded to most of these concerns for example in 2017 in Siaya County, IEBC County Returning officer strongly among others sanctioned political actors who offender the Election Offences Act and the SMS verification code was finally reinstated albeit late. |
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<th>DATE</th>
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<tr>
<td>June 2017</td>
<td>Advisory on the misuse of children in political campaigns</td>
<td>The advisory was issued to the Cabinet Secretary in the Ministry of Education and the chair, TSC. It brought to their attention the rising misuse of children in political campaigns were in some instances children were being caught up violent disruption of political rallies, disruption of education through children's direct participation in campaigns during school days and the use of school grounds. The Commission strongly condemned this violation of the best interest of the child and advised the Cabinet Secretary and Chair to take stern action against the head teachers who allowed or facilitate such disruptions. The Commission further asked the Cabinet Secretary to issue a circular regarding the conduct of teachers and education officials on: the use of public school property, and the use of students in political campaigns. The Cabinet Secretary issued a directive to all school heads to ensure that students and learning as not disrupted due to their engagement with political campaigns.</td>
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<tr>
<td>June 2017</td>
<td>Memorandum on the Election Offences (Amendment) Bill, 2017</td>
<td>The Commission presented responded to the bill published by the leader of majority at the National Assembly Hon. Duale seeking the deleting of the Elections Offences Act, Section 14 outlawing government from advertising its achievements during an electioneering period. KNCHR submitted that the essence of this provision was to limit the misuse of public resources and officers, and recommended its retention in law since it had the potent of interfering with the political campaign. The bill was shelved and not debated in the National Assembly.</td>
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<tr>
<td>July 2017</td>
<td>Advisory Memorandum to IEBC on public participation.</td>
<td>This advisory was necessitated by the contention on the procurement processes at the IEBC. The Commission reiterated to the IEBC the importance of public participations in all its process as a critical strategy to win public trust, confidence and enhance transparency. The KNCHR specifically stated that the IEBC had a duty to inform, consult and involve the public in this critical process in order to achieve inclusive which had an impact on the realisation of a credible, free and fair elections.</td>
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III. Protecting independent institutions, Civil Society and the Media

The 2017 Electoral Cycle witnessed on the highest attacks on key independent institutions with Constitutional and critical mandates in ensuring a free and fair elections. This included the Independent Electoral and Boundaries Commission (IEBC), the Judiciary, the media and civil society. The attacks documented mostly emanated from the executive, powerful state and political actors which was a clear violation of the rule of law, separation of powers, rights and freedom of association.

Table 9: KNCHR interventions on protection of independent institutions

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<th>INTERVENTION</th>
<th>CONTEXT AND IMPACT</th>
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| 24th December 2016 | Media Advisory on Securing the 2017 General Elections | The presidents and the leader of Majority in the National Assembly Hon. Duale remarks that foreign powers were channelling money to civil society organisations, and specifically IFES was singled out and unceremoniously terminated by the NGO Coordination Board.  

The Commission denounced these remarks, actions and specific attacks on the judiciary by the Leader of Majority Hon Duale specifically targeting Justice Odunga due to his judgements as a violation of the separation of powers.  

The Commission further raised concern on attack on the freedom of the media and the trend in curtailing the freedom of expression ahead of the General Elections.  

The Commission called upon the Speaker of the National Assembly Hon. Muturi in the spirit of safeguarding the freedom of the media to restrain in issuing directives contrary to the law such as ordering the switching off of live coverage during the proceeding of the National Assembly. |
| 10th July 2017 | Media Advisory on political interference with the Independence of the Judiciary and IEBC | The Commission raised concern on the comments attributed to the president, the vice president and other political actors who threaten the judicial officers due to decisions they considered offensive.  

The Commission strongly condemned these efforts that undermine the clear separation of powers, Constitutionalism and asked all political actors to desist violating the rule of law. |
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<th>CONTEXT AND IMPACT</th>
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| 17th August 2017 | High level meetings with the Cabinet Secretary of National Coordination and Civil Society | As a result of the attacks on civil society organisations in August 2017 namely KHRC and AfriCOG, the KNCHR acted as a key mediator and brokered a meeting between the CS Interior Dr Fred Matiang’i and Civil Society representative to unlock the stalemate and concretize on a way forward especially in respect to the operationalization of the PBO Act and the threatened suspension of the two institutions.  
At the conclusion of the meeting it was agreed that: the CS would convene a meeting with the governance and human rights CSOs to present a framework for the operationalisation of the PBO Act by 25th August 2017, the Committee set up to investigate the CSOs would be expanded to include a representative from KNCHR, and the CS communicated that it was his intention to foster a working relationship with Civil Society based on professionalism, good faith and transparency.  
The meeting is yet to take place, however, the threat on the two institutions is not apparent yet. |

### IV. Monitoring the status of human rights and freedoms in the Electoral Cycle

The Commission endeavoured throughout the electioneering period to update the nation on the state of human rights and freedoms throughout the electioneering period through bi weekly media briefs which included key recommendations on ongoing concerns or issues. The impact of these media briefs is that it served as both as an advocacy strategy and watchdog by putting all the actors on notice. This acted as a deterrence to the escalation of human rights violations.
Table 10: KNCHR pre-2017 general election sensitization strategies on human rights

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<th>DATE</th>
<th>INTERVENTION</th>
<th>CONTEXT AND IMPACT</th>
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| 13th June 2017 | Media update: Political campaigns increasingly leading to human rights violations | The KNCHR updated the nation that through its monitoring activities there was a high increase of human rights violations in the various political campaigns specifically:  
- Misuse of public resources and officials at both the county and national level, and  
- Violence and the loss of lives in Turkana and Bungoma Counties. |
| 27th June 2017 | Joint media update as Article 59 Commissions and the National Cohesion and Integration Commission (NCIC) | Article 59 as the custodians of Chapter 4 on the Bill of Rights and therefore raised several concerns and provided minimum standards that needed to be addressed before the elections;  
- Violence targeted especially on women, person with disability and the youth.  
- Heightened insecurity and tensions especially in the identified hotspot areas across the country.  
- Inducements and bribery by political actors.  
The relevant actors including IEBC and the National Police Server were advised to put in place measures to address this concerns. |
| 14th July 2017 | 24 days to the ballot                                                          | The KNCHR updated the nation on the status of human rights as the country drew closer to the poll day. A number highlights were shared:  
- There were secret door to door campaigns that were outside the permitted time. KNCHR called upon the IEBC’s to enforce the electoral Code of Conduct through the committee.  
- Mass movement of voters due to insecurity. KNCHR called upon the IG to heighten security in Lamu, Laikipia, Samburu, West Pokot and Baringo Counties to ensure that no person was disenfranchised. KNCHR further called on IEBC to put in place mobile voting clinics in the affected Polling Stations.  
- Late recruitment and inadequate training of IEBC officials. KNCHR raised the red flag on this and took note of the critical role that all these officials were expected to play at both the Polling and Constituency levels on 8th August 2017.  
- KNCHR called for the immediate publication of the voter register to increase transparency. IEBC publicised the register in its public portal on 20th of July 2017. |
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<tr>
<th>DATE</th>
<th>INTERVENTION</th>
<th>CONTEXT AND IMPACT</th>
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<tr>
<td>6th August 2017:</td>
<td>Crunch time: 1 day to the polls</td>
<td>One day to the polls KNCHR issued a media update reiterating the human rights concerns raised in the previous updates. The Commission updated the nation that it was going to monitor on the 8th. The Commission shared the toll free line and SMS platform numbers 0800 720 627 and 22359 respectively. It called on all to share these numbers widely and use them to communicate with KNCHR 24/7. The Commission shared the minimum human rights expectations for the polls which included: the police obligation to avail security to all citizens, assistance of the vulnerable groups to effectively participate in the elections, a call to IEBC officials to remain true to their oath of duty, IEBC to share information on the specific Polling Stations that did not have 3G or 4G network, political actors and their supporters to respect rule of law.</td>
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V. **Empowering the Electorate to demand for their rights**

The Commission draws its inspiration of empowering the people by recognising that the Constitution, Article 1 sovereign power belongs to the people of Kenya which may be exercise either directly or through their democratically elected representatives.

During the 2017 electioneering period, the Commission endeavoured to undertake interventions geared towards empowering all members of the community especially the vulnerable, marginalised and in the rural areas through community radio activations and national dialogues. The following is a sample of some of the public outreaches:
### Table 11: KNCHR public outreach activities for 2017 general elections

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<tr>
<th>DATE</th>
<th>INTERVENTION</th>
<th>CONTEXT AND IMPACT</th>
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<tbody>
<tr>
<td>June 2017</td>
<td>Community raid activations on corruption and human rights.</td>
<td>Taking into consideration the link between corruption and human rights, and the quality of leaders to be elected in the polls, the Commission delved into a spirited campaign of sensitizing and empowering members of the public on how corruption affects the realization of human rights, the offences and penalties under the law, the role of key actors in fighting corruption, and the role of the people specifically to vote wisely by choosing leaders of integrity.</td>
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</tbody>
</table>
| June 2017-August 2017 | Radio infomercials on human rights and elections.  
Activations targeting Boda Boda riders  
Distribution of branded reflective clothing with the Commission's SMS and Toll free number | This activation was carried out in twenty (20) community radio stations approximately reaching out to six million (6m) listeners who were empowered on what are human rights violations, how to lookout for such violations during the electioneering period, where to report or complain and get in touch with the commission.  
Due to this activation, over 9,500 members of the public were able to contact the Commission directly during this electioneering period. |
| June 2017          | National leadership forum on elected leaders and economic social and cultural rights | The KNCHR entered into partnership with Nation media house and held a national dialogue on elected leaders. This critical discussions including talks on ECOSOC rights and security before a live audience. The dialogues were aimed at empowering Kenyans on the importance of linking human rights to elections, and for people to stand up for their rights. |
| July to August 2017 | Radio and TV appearances in talk shows                                       | The Commission further engaged eleven (11) radio stations and ten (10) TV channels to further sensitize members of the public on the role and work of KNCHR, voter education and conflict management. |

### v. Seeking Accountability for human rights violations and timely action for victims

A key function of the KNCHR is the power to undertake investigations on all forms of human rights violations and take appropriate measure for timely redress. Throughout the electioneering period the KNCHR put in place measure to ensure that members of the public can easily reach...
out to the Commission on complaints of violation and that timely investigations are undertaken with the aim of seeking accountability for human rights violations and remedial action.

As a result of an enhanced public outreach through the KNCHR toll free number and sms platform over 9,500 person were able to reach out to the commission.

The following are the rapid response missions that were key in documenting and offering timely interventions during the electioneering period;

**Table 12: KNCHR interventions and their impact on human rights violations**

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<tr>
<th>Issue</th>
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<tr>
<td><strong>Manipulation of Voters/Voter Bribery</strong></td>
<td>Rapid response mission into Alleged Violation of Election Rights- Manipulation of Voters/ Voter Bribery in Morindat Ward in Gilgil, Nakuru County</td>
<td>KNCHR was able to establish that the complaint on alleged voter bribery/ manipulation of voters was misleading as there was no evidence of manipulation of the IEBC voters register.</td>
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<td>Rapid response mission into alleged violation of electoral rights in Bomachoge Chache Constituency in Kisii County</td>
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<td>Rapid response mission into alleged violation of Election Rights through Voter Bribery in Kathuni, Makueni County</td>
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<td>Rapid response mission into alleged violation of Election Rights through Voter Bribery in Wote, Makueni County</td>
<td>KNCHR was able to meet with the key duty bearers (IEBC &amp; Police) and confirmed that they were aware of the allegations and had put measures in place to protect the petitioners’ rights to vote and be voted.</td>
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<td>Rapid response mission into alleged violation of Election Rights through Voter Bribery in Emali Makueni County</td>
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<td>Rapid response mission into alleged violation of Election Rights through Voter Bribery in Mulala, Makueni County</td>
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<td><strong>Assault/ PWD</strong></td>
<td>Investigation into the assault of a Political Candidate in Nakuru Town, Nakuru County</td>
<td>Commission was able to confirm the violation took place and follow up on the matter with the police to establish the stage at which investigations were.</td>
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<td>POST POLLING PERIOD</td>
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<td><strong>Unrest and protests following the announcement of presidential results</strong></td>
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<td>Investigation into reported violations of the human rights of residents of Homa Bay County by law enforcement officers following post-election protests.</td>
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<tr>
<td>Investigation into reported violations of the human rights of residents of Kisumu County by law enforcement officers.</td>
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<tr>
<td>Investigation into reported violations of the human rights of residents of Siaya County by law enforcement officers following the unrest post-election.</td>
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<td>Rapid response mission into alleged killings of residents from various parts of Nairobi City County post elections- City Mortuary</td>
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<td>Follow up investigations into alleged killings by law enforcement officers, post-elections- City Mortuary and KNH, Nairobi City County.</td>
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<tr>
<td>Rapid Response Mission into alleged violation of human rights of residents of Mathare, Nairobi County following the unrest post-election</td>
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<tr>
<td>Rapid Response Mission into alleged violation of human rights of residents of Kawangware &amp; Kangemi, Nairobi County following the unrest post-election</td>
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<tr>
<td>Rapid Response Mission into alleged violation of human rights of residents of Dandora, Nairobi County following the unrest post-election</td>
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<tr>
<td>Rapid Response Mission into alleged violation of human rights of residents of Kibera, Nairobi County following the unrest post-election</td>
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<td>KNCHR was able to verify the various allegations made of human rights violations in various parts of the country and document <em>inter alia</em> 36 deaths, several injuries, loss and destruction of property.</td>
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<td>Commission also assisted some of the families to have post-mortems of their deceased relatives carried out.</td>
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<td>KNCHR was able to partner with other state and non-state actors to reach out and offer assistance/assurance to affected members of the public</td>
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</table>
The KNCHR further entered into a public interest litigation where it moved to the Supreme Court of Kenya to seek an interpretation of the application of standards of leadership and integrity provided for under chapter 6 of the Constitution as pertains to elected leaders. The decision of the Supreme Court is expected to have far reaching impact on providing clarity on the current challenges of tackling corruption and integrity where elected leaders seem to be subjected to lower standards of ethics and integrity as opposed to their appointed counterparts. The case is ongoing.

6.2 KNCHR Key Recommendations

The Kenya National Commission on Human Rights, based on the findings of the experiences of the 2017 Election Monitoring Project and the evaluation thereof, makes the following recommendations to state and non-state actors with an aim and view so as to expand the realm of human rights within the electioneering framework both in legislation and practice.

1. **The Independent Elections and Boundaries Commission (IEBC)**

   a) Put all the necessary and legally required arrangements for a general election in place at least three months prior to the said election. This is important as it will ensure that the technology to be employed for the voter registration, verification and identification is put in place, tested and approved in advance in compliance with the law.

   b) Invest in and or ensure that places which are not covered by the required network strength are fully covered by the complementary technology either through procurement and application of satellite phones and other related technology or entering into agreements with service providers to boost the same to the required standards so as to ensure that final transmission of results does not become a point of contention during the final transmission of results from the polling centres. – complimentary

   c) IEBC must ensure that civic and voter education is a continuous exercise by working together with other state and non-state bodies specialized in civic and voter education. In the 8th August 2017 General Elections,
401,003 rejected votes were beamed in the media portal while the final result by the IEBC was later reduced to 81,685 votes in the final results in the Presidential Elections. We believe that this number could be minimized if civic education efforts in 2017 were scaled-up. IEBC must appreciate the heavy tasks of steering the polling process and where possible, delegate roles like civic and voter education to other state and non-state institution.

d) Must ensure that timely recruitment and training of Presiding and Returning Officers is done at least 2 months in advance so as to avoid rushed recruitment and training processes. Sufficient training timelines must also be developed for Electoral Clerks. IEBC must ensure that they train their officials early enough and ensure that the level of simulations and refresher courses are done in order to ensure that the level of competence and confidence of the Clerks, Presiding Officers and Returning Officers is optimized. Effort should also be put in place to ensure that the POs are IT savvy. This would minimize cases of some POs not being able to use electronic/IT gadgets during elections.

e) Ensure that disciplinary measures taken against errant political parties, aspirants and candidates are timely, uniform and equally enforced. The IEBC Code of Conduct Enforcement Committee must be strengthened in their enforcement mechanisms that stem from their decisions and orders they issue.

f) Ensure that as per the IEBC Act Section 4 (a), continuous registration of voters is actualized. In the case of the 2017 elections, only two phases (MVR I and II) provided an opportunity for fresh voters to be registered. This might have locked out many youthful voters who acquired their ID cards after the closure of the registration of voters.

g) Ensure that the regulations and procedures on prisoners voting is formulated so as to ensure that registration, voter education and voter verification guarantees the highest level of their participation so that as many qualified prisoners as possible can vote. This should as well guarantee that as many qualified prisoners vote for candidates in all the
six positions.

h) In places with high numbers of registered voters, increase voting booths in the polling stations from two to four to increase the polling pace and reduce the unnecessary queues witnessed in the polling centres. These to include special provision for booths for persons with disability.

i) Redesign and standardize the minimum requirements for the layout polling centres and polling stations so as to give a logical purpose for the 700 voters cap and avoid overcrowding, long queues and confusing voters.

j) IEBC must reconfigure the number of polling stations in a polling centre especially in social halls and redistribute them to adjacent venues so as to ease congestion.

k) Rethink the use of form 32A with a view of making it redundant. As per the 2017 General Elections, the different mode of the use amount to misuse in certain circumstances.

l) Ensure that appropriate materials for the PWDs which include braille, tailor-made audio and visual materials to secure their, privacy and secrecy in special booths are introduced and used. This should tie to un-limiting accessibility of the Polling Centres to facilitate quick and smooth voting for special categories of voters.

m) Must ensure that Polling Stations with poor network coverage are gazetted and that the Presiding Officers are facilitated to reach specific points to transmit results to the Constituency and National Tallying Centres.

n) As per the legal provisions, ensure that the public portal for the voter register and results transmission are real time and that all the scanned results availed in a simple technology which guarantees public access. IEBC should engage an independent organization to conduct an Independent Review of 8\textsuperscript{th} August general elections of 2017. KNCHR recommends that a comprehensive independent legal, institutional, and operational audit of the political parties’ management and conduct of the
party elections should be undertaken immediately. The review should also involve evaluation of the other general election activities/processes which may include procurement and distribution of voting materials, voting centers, timing of the elections, party officials and agents, vote tallying and announcement of results, issuance of certificates to successful candidates, and the role of critical actors such as IEBC, security personnel, voters, national and county government officials, and the media.

o) In its endeavor to vet candidates for nominations, IEBC should adhere to Chapter 6 of the Constitution of Kenya, 2010 by ensuring that candidates meets the criteria as documented in the following institutions:

a) Financial probity institutions like KRA and Credit Reference Bureau
b) Commission for Higher Education for authentication of academic certificates
c) The Directorate of Criminal Investigations
d) National Cohesion and Integration Commission
e) Kenya National Commission on Human Rights

II. The Political Parties

a) Ensure that party primaries are conducted in good time and within the legal timelines so as to avoid last minute rush and way before the General Elections.

b) Strengthen disciplinary measures for errant candidates and enforce political party discipline and make public reports of cases they handle.

c) Strengthen party disputes resolution mechanism so as to fast-track complaints handling to ease backlog of cases to the judiciary.

d) Ensure that internal operations professionalized and that party activities including the running of offices, registration and recruitment is a
continuous exercise.

e) Must increase the level of transparency and accountability in all their activities as per the law and ensure that all their members and supporters subscribe to the same ideals. These include: disaggregated membership information, party rules and regulations, compliance records, party finances and audited accounts, manifestos and party structures.

f) Ensure the rule of law and democratic principles are upheld in all processes so as to ensure that the constitutionally recognized groups including women, youth and PWDs as per legal provisions including the 2/3rd gender provision.

g) Train their party agents in time and ensure that they understand electoral laws and other regulations governing general elections.

III. The Office of the Registrar of Political Parties (ORPP)

a) Enforce the rule of law during the electioneering cycle adhered to by all political parties and ensure that all political parties adhere to the law and all the procedures.

b) Must enforce the code of conduct and prescribed penalties and sanctions, including the withdrawal of funding and deregistration of culpable Parties.

c) Ensure that political parties have the prerequisite requirements: registers, offices and all other necessary requirements for operations.

d) Increase the level of vigilance to ensure that their monitors and enforcement officers enhance their surveillance on parties for maximum adherence to the rule of law.

e) Increase visibility through access to information and ensure that members of the public understand their functions so as to have a better engagement.
Decentralise the services of the office

IV. The Political Parties Disputes Tribunal (PPDT)

a) Decentralize services so that aggrieved parties can access them either at the Constituency or County level. Ensure that their operations are continuous so as to ensure that political parties do not fall below the expected standards regardless of whether it is during an electioneering period or not.

b) Educate the public, parties and candidates on mandate of the PPDT for smooth engagement.

c) Hold open sessions during the day to enhance public participation that as many people can follow the proceedings.

d) Publicize decisions reached so that members of the public would be aware and know how to engage with the respective candidates.

V. The National Police Service (NPS)

a) Senior officers must restrain their junior officers from the unnecessary use of force. All officers must be reminded of the legal principle of individual responsibility for any proven case of misconduct during any operation.

b) Use of force must only be used as per sixth schedule of the National Police Service Act and should only be commensurate to the threat posed by the protesters. The police and the auxiliary services must respect the right of Kenyans to picket as enshrined in art. 37 of the constitution.

c) Strengthen intelligence and prepare advance reports as to ensure that the police do not use blanket condemnation to attack specific areas. Investigate the perceived role of illegal gangs in the campaigns and post-election phase so as to clearly plan and ensure that they employ the best strategies to deal with the same.

d) Observe restraint especially when curbing protesters in residential areas.
so as not to hurt children, the sick, PWDs and the elderly in their houses by use of unnecessary force including use of tear gas, live bullets and other excessive methods used by the police.

e) Investigate at a higher level, the deaths of protesters in places mentioned by KNCHR and other state and non-state agencies.

f) As required by the law, work with IPOA in cases reported deaths and serious injuries. Ensure that any bodies collected from any scene are properly handed over to the relevant institutions like morgues in accordance with the law and the due process.

g) Work with the public in ensuring that the relationship is improved so as to end the obvious acrimony and constrained would be cooperation. This can be achieved by having many pronged approaches aimed at bringing the public closer to the police.

h) Assist persons who report to police stations for assistance and help process the Police P3 (Medical Examination Report) Form so as to fast-track medical assistance for any person injured during political related incidences.

VI. The ODPP

a) Enforce the law which prohibits advertisement of government achievements as a campaign tool for both the national and county governments. This gives undue advantage to the incumbent’s.

b) Ensure timely and efficient investigations on cases presented before the office or those taken on own volition.

c) Ensure that any person whether at a personal level or acting in an official capacity and who participates in electoral offence is prosecuted as per the laid down procedures and written law.

VII. The Judiciary
a) Hold any election petition matters in an open and spacious court so as not to lock out interested parties including the public from the proceedings.

b) Engage the political parties and candidates on the threshold of admissibility for cases related to electoral disputes so as to avoid clogging of courts with unnecessary cases which don’t fit the criteria.

Expedite the time for handling election petitions in order to give electorates their leaders in good time. This would fast-track service delivery by leaders to the electorates.

VIII. The Department of Children Services

a) Work closely with the Ministry of Education and specifically with the office of the Cabinet Secretary to ensure that they come up with Gazetted guidelines prohibiting the use/misuse of children in political activities.

b) With the Teachers Service Commission (TSC), enforce the guidelines which prohibit the misuse of school grounds, property, tools, and equipment and or interfere with the school calendar. Any teacher or education officer who contravenes the same should be held liable and action taken against him/her.

c) Ensure that children, whether during the school hours or after do not participate in campaigns either to distribute campaign materials or do any other work in support of candidates or political parties.

IX. The Parliament

a) Should ensure that all the relevant legislative review relating the elections is done at least six months to the elections and subjected to public participation. This will enable the electorate, the candidates and all the other relevant bodies to be cognizant to the legal provisions way before the campaigns.

b) Ensure that, in line with the good precedence set during the 2017 General Elections, make the elections day a public holiday through legislation.

c) Provide the necessary framework for the enforcement of the implementation
of the PBO Act (2013) so as to ensure that all organizations registered under the same legislation operate without harassment and where there is need for control, the same be done in line with the law. Reference PBOs which do democracy, governance

d) Members must respect other arms of government including the Judiciary and the Executive. All intimidations and arm-twisting tactics to coerce any arm of government rightfully discharging its duties should never be allowed to happen.

X. Communications Authority of Kenya (CAK)

a) Reign in on media houses which broadcast biased information, sensitive images and information and or any information which is against the law so as to avoid dividing the nation along ethnic lines.

XI. The Ethics and Anti-Corruption Commission of Kenya (EACC)

a) Must ensure that all candidates fronting their names for the various positions for clearance must meet the integrity threshold as prescribed in the constitution and all other written laws.

b) Should work together with other state and non-state bodies and ensure that the chapter 6 working group is strengthened to include at least 13 other stakeholders as proposed on 22nd March 2017249.

c) Must be firm based on the standards of ethics and integrity and based on the constitutional and legal framework to ensure that candidates who fall short of the expectations of chapter 6 on integrity are not allowed to participate in the election.

XII. The International and Local Observer Missions

a) Work closely with local stakeholders so as to get a wide viewpoint of the local dynamics such as political alignments and general political mood in the country.

249 https://www.google.com/search?q=chapter+6+working+group+kenya&oq=chapter+6+working+group+kenya&gs_l=psy-ab.3...1295580.1308667.0.1308999.31.30.0.0.0.0.455.3204.2-9j2j1.12.0.dummy_maps_web_fallback...0...1.1.64.psy-ab..19.10.2746...0j0z23k1j33k22i29j30k1j33k21k1.0.yw6TtgUOyml
b) Give timely and consistent updates on the full electoral cycle. This prepares voters and candidates for the final verdict and avoid unnecessary biased reception of the same.

c) Consult widely before giving verdicts so as to ensure that they report from a wide array of stakeholders’ perspectives from preparations, campaigns and polling process.

XIII. The Media

a) Based code of conduct for the practice of journalism in Kenya and ethics as per Media Act (2103) ensure fair coverage for the candidates especially the national broadcaster. Privately owned media stations should also ensure integrity, ethics and professionalism in their coverage.

b) Consider careful selection of political analysts are selected to ensure that opinion especially during the live media shows would be more on issues affecting the electorate rather than focusing on personalities.

XIV. The General Public

a) Uphold the rule of law throughout the electoral period and the principles of human rights.

b) Although it’s an open constitutional right to join and support political party of choice, the public should carry out an analysis party of choice or independent candidates based on ideologies which are geared towards uplifting their welfare and livelihoods.

c) Respect the right to own property and freedom of movement anywhere in Kenya and avoid destruction of public and private property.

d) Cooperate with the law enforcement officers and respect the rule of law in regard to article 37 to peaceably and unarmed participate in the right peaceful assembly.

XV. Private Sector

a) Ensure that they conduct their businesses in a manner which does
indicate taking of sides and supporting certain parts of the political divide.

b) Uphold business and trade ethics so as not to support candidates in the hope of gaining national or county government tenders as this will encourage corruption.

**XVI. Humanitarian and Response Missions**

a) Ensure that they don’t link themselves with support preparations which may publicly be interpreted so as to mean projections of death and destruction of property.

b) Coordinate with security agencies to ensure smooth facilitation of the injured and those traumatized by electoral violence.

c) Assist in Conflict Early Warning and Early Response Mechanism (CEWARN) mapping and coordination so that relief and emergency services in case of emergencies are not done haphazardly.

**6.3 Conclusion**

The Constitution of Kenya, 2010 is clear that the realization of human rights is progressive and this includes the right to vote and complimentary rights that enrich the same. The entrenchment of these rights at varied levels require participation by all and to a larger extent, the citizens.

Electoral processes must not curtail and choke the rights of Kenyans. Citizens must participate freely and exercise the right to choose their leaders or offer themselves for the elections. This participation should be boosted by civic education processes that continuously take place at grassroots and national levels.

KNCHR notes that, elections have offered a real test for the compliance of human rights standards. This is peculiar to the 2007, 2013 and recently the 2017 General Elections. Each episode has offered valuable lessons which have been captured in this report. As a country, we should use the same to boost the democratic ideals that we desire.

If the trends are anything to go by, no sooner does election end than campaigns
begin again, albeit elections being five years away. Such are the bitter - sweet fruits of the much fought for multi-party space. However, without the struggle, the rights many enjoy today may be naught and thus must be jealously guarded within the spirit and letter of the Constitution.

Mirage at Dusk is an election report that documents in detailed form most of incidences where cases of human rights were violated before, during and after the 8th August general elections. The report further provides pictorial evidence of such cases, hence making it distinct from other reports that largely concentrated on the processes of voting without highlighting the human rights violated. We therefore conclude that, this report is a true reflection of the Kenya electoral process and the opportunities to ensure timely streamlining of all the necessary human rights parameters.
HEAD OFFICE
CVS Plaza 1st Floor,
Kasuku Lane, Off Lenana Road
P.O. Box: 74359-00200 Nairobi, Kenya
Tel: Pilot No.: +254-020-3969000
Mobile: 0724-258-448 / 0733 780 000
Fax: +254-020-2718160
General Enquiries: hakiknchr.org
Complaints: complaint@knchr.org

North Rift Regional Office - Kitale
AFC Building, Mak Asembo Street, opp. Mega Centre Mall
P.O Box 2999-30200 Kitale
Tel: 054-31773
Mobile: 0708271216 / 0786236683
Email: northrift@knchr.org
Twitter: @KNCHRRkitale

Western Regional Office - Kisumu
Re Insurance Plaza, 3rd floor
Oginga Odinga Street
P.O Box 7768-40100 Kisumu
Tel: 057 202078
Email: kisumu@knchr.org
Twitter: @KNCHRkisumu

North Eastern Regional Office - Wajir
Waberi, Opp. former Al Shifaa Hospital
P.O Box 363-70200 Wajir
Tel: 046-4422152
Email: northernkenya@knchr.org
Twitter: @KNCHRWajir

Coast Regional Office - Mombasa
Panal Freighters Lane
Off Haile Selassie Road
P.O Box 90171-80100 Mombasa
Tel: 041-2220468 / 2220584
Email: coast@knchr.org
Twitter: @KNCHRmombasa

Center for Human Rights,
Inside Laikipia University, Nyahururu
P.O Box 3100-20300, Nyahururu
Tel: 0705982617
Email: laikipia@knchr.org
Twitter: @KNCHRLaikipia

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