Kenya National Commission on Human Rights

THE FALLACIOUS VOTE

APRIL, 2018
THE FALLACIOUS VOTE
The Fallacious Vote
“All sovereign power belongs to the people of Kenya and shall be exercised only in accordance with this Constitution.”

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Acknowledgements

The Kenya National Commission on Human Rights (KNCHR) salutes the citizens of Kenya for their participation and enthusiasm in this great milestone that did set the ground for the election of our Country’s leaders for the next five years (2017-2022). Despite the challenges encountered, eligible voters remained faithful to the process by coming out in large numbers to exercise their constitutional right to vote.

The Commission remains indebted to the 84 monitors and the staff deployed across the Country whose zeal and commitment shaped the architecture and content of this report. The commitment to the human rights agenda demonstrated in the project attests to a desire to continue expanding the democratic space in this country.

We recognize the gigantic role played by the political parties in coordinating the respective primaries. The commitment to have this important phase of the electoral cycle actualized and the putting in place of the framework to facilitate their members to participate in the process was no mean feat.

Special mention to the leadership and strategic direction offered by the KNCHR Chairperson, Commissioners and the Commission Secretary. Through their guidance, the technical staff were able to steer the critical process through open and flexible thinking spaces from where critical decisions that informed this monitoring process were drawn from.

The report would not have been a success without the immense planning, input, support and participation of KNCHR staff who were committed to early mornings and long nights at the KNCHR Elections Monitoring Hub in order to ensure that information from the regions was analyzed and posted. This report is aptly dubbed “The Fallacious Vote”, and it’s a reflection of the continuous efforts and milestones achieved in steering the country towards compliance with human rights standards in political processes.

The Commission further commends the media for objectively keeping the country abreast with the proceedings and their educative role they played in empowering Kenyans with knowledge on electoral processes and reforms. They remain a
critical force whose work can build or break a nation and we thus encourage them to remain vigilant in safeguarding Kenya’s democracy.

Last but not least, we acknowledge and appreciate the United Nations Development Programme (UNDP) and the Office of the High Commissioner for Human Rights (OHCHR) who have supported this process in kind and deed. Their visits to the KNCHR Elections Monitoring Hub and words of wisdom were a show of trust to the processes the Commission undertakes and our resolve towards the promotion and protection of human rights in Kenya.

This was the beginning of a crucial process in an electoral cycle that was to facilitate inauguration of top leadership in Kenya in the next few months and thus it took the input of all to ensure that the end result was justifiable and adhered to the rule of law. It is in this light that we say to all who contributed to this process a big

THANK YOU.
Executive Summary

At the preliminary level, the question remains. Did you actualize your constitutionally guaranteed right to vote during the recent political party nominations exercise? Do you understand the significance of party primaries as a milestone towards solidifying good governance in the electoral reforms in Kenya? The sad answer is “No” or at best “Yes”. Nevertheless, this report explores what those who participated in party primaries experienced and further suggests mechanisms that would be put in place to eliminate nasty experiences.

Electoral reforms in Kenya envisaged a process that would reflect the aspirations of citizens as key decision makers towards the leadership of the country through the power vested upon them by the Constitution of Kenya (CoK). Article 1 provides that all sovereign power belongs to the people. One of the key provisions that brings to life this power is the constitutionally guaranteed right to make political choices that are actualized by the right to vote as entrenched in Article 38 (3) (b) of the Constitution of Kenya, 2010.

The exercise of these powers culminates to the determination of how citizens are governed over five-year term of each National and County leadership cycle. It is thus critical that citizens prioritize participation in each of the legally stipulated processes that lead up to the outcome of the general elections. This includes the right to form a political party, participate in its activities and also vie for a position in any political party of which they are members.

The same Constitution of Kenya, 2010 has established institutions to oversee and act as watchdogs over the exercise and enjoyment of these fundamental rights. Thus the KNCHR obtains its mandate to monitor the adherence to human rights standards and principles in varied governance processes, key among them the elections in Kenya.

Since its inception, KNCHR has been at the forefront in advocating for a Human Rights Based Approach (HRBA) to elections in order to promote accountability of leadership which can only be achieved through enhanced public participation mechanisms.

It is in this regard that KNCHR has over the years undertaken to engage in
electoral reforms processes through voter education, preparation of advisories, litigation, monitoring and observation.

**The Fallacious Vote**, is thus a report summarizing key findings and recommendations from 2017 political party primaries monitoring which took place between April and May 2017.

The information was gathered from 33 Counties that KNCHR had mapped out as potential hotspots based on security trends and information. KNCHR recruited 84 monitors who were taken through intensive training and sensitization on key human rights election-related issues and thereafter deployed to monitor the electoral cycle.

The KNCHR lauds and notes the great enthusiasm with which the electorate participated in the political parties primaries as was reflected in the turnout at various polling centers despite the myriad and sudden cancellations or postponements by their respective political parties. This, according to KNCHR, is a positive indicator of an electorate that has over the years acquired greater understanding and knowledge which has empowered them to actively participate in this important decision making process.

However, KNCHR was concerned about the lack of preparedness demonstrated by political parties in the party primaries despite having ample time, based on the timelines that had been gazetted in advance by the Independent Electoral and Boundaries Commission (IEBC). The gaps brought about by this unpreparedness greatly affected the credibility and integrity of the entire exercise; Key among these issues included the lack of party registers and adequate voting materials. Therefore, these amounted to election offences as stipulated under the Election Offences Act, 2015 and political parties ought to be held liable for election offences committed.

KNCHR also noted incidences that threatened to compromise the right to vote and the outcome of the nominations that were caused by aspirants, their supporters and party officials. These included bribery, use of violence, intimidation and harassment; destruction of voting material, lack of co-ordination at the tallying centers and targeted attacks meted against minority and marginalized groups such as women aspirants.

It is worth noting that, Political party nominations are not optional but are
mandatory and a prerequisite for all aspirants’ clearance to contest in the general elections. The blatant non-adherence to electoral laws, code of conduct and party rules point to a worrying trend of lawlessness and disregard to democratic ideals and good governance. In an already polarized and highly charged election environment, the above threatens the rule of law and perpetuates a culture of impunity.

In the preceding political parties’ nominations exercise of 2013, KNCHR observed myriad irregularities and therefore recommended to relevant duty bearers to act and tighten the noose on non-compliant parties/aspirants. Despite such recommendations and introduction of new electoral reforms, KNCHR is deeply concerned that credible and verifiable political party nominations were still an illusion in the year 2017.

In line with findings this report therefore recommends that political parties should update party membership registers and enforce strict use of the same during the primaries, the IEBC should adopt a continuous stakeholder engagement and public outreach approach with political parties before party primaries, parliament should fast-track the ratification of the African Charter on Democracy and Governance to enhance the respect of fundamental human rights and freedoms in the context of elections. Other stakeholders such as media should Adhere to the code of conduct by remaining vigilant to objective and conflict sensitive reporting to avert heightening emotions that may escalate volatile situations and the Office of the Director of Public Prosecutions must exercise its powers and order timely/speedy investigations into the numerous alleged incidents of assault and killings of people and offences committed in the run-up to, during and after the 2017 political party nominations. Finely the electorates should Uphold peace during campaigns and avoid all forms of violence. All these will ensure that the right to vote and be voted for will be highly upheld in Kenya during party primaries.
## List of Acronyms/Abbreviations

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
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<tbody>
<tr>
<td>ACDEG</td>
<td>African Charter on Democracy, Elections and Governance</td>
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<td>ACHPR</td>
<td>African Charter on Human and Peoples’ Rights</td>
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<td>ANC</td>
<td>Amani National Coalition</td>
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<td>CCM</td>
<td>Chama Cha Mashinani</td>
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<td>COK</td>
<td>Constitution of Kenya</td>
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<td>CEDAW</td>
<td>Convention on the Elimination of all Forms of Discrimination Against Women</td>
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<td>CRPD</td>
<td>Convention on the Rights of Persons with Disabilities</td>
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<tr>
<td>D.E.B</td>
<td>District Education Board</td>
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<td>F.K</td>
<td>Ford Kenya</td>
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<tr>
<td>GE</td>
<td>General Election</td>
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<tr>
<td>HRBA</td>
<td>Human Rights Based Approach</td>
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<tr>
<td>IEBC</td>
<td>Independent Electoral and Boundaries Commission</td>
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<tr>
<td>ICCPR</td>
<td>International Convention on Civil and Political Rights</td>
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<tr>
<td>ICERD</td>
<td>International Convention on the Elimination of all Forms of Racial Discrimination</td>
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<td>JAP</td>
<td>Jubilee Alliance Party</td>
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<td>KANU</td>
<td>Kenya African National Union</td>
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<td>KNCHR</td>
<td>Kenya National Commission on Human Rights</td>
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<td>KRA</td>
<td>Kenya Revenue Authority</td>
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<td>MCA</td>
<td>Member of County Assembly</td>
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<td>MP</td>
<td>Member of Parliament</td>
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<td>Acronym</td>
<td>Full Form</td>
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<td>NGOs</td>
<td>Non-Governmental Organizations</td>
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<td>NPS</td>
<td>National Police Service</td>
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<td>ODM</td>
<td>Orange Democratic Party</td>
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<td>OHCHR</td>
<td>Office of High Commissioner for Human Rights</td>
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<td>ODPP</td>
<td>Office of the Director of Public Prosecutions</td>
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<td>ORPP</td>
<td>Office of the Registrar of Political Parties</td>
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<td>PNU</td>
<td>Party of National Unity</td>
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<td>PWDs</td>
<td>Persons with Disabilities</td>
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<td>PPDT</td>
<td>Political Party Disputes Tribunal</td>
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<td>PPNEB</td>
<td>Political Party National Election Board</td>
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<td>RO</td>
<td>Returning Officer</td>
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<td>Political Parties Dispute Tribunal</td>
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<td>UNDP</td>
<td>United Nations Development Programme</td>
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<td>UDHR</td>
<td>Universal Declaration on Human Rights</td>
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<td>WDM</td>
<td>Wiper Democratic Movement</td>
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CHAPTER 1

Introduction

1.1 Contextual Background

Kenya held its second General Elections under the Constitution, 2010 on Tuesday 8th August 2017. The months leading to the political primaries were precipitated by a clamour for electoral reforms that culminated in violent public demonstrations in Nairobi and major cities and towns that led to the death of five people, hundreds injured and destruction of property.

To actualize the electoral reforms before the 2017 general elections, there were spirited calls by KNCHR, Civil Society Organizations and religious bodies to the two main political divides to hold dialogue and end the violence. This finally bore fruit in June 2016 when a joint parliamentary committee was formed. This joint committee held public hearings with key stakeholders (the KNCHR included) and received memoranda and recommendations on the key election reforms agenda. This exercise culminated in a politically negotiated exit of the IEBC Commissioners under the leadership of Issack Hassan, the enactment of the Election Laws (Amendment) Act, 2016 and the Election Offences Act of 2016.

However, in January 2017, amendment to the negotiated Elections Laws was acrimoniously passed in parliament amidst protests from the opposition. This turn of events further polarised the nation into ethnic and political divides that heightened the tension in the country. The months thereafter towards the political primaries were characterized by threats and occurrence of politically instigated violence in several parts of the country including Baringo, Nairobi, Kakamega, Migori, Garissa, and Kisumu counties. This political environment was further exacerbated by a police service characterised by the tendency to resort to the utilisation of excessive force in response to public demonstrations.

Despite the change of leadership at the IEBC, the trust deficit from political actors remained. Questions were raised on the integrity of the voter register, allegations of discriminatory approaches in the second phase of mass voter registration,
delays in achieving election timelines set by IEBC particularly in the procurement of ballot papers, election technology and procurement of an audit firm that was to clean up the voters’ register.

The focus on the 2017 general elections was also characterised by a dramatic shift of interest and focus on the seats at the county level with an unprecedented increase of the number of independent aspirants. This was definitely going to have logistical implications on the part of IEBC.

The KNCHR noted a dynamic shift in the pattern of the known traditional “hotspot counties” to the emergence of new ones like Kakamega, Kirinyaga, Kiambu, Kitui, Garissa and Machakos where fierce competition between the incumbents and aspiring candidates resulted to campaigns laced with incitement, hate speech and violence.

Political parties in Kenya were expected to operate under prescribed legislation as discussed in Chapter Two of this report. This was the basis under which the KNCHR endeavoured to undertake this monitoring project so as to effect remedial actions and interventions geared towards safeguarding political rights in the 2017 General Election.

**Significance of Political Primaries in the Election Cycle**

Political party primaries play a critical role in promoting democracy in a nation. Since the fight for multi-party democracy in the late 1980s and early 1990s, a multitude of political parties provide a wide array of choices for the citizenry on the type of ideologies and policies that they can associate themselves with. Multi-party democracy by its nature keeps the government of the day on its toes by providing checks and balances on service delivery and pledges to the “wananchi”.

Political parties in Kenya are governed by the Political Parties Act, 2011 which regulates the formation and conduct of all parties. In accordance with this law, all political parties must be formed in compliance and for purposes that are not contrary to the Constitution of Kenya. A key tenet of all political parties therefore is the promotion of democracy, good governance, participation of the people and inclusivity. For any political party to be fully registered, Section 6 of the Act requires the mandatory obligation of among others a disaggregated full membership list to be deposited with the Registrar of political parties. This membership list and composition of the governing body must have an ethnic, regional and gender
balance as well as inclusion of special interest groups which must also be reflected in the governing body. Section 17 further provides that a political party must maintain among others, a membership list, its policies and plans at its head office and in each county office. Section 6 of the First Schedule obligates all political parties to uphold the Constitution, human rights, rule of law, and democratic internal elections. All these requirements are mandatory obligations for political parties to be fully compliant with the law and anything less is an illegality.

In a multi democracy state like Kenya, political parties play a critical role of protecting and promoting the various political rights as enshrined in the Constitution including the freedom of association, right to vote and be voted. Political parties also play the role of shadow government by acting as the alternative platform and highlighting the shortcomings and performance of the ruling government. This role is undertaken by monitoring the government’s pledges and service delivery and creating awareness of the people on the obligations of the government. In addition, the two houses of parliament at national and county level are composed of members of various political parties thereby playing the important role of shaping the type of laws and policies that are debated and passed.

In terms of political primaries, political parties provide the mechanism in which members of the public are availed an opportunity to participate in the nation’s democracy by freely choosing the candidates that best reflects their beliefs and ideologies. Historically, political primaries have been the epitome of shambolic exercises laced with strong undertones of nepotism, favouritism, discrimination and corruption; contrary to the democratic intention of the exercise.

Following the 2007/8 post-election violence, election reforms with an aim of addressing these misgivings were initiated culminating to a new constitutional dispensation and an array of electoral laws that were meant to bring order and management of political party activities. One of the most important objective of these reforms was to ensure political primaries are conducted in a free, fair and transparent manner so as to achieve its democratic intention. In order to achieve this political parties are required under the law to develop and deposit with the IEBC nomination rules that govern how this exercise is to be conducted.

The KNCHR was at the forefront in monitoring the first political primaries in 2013 under this new constitutional and legal dispensation and it findings in its report
breaking from the past indicates the same old game with the same rules. There was no major deviation from the past with political parties being ill prepared for the exercise, claims of rigging were rampant and there was a general lack of internal disputes resolution mechanisms in most of the political parties.

In a country that is heavily characterized by ethnically divided politics, political primaries, especially in party strongholds, amounts to a large extend an assurance of victory in the General Election for the successful aspirants. It is hence vital that the intention of the exercise as an avenue for the common mwananchi to exercise their democratic vote is safeguarded and conducted at the highest attainable standards in accordance with the principles and values of the Constitution.

1.2 Methodology and Scope

- Mapping out and deployment

Some of the internationally accepted best practices in electoral cycle involve early scenario building, conflict monitoring and mapping. Election cycles in Kenya have always been marred by violent activities either during or post elections. The greatest obstacle to democratic consolidation in Kenya is electoral violence which in many cases has ethnic undertones.

In line with international electoral cycle practices, KNCHR monitoring exercise was premised on understanding that, systematic monitoring of electoral processes provides timely documentation of incidents for informed follow up. In order to operationalize this, KNCHR undertook the responsibility of developing an elections monitoring strategy which identified three key phases; the party primaries, campaigns and the polling period with a consideration for the post-poll scenarios.

KNCHR mapped out 29 counties as hotspots during the party primaries elections. However, due to dynamics on the ground during data collection, the party primary monitors included more 4 counties making them 33. The mapping of counties was based on information from security agencies, various partners and stakeholders involved in the election monitoring and observation and its own assessment stemming from past experiences in the field.
The KNCHR team managed to develop an election monitoring system which allowed simultaneous collection of a wide array of data, preliminary analysis and classification of the data. The information in audio-visual text and graphic received from the field monitors was uploaded onto an elections monitoring portal for analysis, follow up and verification.

KNCHR then proceeded to deploy 84 monitors who were taken through an intensive training program. In addition, KNCHR not only engaged its members of staff but also maximized on the partnerships with the various organizations involved in elections monitoring to complement in areas where it does not have a presence.
CHAPTER 2

The Legal Background to Party Primaries

2.1 Introduction

Kenya’s Elections normative framework is guided by the international, regional treaties and conventions that Kenya has ratified. It is also guided by a national framework that aims to respect, protect and fulfil the right to vote and participate in governance through freely chosen representatives.

The right to vote requires the full enjoyment and respect for the rights to freedom of expression, assembly and association. Leading up to elections, these fundamental rights are essential for the effective exercise of the right to vote.

• International and Regional Instruments On Elections

The Constitution of Kenya, 2010 by dint of Article 2 (5) and (6) makes provisions for international laws, ratified treaties and conventions forming part of the law applicable in Kenya such that the general rules of international law pertaining to elections shall be applicable and form a basis for its implementation locally. The following are the relevant international instruments that apply to elections which Kenya has ratified.

• The Universal Declaration on Human Rights (UDHR)

Within the framework of the United Nations, Article 21 of the declaration makes provision that all persons have the right to participation in government either directly or through their democratically elected representatives. The declaration also makes provision for the right to expression and opinion which is crucial in the
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formation of political ideology that facilitates political positions. Tied to the above
is also the freedom of peaceful assembly and to form associations without being
compelled to do so. This ensures that citizens freely participate in political parties
and activities as they wish.

- **International Convention on Civil and Political Rights (ICCPR)**

This Convention provides the foundation for the promotion and protection of
civil and political rights. It requires states parties to respect and 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.”

- **The International Convention on the Elimination of All Forms of Racial
  Discrimination (ICERD)**

This Convention puts in place measures to prohibit and eliminate any form of
discrimination based on the account of race. In terms of elections, the Convention
grants the political rights, in particular the right to participate in elections, to vote
and to stand for election, on the basis of universal and equal suffrage, to take part
in the government as well as in the conduct of public affairs at any level and to
have equal access to public service.

- **Convention on the Elimination of All Forms of Discrimination Against
  Women (CEDAW)**

The convention seeks to promote gender equality and non-discrimination in all
spheres including in political representation and participation. The convention in
essence avails women the opportunity to participate in the electoral and political
processes of their respective countries through voting and being voted for and further calls for the equal treatment of both men and women in the mentioned processes. Gender cannot be grounds for discrimination in involvement in political and electoral undertakings of a country.

The right to non-discrimination and full inclusion in society encompasses the fundamental right to participate in political life, which requires that women have the right to vote and be voted for on equal footing with men.

- **Convention on the Rights of Persons with Disabilities (CRPD)**

This Convention explicitly extends political rights to persons with disabilities; setting out that state parties must guarantee persons with disabilities the right to “effectively and fully participate” in political life on an “equal basis with others” and guarantee the “free expression” of their will as electors.

As a party to the CRPD and its optional protocol 25 and to the ICCPR, Kenya is obligated to allow persons with disabilities to participate in political activities on an equal basis with others by granting them the right to vote and be voted for.

While disability rights have become more visible at the international level since the CRPD was adopted, the Kenyan example illustrates that the state needs to ensure that treaty provisions, particularly Article 29, are sufficiently implemented at both the national and county level including having disability-friendly venues and voting materials.

Substantial changes to the electoral participation of persons with disabilities are only possible if state parties fully and effectively implement Article 29 of the CRPD into their national law.

- **The African Charter on Human and Peoples’ Rights (ACHPR) and the African Charter on Democracy, Elections and Governance (ACDEG).**

The African Charter on Human and Peoples' Rights provides for the right to participate freely in government, either directly or through freely chosen representatives. It further protects the right of everyone to freely assemble. Of equal consideration is the right granted in Article 20 which sets out the rights to
unquestionable and inalienable right to self-determination. This buttresses the right of the electorate to freely determine their political status and pursue their economic and social development according to the policy they have freely chosen.

Kenya is yet to ratify the African Charter on Democracy, Elections and Governance which calls on State Parties to “ensure fundamental freedoms and human rights” in the context of holding regular, free, fair and transparent elections.


  This protocol focuses on the rights of women in Africa. With regards to elections, the protocol obligates state parties to take specific measures to promote the equal participation of women in the political arena through affirmative action and enabling national legislation. More specifically, these measures should ensure women’s participation without any discrimination in all elections and representation of women equally at all levels with men in all electoral processes.

2.2 National Legal Framework on Elections

(a) **The Constitution of Kenya, 2010.**

Article 27 of the Constitution of Kenya, 2010 makes provision that all persons are equal before the law of which this equality includes the full enjoyment of all human rights and freedoms. Further, men and women have equal opportunities and rights including political rights. Under this article, no person or body shall discriminate either directly or indirectly against another person on the grounds of among others sex, race, pregnancy, social origin, disability, religion, age, culture or dress. Gender equality is protected by the Constitution which provides that not more than two thirds of elective and appointive bodies shall be of the same gender.
Articles 38 of the Constitution of Kenya, 2010 sets out the political rights of which every citizen in Kenya is entitled to and which include the following:

- The right to form, or participate in forming a political party;
- The right to participate in activities of recruiting members for a political party;
- The right to campaign for political party or cause and
- The right to a free, fair and regular elections

The Constitution of Kenya, 2010 further sets out the principles of the electoral systems in Kenya under Article 81 and provides the following:

- The electoral system must comply with principle of freedom of citizens to exercise their political rights spelt out in Article 38;
- The electoral system must comply with the principle that not more than two-thirds of members of elective public bodies shall be of the same gender;
- The electoral system must comply with the principle of fair representation of persons with disabilities and
- The electoral system must comply with the principle of universal suffrage based on the aspiration for fair representation and equality to vote.

The electoral system must also comply with the principle of free and fair elections that bear the following characteristics;

- The elections must be by secret ballot;
- The elections must be free from violence, intimidation, improper influence or corruption;
- The elections must be conducted by an independent body, transparent and administered in an impartial, neutral, efficient, accurate and accountable manner.
(b) Statutory Framework

Elections in Kenya are governed by the following Acts of parliament;

- The Elections Act, 2011;
- Election Offences Act, 2016;
- The Political Parties Act, 2011;
- The Independent Electoral and Boundaries Commission Act, 2011;
- The Elections Campaign Financing Act, 2013;
- The Supreme Court Act and
- Publication of Electoral Opinion Polls Act.

In a nutshell, these pieces of legislation provide for the conduct of elections to the various offices and seats, referenda, electoral disputes resolution registration, conduct and funding of political parties. These laws further govern the key actors involved in elections including the Independent Electoral and Boundaries Commission, Political Parties, the Registrar of Political Parties, the Political Parties Dispute Tribunal, and the Judiciary.

(c) Statutory amendments

Since the first elections were held under the New Constitution of Kenya, 2010 in 2013, there have been several proposals to amend the Constitution of Kenya, 2010 and the statutes related to the electoral bodies and processes in response to various issues that had been experienced and to also comply with the various constitutional or elections requirements.

All these efforts of the electoral reforms culminated into establishment of a Joint Parliamentary Committee on electoral reforms that held public hearings on the electoral issues raised and thereafter came up with two main Bills that were assented by the president in September 2016;

- Election Laws (Amendment) Act, 2016 that has a raft of amendments to the Election Act, the IEBC Act, the Political Parties Act, 2011, the
Supreme Court Act, 2011 and the Registration of Persons Act, Cap 106;

- The Election Offences Act that enumerates the various offences associated with the elections and the penalties for the same and

- In January 2017, an amendment to Election Laws (Amendment) Act, 2016 was also acrimoniously passed in parliament amidst protests from the opposition.

KNCHR hence sought to monitor the compliance of the political party primaries to the rights encapsulated in these international, regional and national legal instruments.
CHAPTER 3
Analysis of Key Findings

3.1 Introduction

The Kenya National Commission on Human Rights (KNCHR) had selected parameters upon which the monitoring of the political party primaries was based on. The parameters included, bribery, violence, missing names (of both aspirants and voters) on the party register, voting materials, opening and closing time of the polling centre, provision of security, harassment and duress (of both aspirants and voters), intimidation and violence against the marginalised and the vulnerable, manipulation of the voter register, misuse of public resources and any other unique issues that came up including challenges and dispute resolution. KNCHR monitors and staff monitored 224 centres in 33 counties and documented the issues as presented in Figure 1.
An overall analysis of the findings from the monitoring exercise highlights the prevalence of the various parameters that were used to measure the compliance of the political party nomination process in promoting and protecting the right to vote and the right to be voted.

The findings infer that cases of missing names from the party registers were the highest concern as evident in the 116(52%) out of 224 canters monitored. This is attributed to the fact that, none of the political parties, in the stations monitored, had its own authentic party register. KNCHR established most of the political parties resorted to the use of 2013 IEBC register.

KNCHR further established that most of the political parties had not adequately prepared for the primaries. This is as attested by late opening and early/late closing of polling centers as reported in 81(36%) out of 224 centers monitored.

Out of the 224 centers monitored, the National Police Service endeavored to provide security at a minimum of 2 officers per center. However, in 81(36%) centers the KNCHR team observed the officers were overwhelmed by the large number of the voter turnout.

There were incidences of violence reported in the 17(8%) of centers monitored which resulted to confirmation of at least 2 deaths and 10 persons seriously injured and admitted in hospital. Other anomalies observed includes, insufficient voting materials in 34 (15%) centers, open bribery in 12(5%) centers, harassment in 12(5%) centers, misuse of public resources in 2(0.08%) and intimidation and violence against women in 1(0.04%) of the monitored centers.

Apart from general party primary anomalies presented in Figure 1, the report further documents incidences where such anomalies occurred and subsequently provides pictorial evidence for such anomalies. This is as discussed in subsequent sections.

3.2 Bribery and Manipulation of Voters

Bribery is an election offence that plays a significant part in influencing the voting patterns to favour a particular candidate thereby violating the right of the electorate to freely vote for the candidates of their choice and denying the
deserving candidates to have the right to be voted for.

Section 6 of the Elections Offences Act provides that bribery is an offence and states that a person who, during an election period directly or indirectly offers a bribe to influence a voter to vote or refrain from voting for a particular candidate or political party or gives a bribe to unlawfully influence the result of an election commits an offence and shall be liable, on conviction, to a fine not exceeding two million shillings or to imprisonment for a term not exceeding six years or to both.

KNCHR documented 12 cases of bribery observed in Bungoma, Nairobi, Garissa, Kirinyaga, Kisumu, Kwale, Meru, Migori, and Mombasa counties as presented Figure 2.

Figure 2, indicates that most (25%) of bribery cases were reported in Bungoma and closely followed by Nairobi at (17%). This could be attributed to the fiercely contested ODM, Ford Kenya, and Amani National Congress in the Western region as characterised by the numerous repeat exercises.
To augment the statistical data in line with number of electoral malpractices recorded which directly or indirectly infringed the right of citizens to vote or candidates to be voted for, real instances were recorded and in some occasions pictorial evidence provided. Some of the incidences are as follows:

- **On 25th April 2017**, at Malaha Primary School polling station, Matulo Ward within Webuye West Constituency, Bungoma County at around 8:30 a.m., a MCA aspirant was openly issuing cash to his supporters.

- **On 26th April 2017**, in Kinango constituency in Kwale County, a MCA aspirant was openly bribing people during the campaigns by giving them money to influence them to vote for him.

- **On 26th April 2017**, at Tononoka Social Hall polling station in Tononoka ward, Mvita Constituency, Mombasa County, agents of one aspirant induced voter decisions by giving free water to all who were walking in polling stations. During the offer of free water, it was noted that the agents used the opportunity to campaign for their candidate.

- **On 18th April 2017**, at a place called Whitehouse, Bahati, ward, in Bahati Constituency, within Nakuru County, a candidate was caught on camera by KNCHR monitors bribing members of the public.

- **On 22nd April 2017**, at Langata constituency, within Nairobi County where a gubernatorial aspirant was captured giving out money to the members of the public.

![Photograph 1: (Left) A voter on motorbike counts money dished out by an aspirant. (Right): Bribery in Nakuru County on 18th April 2017](image-url)
On 17th April 2017, at Kotetni Primary school polling centre within Kisumu County, during the nominations of Ford Kenya Party, KNCHR monitors observed that the supporters of one of the MCA aspirants were issued with party membership cards and bribed them before voting.

On 24th April 2017, at Gatwe polling station, Mutira Ward within Kirinyaga County, an agent for an aspirant was captured by the KNCHR staff as he was dishing out money near the polling station.

In Kirinyaga County, a photo was published of a desk donated by a gubernatorial candidate and the same was used to place ballot boxes. The said candidate was captured in the print media casting her vote on the same material item. This is tantamount to campaigning at polling centers/stations which is an electoral offence and borders on attempts to unduly influence voters.

Photograph 2: A gubernatorial aspirant with the ballot box placed on a desk she donated in 2014 (Photo- The Standard)
On 20th April 2017, at Mwira Polling Station, Mayoni Ward, Matugu constituency, Kakamega County, Some candidates transported voters to the polling stations.

KNCHR also observed the display of posters and distribution of leaflets bearing candidates’ images and campaign messages at polling stations during the party primaries polling day.

The KNCHR monitors also reported bribery cases per political party. This aimed at establishing the political which was highly involved in bribing voters. The results are as presented in Figure 3.
Figure 3 shows that Jubilee Party had the highest number (59%) of bribery cases closely followed by ODM (25%), Ford Kenya (8%) and ANC (8%) among the political parties.

### 3.3 Incidences of Violence

Violence impacts on the rights of both the aspirants and the voters to freely exercise their political rights.

Section 11 of the Kenya Election Offences Act, 2016 outlaws violence and provides that a person who, directly or indirectly in person or by any other person on his behalf, inflicts or threatens to inflict injury, damage, harm or loss on or against a person; “so as to induce or compel that person to support a particular candidate or political party on account of such person having voted or refrained from voting; or in order to induce or compel that person to vote in a particular way or refrain from voting, commits an offence and is liable on conviction to a fine not exceeding two million shillings or to imprisonment for a term not exceeding six years or to both”.

Source, KNCHR Election Monitoring System (EMS)

Figure 3 Incidences of voter bribery per political party
As presented in Figure 1, there were violence related cases in 12 monitored centers. The cases ranges from assault on aspirants and their supporters and agents and voters, rivalry during rallies, attempted rape, alleged abductions, use of firearms to threaten aspirants and intimidation. The distribution of violence cases are as presented in Figure 4.

Source, KNCHR Election Monitoring System (EMS)

Figure 4: Incidences of Violence per county

Figure 4 indicates that Bungoma county had the highest number of violence cases at 23%, followed by Nairobi 11%, Turkana 12% and the rest Tana River, Isiolo, Kericho, Kirinyaga, Kisii, Kisumu, Migori and Mombasa each registered 6% of violence cases observed during party primary monitoring period.

KNCHR recorded some of the cases of violence as follows;

- On 21st April 2017, at Ndori, Rarieda Constituency, Siaya County, an ODM Parliamentary aspirant mobilised his supporters to attack his opponent. In the ensuing melee, a number of people sustained serious injuries and one person was reportedly killed.

- 20th April 2017, at Lenchante Hotel, in Kimilili Constituency, Bungoma County, an aspirant allegedly drew his gun and pointed it on another aspirant threatening to shoot her. However, he was restrained though the female aspirant was left shaken.
• On 23rd April 2017, at Kanyenyani market, Kangema constituency, Murang’a County, a group of people allegedly hired by the incumbent attacked supporters of his rival and injured scores of people.

Photograph 4: A party supporter injured by alleged hired people from an opposing camp at Kanyenyani market, Murang’a County on 23rd April 2017

• On 26th April 2017, at Dr Livingstone Primary School polling station, Maringo, Hamza Ward, Makadara Constituency, Nairobi County, missing party register at the polling station led to the suspicion of rigging and this created tension. The incumbent MCA and MP stormed the polling station and destroyed ballot papers and the votes which had already been cast. The quick response by the area Police Commandant and Assistant County Commissioner restored calm. However, the voting process was cancelled and the remaining voting materials taken to Jogoo Police station.
• In Migori County, two party supporters were confronted by group of people supporting an incumbent leader. The hired team prodded the party supporters as to which candidate they were supporting. Upon failure to identify with the incumbent leader, the party supporters were attacked and in the process sustained serious injuries. A Good Samaritan who rushed to their rescue was also attacked sustaining deep cuts leading to minor operations and hospitalization in a Migori hospital.
• On 20\textsuperscript{th} April 2017, at Rakwaro mixed secondary school, Migori County, Four (4) people were seriously injured after a group of youth went to disrupt an ODM training session for presiding officers. The media showed scores of people being filmed having been slashed in the open with machetes.

![Photograph 7: An elderly woman caught in Party primaries fracas in Kirinyaga County on 24th May 2017](image)

• On 21\textsuperscript{st} April 2017, at Gatundu South Constituency, Kiambu County, crude weapons consisting of machetes, clubs and slashers were intercepted by the security agents and 3 people were arrested.

• On 25\textsuperscript{th} April 2017, at Rarieda Secondary School polling station, Rarieda Constituency, Siaya County, an aspirant’s vehicle was found with crude weapons (clubs and machetes) and was detained by the security agents at Aram Police Station.

Incidences of violence were also recorded per political party. The results are as presented in Figure 5
As shown in figure 5, Orange Democratic Movement had the highest number (53%) of violence cases followed by Jubilee Party at 35%, Amani National Congress 6% and Ford Kenya 6%.

3.5 Missing Names

The Kenya Political Parties Act, 2011, Section 7 (2) (f) (1) and section 28 of the Elections Act, 2011 requires that political parties submit to the Registrar of Political Parties and the IEBC a list of names and identification of all their members.

In the political party primaries, KNCHR recorded 116 centres with names of voters and aspirants missing. Based on the Commission’s findings, this was attributed to lack of credible party registers as political parties resorted to using the 2013 IEBC register. This exhibited gross levels of disorganization and ill-preparedness on the part of the parties.

In some constituencies, many voters were turned back and failed to vote since their names were either missing on the available registers or due to the merger of the polling centres. The merging had been done without a prior notice to the
voters. The distribution of missing names per county is as presented in Figure 6.

![Bar graph showing the number of centers per county with data for each county listed on the x-axis and the number of centers on the y-axis.](image)

Source, KNCHR Election Monitoring System (EMS)

Figure 6: Incidences of missing names per County

To salvage the situation, most political parties through their Returning Officers

![Bar chart showing missing names per political party with data for each party listed on the y-axis and the count on the x-axis.](image)

Source, KNCHR Election Monitoring System (EMS)

Figure 7: Incidences of Missing names per Party
Figure 7 shows that Jubilee Party had the highest number of missing names for electorates, it was followed by ODM, ANC, WDP, KANU and Ford Kenya in that order.

Throughout the party primaries, KNCHR recorded such incidences in some of the places recorded below;

- On 26th April 2017, at Wabera Primary School polling Center, Isiolo North Constituency, Isiolo County, many of the voters’ names were missing from the availed party register during the Jubilee Party primaries. Those whose names were missing were turned away.

- On 15th April 2017, KNCHR monitors noted there were cases of last-minute merger of polling stations further complicating the situation as voters’ registers were mixed up. A case in point was in Narok County at Oloikarere Primary School polling center which combined 3 polling stations namely; Oloikarere, Nailoglogilog and Endashata polling stations.

- On 20th April 2017, at Mwira Polling Station, Mayoni Ward, Matugu constituency, Kakamega County, the issue of missing names was exploited by some political parties to do double registration of voters. In an undercover manner, a KNCHR’s Monitor managed to register twice in Ford Kenya and was issued with two party membership cards from the same polling station and voted.

- Besides voters missing their names, aspirants also found their names missing on ballot papers causing cancellations of some nominations. In Kanduyi constituency, Bungoma County, a Ford Kenya MCA aspirant for Sangalo Ward a Mr. Eliud Kasingani Khaemba found his name missing causing the nominations to be postponed to a later date. A similar case was witnessed in Kirinyanga and Bomet Counties where 8 MCA aspirants found their names missing from the ballot paper. Voting was cancelled and postponed to a later date.

Based on the above, KNCHR noted that the absence of political party registers during the nomination process casts doubts on the party internal operations and also gives an opportunity to persons to vote for more than one party thus mocking the credibility of the nominations exercise.
3.6 Lack of Sufficient Voting Materials

While political parties were accorded ample time to prepare adequate materials for the exercise, the KNCHR noted that this was not the case for most of the political parties based on the political party legislation and timelines given by IEBC.

The analysis on inadequate voting materials is as presented in Figure 7.

As shown in Figure 8, Elgeyo/Marakwet County had the highest cases of insufficient voting materials closely followed by Samburu and Uasin Gishu Counties.

KNCHR documented that 34 centres did not have sufficient voting materials in some polling stations. These included either lack of ballot papers or inadequate ballot papers which in a couple of centres were depleted while voters were still on the queues. This forced political party officials to lock out voters thus denying them the right to participate in the exercise.

In some areas which lacked or had inadequate ballot papers, KNCHR witnessed party officials attempting to collect more materials from party offices some of which were long distance away and in some cases access was slowed by rainfall. The effect of these delays led to some voters returning to their homes without
casting their ballot, thus denying them their right to participate in the nomination process.

The KNCHR team documented the following cases of lack of adequate materials:

- On 24th April 2017, at Mariwa Primary school, South Sakwa Ward, Awendo Constituency Migori County, the ODM polling station received only 200 ballot papers yet the party members list had 522 people. The last ballot paper was cast at 3:00 p.m. yet voters were still on the queue. Since the ballot papers were not enough, some voters did not vote.

- On 25th April 2017, at Kimilili D.E.B Primary School polling station, Kimilili Ward, Bungoma Constituency, Bungoma County, the ballot papers for the Member of the National Assembly were few and the voting exercise came to an end before the official closing time since the materials were depleted. Only 360 ballot papers had been delivered against an expected number of 820 registered voters. At the end of the exercise, 511 voters showed up with the difference being turned away.

- On 24th April 2017, at Chesoi Catholic Church polling station, Sambirir Ward, Marakwet Constituency, Elgeyo Marakwet County, blank white stamped papers were utilized as ballot papers in which voters were required to write the name of the aspirant from a sample of ballot papers which had been pasted on the wall. Lack of sufficient voting materials resulted to a delay in voting as it began at 1.30 p.m. This further disenfranchised voters who showed up at the polling station earlier and left without voting.

- On 26th April 2017, at Kirindo Primary School ODM polling station, South East Alego Ward, Alego Constituency, Siaya County, there were no sufficient ballot papers and the Presiding Officer decided to use exercise books as ballot papers for the exercise.

- On 20th April 2017, at Chebole Primary School polling station, Kipsonoi Ward, Bomet Constituency, Bomet County, the station lacked sufficient voting materials and at some point they had to borrow from a nearby polling station and also forced to use the exercise books as ballot papers.

- On 24th April 2017 at Chemolingot polling center, Ribkwo Ward, Baringo
East Constituency, Baringo County, rubber stamps and ballot papers were missing at the polling center.

- On 24th April 2017, at Sambirir Girls Secondary School, Sambirir Ward, Marakwet Constituency, Elgeyo Marakwet County, ballot papers that were used at the polling station were not the originals from the Jubilee Party Headquarters but photocopies of the originals. Blank papers stamped using the Party’s Returning Officer (RO) Stamp were utilized as ballot papers in which voters were required to write the name of the aspirant of their choice who they wished to nominate then cast the vote in the ballot box. The ballot boxes were not secure as they lacked security seals and lids. Lack of sufficient voting materials resulted to a delay in voting since the exercise began at 1:00 p.m. This further disenfranchised voters who showed up at the polling station earlier and left without voting.

KNCHR noted that most of the polling centres monitored ended up using ballot papers which were sets of photocopies and therefore bore a similar serial number. This was evident in Kirinyaga, Uasin Gishu, Nandi and other Counties.
3.7 Late Opening and Early/Late Closing

In a voting process, the common practise is to have clearly set and pre-determined opening and closing time of polling centres and stations. In 2017 nomination exercise, political parties had set out clear timelines for the opening and closing of polling centres; a majority of which was between 6:00 a.m. to 5:00 p.m. However, due to varied inadequacies, majority of the polling centres were opened past 9:00 a.m. and closing as late as 11:00 p.m.

KNCHR noted that most of the political parties were unable to complete the exercise in good time and as most of the polling stations started the exercise very late. There were extreme cases in which the primaries were carried late in the night. This was as evidenced in the following areas,

- On 14th April 2017, at Khalaba Primary school polling center, Khalaba Ward, Bungoma Constituency, Bungoma County, the polling center was opened at 6am in the morning however the voting materials were brought late at around 10am which delayed the voting process. Some registered members could not vote because of such incidences.

- On 24th April 2017, at Kibingoti Youth Polytechnic polling center, Kiine Ward, Kirinyaga Constituency, Kirinyaga County, voting materials were delivered at 8:15 a.m., but opening of the polling center was delayed until 9:20 a.m. after polling clerks in one of the stream failed to show up. This caused tension since the voters had already queued ready to vote. Some of the voters who had arrived early left complaining that they had to go to work thus missing out on the voting process.

- On 25th April 2017, at Oboch Primary School polling station, South West Nyakach Ward, Nyakach Constituency, Kisumu County, the ballot materials for this polling station arrived late at 12:35pm hence voting started some few minutes past 1:00 p.m. Some voters who had arrived as early as 7:00 a.m. to participate in the exercise did not have the patience to wait. They therefore left. Their right to vote and participate in decision making of electing party leaders who would lead them was then compromised.
• On 13\textsuperscript{th} April 2017, at Pinnacle Academy polling station, Township Pinnacle Ward, Kanduyi Constituency, Bungoma County, chaos erupted at this polling station mid-morning and voting began at 2:00 p.m. and ended earlier at around 4:00 p.m.

• On 18\textsuperscript{th} April 2017, at Kiambere D.E.B Primary School polling station, Bogichora Ward, Nyamira Constituency, Nyamira County, the polling station was opened at 11.00 a.m. and closed at 11.00 p.m.

• On 22\textsuperscript{nd} April 2017, at Danisa Primary School polling station, Garsen Centra Ward, Tana River Constituency, Tana River County, the voting exercise started at 12:32 p.m., instead of 6:00 a.m., as had earlier been announced. Voters complained of hunger and fatigue.

• On 25\textsuperscript{th} April 2017, at Wareng High school polling station, Langas Ward, Kesses Constituency, Uasin Gishu County, the polling station was opened at 8.00 a.m. in the morning and closed at 11.00 p.m at night.

• On 25\textsuperscript{th} April 2017, at Railways Junior polling station, Kuinet Ward, Soy Constituency, Uasin Gishu County, lack of enough voting materials caused delay in opening and closing of the polling station as it was opened at 9.15 a.m. and closed at 8.50 p.m.

• On 20\textsuperscript{th} April 2017, at Mwira polling station, Mayoni Ward, Matungu Constituency, Kakamega County, Voting opened at 12.00 p.m. but some voters had already left due to the long waiting hence they did not exercise their right to vote.

• On 22\textsuperscript{nd} April 2017, at Mwaligulu Primary School, Tiwi Ward, Kwale Constituency, Kwale County, the polling station was opened early but due to late delivery of polling materials, the exercise began at 1:00 p.m.

### 3.8 Provision of Security

The maintenance of law and order is critical in the electoral process and is complemented by the presence of security agents' at all key electoral centres.

The Kenya National Commission on Human Rights (KNCHR) was thus keen on the preparedness of the National Police Service (NPS) with reference to the
availability of officers and deployment at all gazetted nomination centres.

KNCHR noted that the security agents played a critical role in providing security in a fairly professional manner. This was demonstrated by their active role in the securing polling stations, securing ballot materials to and from the polling centres as well as managing queues and movement into the polling stations / rooms. The Commission commends the high level of restraint and commitment to law and order demonstrated by security officers even in areas where situations threatened to get out of hand. Most of the polling centres were assigned at least two security personnel from the National Police Service.

Despite the active role the security agents played in areas where the KNCHR monitors were deployed and incidences of violence reported, it was envisaged that Police were to be keen to expedite the arrest and arraignment of suspects in Court during and after the general elections if violence incidences occur.

### 3.9 Harassment and Duress

The principle of free and fair elections envisages a process that facilitates free will of the electorate and aspirants; one that is devoid of undue influence, harassment
or coercion. The power vested on the individual vote is critical in the promotion of the democratic space.

During the political party nominations process, KNCHR recorded a number of cases of harassment. Most of the notable cases of harassment and duress were in the form of booing, threats to voters, aspirants and polling officers aimed at influencing the choices of candidates.

In line with harassment and duress cases, the results are as presented in Figure 8.

![Figure 9: Incidences of harassment and duress per county](image)

Source, KNCHR Election Monitoring System (EMS)

Figure 8, shows that there were some harassment and dures cases reported in 9 Counties where Bungoma, Kajiado and Kericho indicated the highest incidences.

Some of harassment and duress cases are recorded in the following incidences;

- At Young Muslim Primary School polling centre, Ijara Ward, Garissa Constituency, Garissa County, KNCHR documented an incident where a group of young men marched into a polling center chanting that the nominations process should stop without giving legitimate concerns. The intention was to harass the voters but quick action by the Police managed the situation and the voting process continued.
At St Monica Girls Secondary and Kajiado Township polling centres, in Kajiado County, Party agents purporting to assist voters coerced them to nominate their candidates. This led to wrangles between party agents as they fought over who the voters were to nominate.

3.10 Intimidation and Violence against Marginalized Groups

It was noted during the political party nominations that a number of political actors resorted to intimidation, violence and hate speech. These cases raise the specter of the 2007/08 post-election violence and must be condemned in the strongest terms possible. Some of the cases documented by KNCHR include:

- Distribution of hate leaflets in Nakuru County targeting certain communities is a stark reminder of the build up to the post-election violence witnessed in Kenya in 2007/2008. Chilling hate messages were distributed through leaflets in Nakuru as indicated in the photo below. In Nakuru, leaflets were found spreading fear to a certain community which was being warned to exit the County should a certain aspirant win the polls.
In Kirinyaga and Nakuru Counties, female aspirants received printed messages meant to harass and intimidate them to dissuade them from continuing with their political ambitions. This was meant to break the spirit of the female aspirants and hence drop their bid to defend their positions.

The next two photos indicate the trend of targeted harassment to women. The leaflet targeting a gubernatorial aspirant collected from Kirinyaga.
11. Ngirici mwina mugunda ya mucere bururi wa Pakistan iria watigiiru ni Kanyotu na na uii wega Athoni aku nio maninite mucere mwea. Tugu kuria atiri, Arimi a Mucere Mwea nimageethia wathuriro mutumia waku Wangui?

12. Ngirici ririkana muthuri andikitwo mugundaini kuria Kangai wetagwo Muchiri oimete Kiamathambu ni wamuragire niundu wa miti waterire nahiya ugitii kwendia Mombatha. Kiuria kiria kinene, Aikari a Kirinyaga tureuria ni giki “ mbea icio uretia nacia Giti kia utongoria no icoke andu aya othe muoyo?

13. Ngirici mutumia waku angithuro ungiuruga aigana wina UNENE?


15. Niki Ngirici andu a Kerugoya na Kirinyaga Central makuingatire kuu ukitii Mombasa? Kana urona twariganisoro niwe wari General Wa MUNGIKI.

Photograph 12: A copy of hate speech leaflet that was distributed in Kirinyaga County Translated as below.
• In Kakamega County, during the party primaries for the ODM Party, a female aspirant from Chavayo Ward, together with her party agents were assaulted by the supporters of her competitor who hails from the same village, and was barred and denied entry into her own home. Her party agents were chased away from the polling station and some of her supporters coerced and threatened to vote for her opponent failure to which she would be killed.

• On 21st April 2017, a KNCHR monitors was accosted by party agents in Kakamega and accused of being “Omuseve” which in the local language jargon is attributed to the Kikuyu community.

• On 21st April 2017, a shop belonging to Hon. Miringo, a MCA aspirant for Kimilili Ward was burnt in Bungoma for being an “outsider”
The threats against a certain community should not be taken lightly owing to the country’s 2007/2008 post-poll violence which was fanned by similar mode of incitement. KNCHR notes that the spiral effect may cause agitation and mobilization to cause violence pitting certain communities in future elections.

3.11 Absence or Manipulation of Political Parties’ Membership Lists

The KNCHR established that most political parties conducted their primaries without valid political party registers. In the 33 Counties where KNCHR had dispatched monitors, the respective political parties did not use legitimate party registers during the party primaries exercise.
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Photograph 15: Political Parties trend on use of valid party registers.

The Political Parties Act, 2011 Section 7 (2) (f) (1) and Section 28 of the Elections Act, 2011 requires that political parties submit to the Registrar of Political Parties and the IEBC respectively, a list of names and identification of all their members. The non-utilization of these registers is against Section 3 and 4 of the Elections
Offences Act, 2016.

In the absence of political party registers during the nominations process, it cast doubts on the political party operations and also gives an opportunity for persons to vote for more than one party thus mocking the credibility of the nominations exercise.

KNCHR noted three key issues with regard to the voter registers:

- None of the political parties had a valid party membership registers as required by the law;
- While some political parties attempted to have the political party registers, it was clear that the reference was the 2013 IEBC party register and
- Some political parties registered party member’s right at the polling centres and purportedly used them as the bona-fide registers.

Photograph 16: A purported ‘voter register’ created during the voting day in Bomet County
3.10 Misuse of Public resources

KNCHR observed that some aspirants used public resources thus having an undue advantage. Here below is a case witnessed in Elgeyo Marakwet:

Photograph 17: Elgeyo Marakwet County: Vehicle alleged to have been carrying fake ballot papers

Emerging Issues

The KNCHR also noted other issues which were considered as political party anomalies. Some of them are documented and discussed as follows;

- KNCHR was alarmed by trend that had emerged where some aspirants had resorted to using children (including school children) to brand their campaigns by giving them banners to carry, dressing them in party attire and other apparels. This despite a clear directive issued by the Dr. Fred Matiang’i, Cabinet Secretary for Education, banning such practices.
Photograph 18: Kilome, Makueni County: Pupils at Landu Primary School, at a political event on a Sunday for an aspirant on April 2nd 2017. (Photo Courtesy of Citizen TV)

Photograph 19: Children carrying a banner of MCA aspirant Dikqa Wario along the Northern bypass
• Continued insecurity in some parts of the country such as Baringo and Laikipia hindered many voters from participating in the process owing to the relocation movement by residents following skirmishes in the areas.

• Independent Candidates- KNCHR noted the influx of independent candidates which was attributed to the weak democratic practices within the political parties that made the losers not to concede. This was a direct indictment to the lack of a political party culture in Kenya since independent candidates are supposed to be those who do not subscribe to the ideology, manifesto or policies of the dominant parties for a number of personal political reasons. Independent candidates are not supposed to be another avenue for the outlawed party hopping as was clearly evident in the post 2017 political party nomination scenario in Kenya.
CHAPTER 4

Summary of Actions Taken

Throughout the process, KNCHR tracked actions taken by various stakeholders either to facilitate the political party primaries or in response to the issues that emerged. The following is a summary of the actions documented by KNCHR.

4.1 IEBC

The Independent Elections and Boundaries Commission (IEBC) set the timelines and gazetted dates for the political party primaries to allow political parties carry out the nomination process.

IEBC did not bow to pressure following the clamour by the political parties for extension of nomination dates, as several political parties had encountered challenges during the initial days of the nomination process. IEBC urged them to observe the stipulated guidelines. The Electoral body made efforts to curb political party hoping by losers of the party nomination process by challenging a high court ruling that had allowed for the same.

4.2 Political parties

Political parties kept the public informed of the change of voting dates and shared other critical updates through mass media, press conferences / live broadcasts which managed to keep voters informed.

Some of the political parties suspended the issuance of Nomination Certificates to candidates in areas where there was contestation and expedited hearing of appeals by inviting the conflicting parties or aspirants to their offices to resolve the issues or referring them to the party election boards or Political Parties’ Dispute
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Tribunal for further investigation. This was evident in several counties

Political Party National Elections Boards

- The Boards facilitated the nomination process at the party level through the recruitment of election officials, provision and distribution of party nomination materials to all polling centres and stations.
- Where anomalies were experienced, the boards acted through cancellation of results then sought fresh nominations and taking action against presiding officers who were found to have committed nomination or election offenses.

Political Parties Dispute Tribunal

- The Tribunal was able to issue a temporary injunction in the Kisumu ODM primaries and called for the reconstitution of the Kisumu ODM County Elections Board.
- The tribunal adjudicated petitions brought before it and issued judgement ranging from orders for fresh nominations processes, striking out petitions and gave recommendation for action by political parties.

4.3 Police

In their preparation for this exercise, the police mapped out the perceived electoral hotspots prior to the commencement of the nominations process thus made plans for deployment of security agents to the polling centres and stations. The following are some sample interventions by the police;

- On 15th April 2017, at Kanam ward, Turkana County, during the ODM primaries, supporters of parliamentary aspirants clashed. The Police calmed the situation by quelling tensions and enabling the exercise to proceed.
- On 25th April 2017, at Oboch Primary School polling centre, Southwest
Nyakach ward, Nyakach Constituency, Kisumu County, a group of rowdy youths stormed and dispersed voters who were queuing to vote. The youths had been sent by one of the aspirants for MCA position who had planned to sabotage the nomination/voting process. The police intervened, arrested the masterminds and restored order enabling the voting exercise to continue smoothly.

- On 18th April 2017, Nakuru Primary School polling station, Kivumbini ward, Nakuru Town East Constituency, Nakuru County, young female agents belonging to an MCA aspirant were harassed and threatened by other male agents belonging to another aspirant using derogative language with the intention to have them leave the polling station. The police intervened allowing the female agents to perform their duties.

- On 26th April 2017, at Mathare Youth Polytechnic polling station, Mabatini ward Mathare Constituency, Nairobi County, restive voters pulled down the gate forcing their entry to the premise but the police stepped in and restored order.

- In Siaya, Migori, Kiambu, Kwale, Nakuru and Nairobi City Counties, the Police in conjunction with members of the public were able to intercept and seize consignments of crude weapons that were found in vehicles belonging to aspirants.
CHAPTER 5

Recommendations

The Kenya National Commission on Human Rights (KNCHR), in its 2013 report on party primaries titled; Break from the Past? A Monitoring Report of the 2013 Political Party Nominations, made recommendations which would have enhanced the quality of the party primaries 2017. Surprisingly, the 2017 political party primaries exhibited similar acts of omissions and commission.

Based on its findings, the Kenya National Commission on Human Rights, makes the following recommendations:

5.1 The Political Parties

Political parties must;

- Endeavor to recruit and deploy duly credited, properly trained and qualified party/polling officials to all polling stations and the various tallying centers. These officials should be deployed in time to enable them effectively and efficiently discharge their duties.

- Ensure that they have proper membership registers during party primaries. The Elections Act (2011) requires that they deposit the same registers with the IEBC and Registrar of Political parties. The absence of political party registers and use of alternative ones like the 2013 IEBC registers meant that in the strict sense, those who voted in the 2017 primaries were not party members.

- Uphold the rule of law in conducting political party primaries. Political parties should focus on ensuring that the party members and candidates follow the law that guides operation of political parties. This will in future ensure that political parties do not become agents of breaking the law through promoting hooliganism during election campaigns.

- As critical institutions of democracy, political parties should endeavor to conduct their affairs in a democratic, participatory, and inclusive manner,
especially during party primaries which produce the candidates for the General Elections. Should practice internal party democracy especially during the awarding of direct certificates in order to avert decisions that disenfranchise the youth, persons with disability, women and candidates who may not have the financial muscle to push their way and have the certificates awarded to them. Closely tied to the issue of lack of internal Party Democracy is the inordinately large numbers of independent candidates who “jumped ship” after feeling that they were rigged out by their respective parties. KNCHR therefore calls upon the political parties to strengthen the internal party democracy mechanisms in line with the constitution of Kenya, 2010, their own constitutions, the political parties act (2011) as we all as all other relevant electoral laws.

- Reign in political party candidates who break the respective electoral laws and ensure that legal action is taken against such candidates or aspirants. For instance, candidates who engage in actions which occasion violation of human rights like incitement to violence, displacement and destruction of property must be indicted and their names forwarded to the respective authorities for action.

- Ensure that they prepare adequately for the political party primaries. This would entail procurement of the necessary nomination materials including ballot papers, boxes, stamps and ink and ensure that they are delivered to the centers or stations in good time to avoid late opening and closing of polling centers or stations.

- Political parties must not shift polling centers on short notice and also avoid amalgamating polling stations so as to avoid confusing the voters. This lack of defined polling centers not only denies people the right to participate in the primaries but also creates lethargy among voters leading to trivialization of the whole exercise.

- Reconsider having their primaries in good time to avoid last minute rush in order to beat the IEBC deadline. This should be at least thirty (30) days before the deadline so as to ensure that the process is not rushed and also allows adequate time for aggrieved parties to file their complaints in good time.

- As advised by the Political Party Disputes Tribunal (PPDT), political
parties should strengthen their internal disputes mechanism so as to ensure that internal party disputes are handled and dispensed internally and avoid overloading the Judiciary with matters which may be handled at that level.

- Restrain party agents from being partisan and demand that they remain neutral and avoid interfering with the voting processes. This includes campaigning at the polling stations, distributing freebies and compromising the credibility of the vote. The party agents must be neutral.

- Streamline voting, counting, tallying and announcement of results and ensure that fraudulent persons do not exploit the loopholes and seize the opportunity to declare undeserving candidates as the winners.

- There is need for clarity between the Political Party National Election Board (PPNEB) and their County Boards to bring out semblance of synergy.

Political parties need to invite independent observers on the party primaries polling day. The observers can be used to verify whether nominations were simple, accurate, verifiable, accountable and transparent. Their reports can be used to enhance the credibility of party primaries in the subsequent polling cycles.

5.2 The Office of the Registrar of Political Parties (ORPP)

The Office of the Registrar of Political Parties appeared to have less clout especially on the enforcement of the party rules and regulations. It is therefore important that as we approach any future political party elections, the ORPP should;

- Provide assistance to political parties so that they can strengthen and manage their nomination processes. This can be through a continuous review of the legal requirements especially on the nomination processes.

- Enforce political party discipline by ensuring that all political parties have accredited party registers which can be viewed by the public with ease so that members of the public are not clandestinely registered.

- Ensure that political parties update party membership registers and
enforce strict use of the same during the primaries.

- Take action, including deregistration, against any political party which does not follow the legal provisions in carrying out the nomination process or in any other way flouts the political party provisions.

- Position enforcement officers to monitor and share up-to-date information from polling stations to enhance action on urgent matters.

5.3 The Independent Electoral and Boundaries Commission (IEBC)

The IEBC, being the key body mandated by the Constitution of Kenya, 2010 to manage elections should consider the following so as to better future political party primaries;

- Ensure that they reign in political parties which do not comply with the laid down nomination procedures especially the independent candidates, those alleged to have caused violence or involved in other malpractices like bribery and misuse of state resources.

- Consider and develop administrative regulations so that political party primary days fall on days conducive to the majority of the members of the public. This should avoid days of worship so that the members of the public can have adequate time to participate in their political party primaries.

- IEBC should adopt a continuous stakeholder engagement and public outreach approach with political parties. This approach should be more inclusive, structured, regular, open, and predictable in relation to the future political parties electoral preparedness, the emerging challenges, and the measures taken to proactively respond to the challenges. This will ensure that IEBC and all political party stakeholders continue to engage and appraise progress in different electoral processes/reforms.

- IEBC should engage an independent organization to conduct an Independent Review of 2017 Political Party Electoral Process. 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 political party election 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 direct nominations, issuance of certificates to successful candidates, dispute resolution mechanisms among others, and the role of critical actors such as IEBC, security personnel, voters, national and county government officials, and the media.

The National Assembly and the Senate

- Fast-track the ratification of the African Charter on Democracy and Governance to enhance the respect of fundamental human rights and freedoms in the context of elections.

- Should move quickly to ensure the operationalization and implementation of the Election Campaign Financing Act 2013 by enacting the necessary policies, regulations, guidelines and publicizing it among citizens and political parties. Revisit the provisions of law on issues of Independent candidates and political party hopping so as to ensure that political parties do not just become vehicles upon which the candidates use for convenience.

- Revisit the law to ensure that Cabinet Secretaries and all State officers do not participate in political party campaigns and interfere with the party primaries.

5.4 Security Agencies

KNCHR has the following recommendation on security agencies;

- Adequate security should be provided to ensure that voters and other stakeholders are protected during political party elections. During deployment, consideration of the number of registered voters should inform the number of security officers assigned to each polling center/
station in consultation with the political parties.

- Security agents deployed during any elections should always remain independent, neutral, and impartial in the discharge of their duties. They should always discharge their duties with utmost professionalism, integrity, transparency, and accountability. Ensure that cases reported are both promptly and properly investigated and those found culpable be arraigned in our courts of law for suitable legal action.

- Thorough training of the deployed security personnel on how to cope with political party elections fracas/violence should be undertaken early in advance before the election dates.

- Need to strengthen intelligence gathering to identify potential actionable threats to security such as arming of communities or persons, politically sponsored criminal gangs, purveyors of hate messages (electronic and manual) and generally take other deterrent measures geared towards ensuring peaceful, free, fair and credible political party election. To this end, we particularly call upon the Directorate of Criminal Investigations to be more proactive in forestalling the aforementioned electoral offences committed during political party elections.

5.5 Media

The Media should;

- Adhere to the code of conduct by remaining vigilant to objective and conflict sensitive reporting to avert heightening emotions that may escalate volatile situations.

- Work to enhance transparency of the political party primaries / elections through wide coverage of the party electoral process that begins with the pre-election activities. Transparent sharing of political party and candidates information/knowledge with voters

- The Media Council of Kenya should take the necessary action against individual journalists or media houses for breach of the code of ethics and conduct and facilitate external processes that may require prosecution of
individual journalists and media houses.

- Give balanced media coverage for all candidates and political parties during public events and resist from profiling the candidates by either referring- in some instances- “two or three horse race” even in cases where many more candidates are involved.
- Not allow politicians to use their platforms to spread fear, ethnic hatred, and despondency especially during political party campaigns or an electoral period.

5.6 The Office of the Director of Public Prosecutions (ODPP)

The Office of the Director of Public Prosecutions:

- Must exercise its powers and order timely/speedy investigations into the numerous alleged incidents of assault and killings of people and offences committed in the run-up to, during and after the 2017 political party nominations process and prosecute the offenders accordingly as per the law conferred to it under section 21 of the Elections offences act. Kenyans in general and the survivors of such incidents, their families, and communities in particular should be assured that the State does not condone violence committed by the candidates, their agents or supporters, police or any other person; and that the State will take all measures necessary to punish the perpetrators.

5.7 Working Group on Chapter 6 of the Constitution of Kenya, 2010

The Chapter 6 Working Group in its mandate of discharging their duties of assessing the suitability of candidates, it must make reference to information and documentation from the following institutions:-

- Financial probity institutions like KRA and Credit Reference Bureau
- Commission for Higher Education for authentication of academic certificates
- The Directorate of Criminal Investigations
• National Cohesion and Integration Commission
• Kenya National Commission on Human Rights

5.8 The Electorate

The voters must;

• Uphold peace during campaigns and avoid all forms of violence. This can be enhanced by ensuring political parties and the respective candidates restrain their members from attacking their opponents.

• Ensure that the rule of law is maintained. They must understand that the opportunity to campaign and choose their candidates does not warrant the violation of the rights of others and also break the law wantonly. It is important to note that such actions will have reprisals at a personal level.

• Vote for candidates who respect human rights and the rule of law. This to ensure that the candidates who sail through to the final elections are leaders who will uphold the same standards and promote their rights.
CHAPTER 6

Conclusion

The conduct of political parties, aspiring leaders and voters during the 2017 party primaries demonstrates a trend that played-out during the 2017 general elections. Thus party primaries monitoring was essential as a means of tapping into strategies that positively worked towards securing the vote or provided stop-gap measures that would have hindered the same.

The *Fallacious Vote* is a report whose efforts aimed at safeguarding the right to vote and inform electoral practices that enhance the enjoyment of fundamental human rights through adherence to human rights standards. Kenya is among very few African countries hailed for a robust Bill of Rights and laws that promote public participation in governance.

As a country, our biggest challenge still remains putting in place strengthened measures that would ensure full implementation of these electoral laws. Thus, vices such as corruption, incitement, violence and harassment that allow for varied degrees of voter manipulation continue to thrive and slow down the realization of free and fair elections. For purposes of investigations and prosecutions, the KNCHR is taking the immediate step to forward to the relevant actors a list of alleged human rights violators for action as guided by their institutional mandates.

This report has demonstrated that during the political party primaries the right to vote or be voted for were violated as indicated by incidences such as; missing names of electorate in political party register, bribery of voters, misuse of public resources, harassment and duress, violence, lack of sufficient voting materials, late opening and early/late closing of polling stations as well as absence of security before, during and after party primaries. All these variables conspired to deny some electorates a chance to vote or some candidates a chance to be voted for.

This is an alarming scenario owing to the fact that, the Constitution of Kenya 2010 was crafted with intention of safeguarding the rights of citizens among other reasons. Based on this findings therefore, KNCHR calls for responsibility of every electoral stakeholder to adhere to the recommendations shared herein.